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Opinions, Decisions, and Orders

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CONTENTS

	Page
Members of the Commission	II
Table of Commission Opinions, Initial Decisions Which Have Become Final, and General Rule Making Orders	IV
Table of Cases Reported	VII
Table of Cases Cited	XXIX
Table of Statutes Cited	XXXVII
Table of Rules of Commission Cited	XLI
Table of Miscellaneous Citations	XLV
Foreword	XLVII
Opinions, Decisions, and Orders	1
List of Producer Orders	1619
Index-Digest	1667
Subject Index	1698

This volume should be cited "34 FPC — ".

COMMISSION OPINIONS

Opinion No.		Page
451–A	Southwestern Public Service Co., docket No. E–7038	841
452–B	Consolidated Edison Co. of New York., Inc., project No. 2338	1083
465	Rumford Falls Power Co., project No. 2333	27
466	Gresham, Wisconsin, Village of, project No. 2464	33
467	Cumberland Natural Gas Co., Inc., et al., docket No. G–18740, et al	132
468	Area Rate Proceeding, et al. (Permian Basin), docket No. AR61–1, et al	159
468–A	Area Rate Proceeding, et al. (Permian Basin), docket No. AR61–1, et al	1068
469	Midwestern Gas Transmission Co., et al., docket No. CP64–308, et al	457
470	Phillips Petroleum Co., et al., docket No. G–16611, et al	486
471	Michigan Wisconsin Pipe Line Co., docket No. RP60–9	621
471–A	Michigan Wisconsin Pipe Line Co., docket No. RP60–9	1188
472	Transwestern Pipeline Co., et al., docket No. G–20464, et al	659
473	Arkansas Power & Light Co., docket No. E–7090	747
474	Natural Gas Pipeline Co. of America, et al., docket No. CP62–243, et al	771
475	Hawkins, H. L. & H. L. Hawkins, Jr., Operator, et al., docket No. G–18077, et al	897
476	Sinclair Oil & Gas Co., et al., docket No. G–16760, et al	930
476–A	Sinclair Oil & Gas Co., et al., docket No. G–16760, et al	1357
477	Midwestern Gas Transmission Co., et al., docket No. RP61–19, et al	973
478	Turnbull & Zoch Drilling Co. (Operator), et al., docket No. G–17960, et al	1001
479	Northern Natural Gas Co., et al., docket No. G–17485, et al	1139
480	Natural Gas Pipeline Co. of America, et al., docket No. CP64–150, et al	1258
481	Niagara Mohawk Power Corp., project No. 2318, et al	1298
482	United States Department of the Interior, Bonneville Power Administration, docket No. E–6611, et al	1462
483	Public Service Co. of Indiana, Inc., docket No. E–7163	1513

INITIAL DECISION WHICH HAS BECOME FINAL

	Page
Northern Natural Gas Co., et al., docket No. CP65–1, et al	507

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION REPORTS

VOLUME 34

ERRATA NOTICE

(March 18, 1969)

On page 462, third full paragraph, change first line to read, "Great Plains predicts that the 1966 population of the four communities it pro-"

Fourth full paragraph, first line, change "5,742 Mcf" to read, "5,472 Mcf".

GENERAL RULE MAKING ORDERS

Order No.		Page
301	Docket No. R-253, Take or Pay Gas Purchase Prepayments	76
302	Docket No. R-277, Responses to Applications for Orders Under Section 7(a)	87
303	Docket No. R-257, Natural Gas Companies-Emergency Planning—System Flow Diagrams	537
304	Docket No. R-281, Natural Gas Pipelines—Tariff Changes	851
305	Docket No. R-285, Annual Report Forms—Electric Utilities, Licensees and Natural Gas Companies	991
306	Docket No. R-286, Exemption from Provisions of Natural Gas Act	999
307	Docket No. R-287, Organization of the Commission	1176
308	Docket No. R-279, Rate and Certificate Filings by Small Independent Producers	1202
309	Docket No. R-272, Annual Charges Prescribed for Licensed Projects	1399
310	Docket No. R-283, Annual Reports for Natural Gas Companies—Miscellaneous Amendments	1436
311	Docket No. R-284, Annual Reports for Electric Utilities—Miscellaneous Amendments	1437
312	Docket No. R-289, Power System Statements—Miscellaneous Amendments	1499
313	Docket No. R-294, Statement of General Policy re Recreational Developments	1546
314	Docket No. R-295, Hydroelectric Licenses—Applications—Exhibit K	1550
315	Docket No. R-268, Hydroelectric Licensed Projects—Safe Operation	1551
316	Docket No. R-296, Budget-type Certificate Applications	1607

TABLE OF CASES REPORTED

Page

A. J. Industries, Inc., project No. 2307 588
Abell, George T., et al., docket No. CI65–878, et al 579
*Aikman, Claude E., et al., docket No. G–18466, et al 159, 846, 1068, 1198, 1286
Alabama Power Co., docket No. E–6893 1257
Alabama Power Co., project No. 618 1471
Alabama Power Co., project No. 2146 ..... 105, 1237, 1600
Alabama Power Co., project No. 2165 ..... 971, 1370
Alabama Power Co., project No. 2203 1108
Alabama Power Co., project No. 2407 711
Alabama-Tennessee Natural Gas Co., docket No. CP65–197 1487
Alabama-Tennessee Natural Gas Co., docket No. RP65–58 767
Alexander, C. W., et al., docket No. G–6932, et al 67
Algonquin Gas Transmission Co., docket No. CP64–6 1124
Algonquin Gas Transmission Co., et al., docket No. CP65–340, et al 572
American Electric Power Co., et al., docket No. E–7184 1173
*American Petrofina Co. of Texas, et al., docket No. CI60–134, et al 1001
*Anderson, Robert G., et al., docket No. CI62–1442, et al 771
*Appell Petroleum Corp. (Operator), et al., docket No. CI61–1591, et al 1001
*Area Rate Proceeding, et al., docket No. AR61–1, et al 159, 418, 846, 1068, 1082, 1198, 1286
Area Rate Proceeding (Permian Basin), docket No. AR61–1, et al 424, 589, 1135, 1287, 1411
Area Rate Proceeding, et al. (Permian Basin Area), docket No. AR61–1, et al 1288
Area Rate Proceeding, et al. (Southern Louisiana Area), docket No. AR61–2, et al 3, 562, 590, 870, 1332
Area Rate Proceeding, et al. (Hugoton-Anadarko Area), docket No. AR64–1, et al 609, 1180
Area Rate Proceeding, et al. (Texas Gulf Coast Area), docket No. AR64–2, et al 609, 1180
Arizona Public Service Co., docket No. E–7225 1227
Arizona Public Service Co., docket No. E–7226 78
Arizona Public Service Co., et al., project No. 2069 1602

*Designates case as an opinion or decision.

Page

Arkansas Louisiana Gas Co., et al., docket No. G–10591, et al. 1558
Arkansas Louisiana Gas Co., docket No. CP61–311 848
Arkansas Louisiana Gas Co., et al., docket No. CP62–219 (Phase I), et al 845
*Arkansas Louisiana Gas Co., et al., docket No. CP64–125, et al 659, 1474
Arkansas Louisiana Gas Co., docket No. CP66–72 1578
Arkansas Louisiana Gas Co., docket No. CP66–73 1579
Arkansas Louisiana Gas Co., docket No. CP66–138 1581
Arkansas Louisiana Gas Co., docket No. CP66–144 1488
Arkansas Louisiana Gas Co., docket No. RP66–15 1561
*Arkansas Power & Light Co., docket No. E–7090 747, 1242
Ashland Oil & Refining Co. (Operator), et al., docket No. G–3912, et al 1239
*Ashland Oil & Refining Co., et al., docket No. CI63–178, et al. 771
Atlanta Gas Light Co., et al., docket No. CP66–51 1208
Atlanta Gas Light Co., et al., docket No. CP66–84 1325
Atlantic Refining Co., The, et al., docket No. G–17741, et al 441, 1167
*Atlantic Refining Co., The, et al., docket No. CI64–837, et al. 1001
Atlantic Refining Co., The, et al., docket No. CI64–1130, et al. 579
Atlantic Seaboard Corp., et al., docket No. G–16401, et al. 592
Atlantic Seaboard Corp., docket No. CP66–64 1439
Atlantic Seaboard Corp., docket No. RP65–49 149, 593
Atlantic Seaboard Corp., et al., docket No. RP65–49, et al. 970
Auburn, Kansas, City of, et al., docket No. CP65–327 1333
Austell, Georgia, City of, et al., docket No. CP65–74, et al. 655, 1172
Austral Oil Co., Incorporated, et al., docket No. G–20289, et al 1216
*Austral Oil Co. Incorporated, et al., docket No. CI61–427, et al 1001
Bangor Hydro-Electric Co., project No. 2403 23
Barnwell Production Co., et al., docket No. RI65–223, et al. 69
Barnwell Production Co. (Agent for J. Paul Ratliff, Jr.), et al., docket No. RI65–230, et al 69
Bass, Perry R. (Operator), et al., docket No. RI66–174 1353
Bass, Perry R. (Operator), et al., issued September 23, 1965 960
Battle Creek Gas Co., et al., docket No. CP66–70 1121
Ben Bolt Gathering Co., et al., docket No. CP65–313, et al. 1360
Black, W. H., docket No. RI63–52 894
*Blanco Oil Co. (Operator), et al., docket No. CI61–618, et al. 1001
Blandin Paper Co., project No. 2362 1289
Bluebonnet Gas Corp., docket No. CP65–417 849
Boshell, Edward O., docket No. ID–1107 1166
Brazos River Authority, project No. 1490, et al 1507

Page

*Breuer & Curran Oil Co., et al., docket No. CI60–581, et al.. 1001
*Bright & Schiff, et al., docket No. CI61–1541, et al..... 1001
Bright & Schiff, issued September 30, 1965..... 994
Brighton, Iowa, Town of, et al., docket No. CP65–312..... 876
*Brown, George R., et al., docket No. CI61–1688, et al..... 897
*Brown, George R. (Operator), et al., docket No. CI63–5, et al. 930
*Brown, Herman, Estate, et al., docket No. G–18479, et al... 1001
Brown-New Hampshire, Inc., project No. 2300..... 657
Brown-New Hampshire, Inc., project No. 2300, et al..... 1601
Brown-New Hampshire, Inc. project No. 2422..... 151
Brown-New Hampshire, Inc., project No. 2423..... 543
Brown, Robert T. (Operator), et al., docket No. CI61–733, et al..... 418, 1082
*Bruns, H. D. (Operator), et al., docket No. CI63–820, et al.. 930
Buford, Georgia, City of, et al., docket No. CP65–11, et al.. 655, 1172
Calaveras County Water District, et al., project No. 2409, et al..... 1583
California Co., The, a Division of Chevron Oil Co., docket No. CI65–560..... 1335
California Co., The, a Division of Chevron Oil Co. (formerly The California Co., a Division of California Oil Co.) (Operator), et al., docket No. CI65–825, et al..... 733
*Callery Properties, Inc., et al., docket No. G–18857, et al.. 897
Carnegie Natural Gas Co., docket No. CP65–331..... 21
Carolina Pipeline Co., et al., docket No. RP63–4..... 547
Carolina Power & Light Co., et al., docket No. E–7227..... 453
Carolina Power & Light Co., et al., project No. 2206, et al.. 25
*Carrl Oil, et al., docket No. CI60–403, et al..... 930
Cascade Natural Gas Corp. (successor to Garfield Gas Gathering Co.), docket No. CP64–220..... 1181
Central Gas Co., docket No. CP66–81..... 1183
Central Illinois Electric and Gas Co., et al., docket No. CP66–23..... 961
Central Illinois Light Co., et al., docket No. CP65–406..... 443
Central Illinois Public Service Co., et al., docket No. CP65–303..... 963
Central Maine Power Co., docket No. E–7244..... 1340
Central Maine Power Co., project No. 2335..... 1103
Central Maine Power Co., project No. 2519..... 535
*Champlin Petroleum Co. (formerly Champlin Oil & Refining Co.), et al., docket No. CI62–1455, et al..... 771
Chatham Strait Fish Co., project No. 2013..... 1159
*Childers, Jr., A. F. (Operator), et al., docket No. CI62–1152, et al..... 897

Page

*Cities Service Co., et al., docket No. CI62–959, et al. 930
Cities Service Gas Co., docket No. CP63–188 (Phase II) 1209
*Cities Service Gas Co., et al., docket No. CP64–131, et al. 659, 1474
Cities Service Gas Co., docket No. CP65–34 1183
Cities Service Gas Co., et al., docket No. CP65–140, et al. 1239
Cities Service Gas Co., et al., docket No. CP65–327 1333
Cities Service Gas Co., docket No. CP65–410 611
Cities Service Gas Co., docket No. CP66–14 578
Cities Service Gas Co., docket No. CP66–113 1489
Cities Service Gas Co., docket No. CP66–115 1447
Cities Service Gas Co., et al., docket No. RP64–9, et al. 1199
Cities Service Gas Co., et al., docket No. RP65–21, et al. 1616
Cities Service Oil Co., et al., docket No. G–20302, et al. 1424
*Cities Service Oil Co. (Operator), et al., docket No. CI64–211, et al. 1001
Cities Service Oil Co., et al., docket No. RI63–485, et al. 587
*Cities Service Petroleum Co., et al., docket No. CI62–1556, et al. 771
Citizens Utilities Co., docket No. E–7253 1441
City Gas Co. of Florida, et al., docket No. RP65–48 1412
*Clark Fuel Producing Co. (Operator), et al., docket No. CI63–1495, et al. 1001
*Cleroy Inc., et al., docket No. CI62–1424, et al. 771
Cleveland Electric Illuminating Co., The, et al., project No. 2280 1407, 1567
Clewiston, Florida, City of, et al., docket No. E–7243 1395
Coastal States Gas Producing Co., et al., docket No. G–2557, et al. 1360
Coastal States Gas Producing Co., et al., docket No. G–19653 549
Coates, George H., et al., docket No. G–19824, et al. 550
*Coates, George H., et al., docket No. CI60–591, et al. 1001
Cody Gas Co., et al., docket No. CP65–378, et al. 125
*Coffey, W. C., et al., docket No. CI60–496, et al. 897
*Coffield, H. H., et al., docket No. CI62–1482, et al. 771
Colorado Interstate Gas Co., et al., docket No. CP61–256, et al. 26
*Colorado Interstate Gas Co., et al., docket No. CP63–344 (Phase Two), et al. 659
Colorado Interstate Gas Co., docket No. CP64–182 1562
Colorado Interstate Gas Co., docket No. CP65–330 4
Colorado Interstate Gas Co., et al., docket No. CP65–341, et al. 6
Colorado Interstate Gas Co., docket No. CP65–377 564
Colorado Interstate Gas Co., docket No. CP65–407 565
Colorado Interstate Gas Co., et al., docket No. RP65–43 118

Page

Colorado River Water Conservation District, The, project No. 2511 ---- 1211
Columbia River Basin, Headwater Benefits Investigation, docket No. E-6384 ---- 1217
Columbian Fuel Corp., et al., docket No. G-14101, et al ---- 1424
Community Natural Gas Co., Inc., docket No. CP64-302 ---- 9
Community Public Service Co., docket No. E-7231 ---- 92, 158
*Consolidated Edison Co. of New York, Inc., project No. 2338 ---- 1, 504, 1083
Consolidated Gas Supply Corp. (formerly Hope Natural Gas Co.), et al., docket No. CP65-282, et al ---- 733
Consolidated Gas Supply Corp., et al., docket No. CP65-394 ---- 613
Consolidated Gas Supply Corp., et al., docket No. CP66-45, et al ---- 1212
Consolidated Water Power Co., project No. 2110 ---- 1407
Consumers Power Co., et al., docket No. E-7206, et al ---- 80, 964
Consumers Power Co., et al., docket No. E-7234 ---- 83, 1419
Continental Gas Producing Co., et al., docket No. G-2737, et al ---- 1199
Continental Oil Co., et al., docket No. G-2737, et al ---- 1199
*Continental Oil Co., et al., docket No. CI61-375, et al ---- 659
*Continental Oil Co., et al., docket No. CI62-961, et al ---- 930
*Continental Oil Co., et al., docket No. CI64-1307, et al ---- 1001
*Cox, Edwin L. (Operator), et al. (formerly Paul R. Turnbull (Operator)), et al., docket No. CI60-620, et al ---- 930
*Cree Drilling Co., et al., docket No. CI61-193, et al ---- 659
*Creek Oil Co., Inc., et al., docket No. CI64-457, et al ---- 132
Crisp County Power Commission, et al., docket No. E-7120 ---- 729
Crisp County Power Commission, project No. 659 ---- 1422
*Crockett, M. W., et al., docket No. G-18522, et al ---- 1001
*Cumberland Natural Gas Co., Inc., et al., docket No. G-18740, et al ---- 132
Dalco Oil Co., et al., docket No. CI64-1442, et al ---- 579
DeBardeleben, Jr., Charles F. (Operator), et al., docket No. RI65-222, et al ---- 69
*DeLange, Rodney (Operator), et al., docket No. CI62-962, et al ---- 930
Del Norte Natural Gas Co., et al., docket No. CP66-104, et al ---- 1584
Delta Natural Gas Co., Inc., et al., docket No. CP65-390 ---- 532
Detroit Edison Co., The, et al., docket No. E-7206, et al ---- 80, 964
Detroit Edison Co., The, et al., docket No. E-7234 ---- 83, 1419
*Diversa, Inc., et al., docket No. G-20458, et al ---- 1001
*Dixon, Philip C., et al., docket No. CI63-585, et al ---- 771
*Dougherty, Mrs. James R., et al., docket No. CI61-619, et al ---- 930

Page

*Drake, Truman, et al., docket No. G–18744, et al. 132
East Tennessee Natural Gas Co., et al., docket No. CP65–66, et al. 655, 1172
East Tennessee Natural Gas Co., et al., docket No. CP66–47 1126
Eastern Maine Electric Cooperative, Inc., project No. 2501 856
Eastern Shore Natural Gas Co., docket No. CP65–345 84
Eastern Shore Natural Gas Co., docket No. CP65–365 113
Eastern Shore Natural Gas Co., docket No. CP66–108 1413
*Edwin M. Jones Oil Co., et al., docket No. CI61–1202, et al. 930
El Paso Gas Transportation Corp., et al., docket No. CP66–105 1588
El Paso Natural Gas Co., docket No. G–8932 1443
El Paso Natural Gas Co., et al., docket No. G–13019, et al. 1385
El Paso Natural Gas Co., docket No. CP62–154 1563
El Paso Natural Gas Co., docket No. CP62–265 126
El Paso Natural Gas Co., docket No. CP64–184 735
El Paso Natural Gas Co., et al., docket No. CP64–211, et al. 579
El Paso Natural Gas Co., docket No. CP65–45 1564
El Paso Natural Gas Co., docket No. CP65–242 1230
El Paso Natural Gas Co., docket No. CP65–374 871
El Paso Natural Gas Co., et al., docket No. CP65–384, et al. 1239
El Paso Natural Gas Co., docket No. CP65–400 877
El Paso Natural Gas Co., docket No. CP65–408 521
El Paso Natural Gas Co., docket No. CP65–412 879
El Paso Natural Gas Co., docket No. CP66–6 965
El Paso Natural Gas Co., docket No. CP66–36 880
El Paso Natural Gas Co., docket No. CP66–49 1587
El Paso Natural Gas Co., docket No. CP66–58 1378
El Paso Natural Gas Co., docket No. CP66–92, et al. 1449
El Paso Natural Gas Co., et al., docket No. CP66–105 1588
El Paso Natural Gas Co., docket No. CP66–127, et al. 1591
*El Paso Natural Gas Products Co., et al., docket No. CI63–89, et al. 771
Empire District Electric Co., The, docket No. E–6711 858
Empire Gas and Fuel Co., et al., docket No. CP66–31, et al. 1212
Equitable Gas Co., docket No. CP62–186 522
Evans, Jr., James P., et al., docket No. RI60–237, et al. 10
*Fair, Ralph E., et al., docket No. CI63–56, et al. 930
*Finder, Richard M., d/b/a Texkan Oil Co. (Operator), et al., docket No. CI61–352, et al. 930
First Transportation Gas Corp., Inc., docket No. CI61–985 533
Florida Gas Transmission Co., docket No. CP65–393, et al. 1184
Florida Gas Transmission Co., docket No. CP66–12 736
Florida Gas Transmission Co., docket No. CP66–18 567

Page
Florida Gas Transmission Co., docket No. CP66–19 738
Florida Gas Transmission Co., docket No. CP66–53 967
Florida Gas Transmission Co., et al., docket No. RP65–48 1412
Florida Gas Transmission Co., docket No. RP66–4 995
Florida Power & Light Co., docket No. E–7210 990
Florida Power & Light Co., et al., docket No. E–7243 1395
Fort Smith Gas Corp., docket No. CP65–411 444
Frankel, J. R., et al. (successors to Berkshire Oil Co., successor to R. R. Frankel), docket No. G–17671, et al 712
*Gallagher, Charles P., et al., docket No. CI63–715, et al 771
*Gallagher, Gregory J., et al., docket No. G–19308, et al 897
*Gallagher, John P., et al., docket No. CI62–1471, et al 771
*Gallagher, William, et al., docket No. CI63–702, et al 771
Gas Gathering Corp., et al., docket No. G–20118, et al 1167
George Mitchell & Associates, Inc., Agent, docket No. RI61–239, et al 1544
Georgia Power Co., et al., docket No. E–7120 729
Georgia Power Co., project No. 1218 106
*Getty Oil Co. (Operator), et al., docket No. G–18378, et al 1001
*Ginther, Warren & Co., et al., docket No. CI64–916, et al 1001
Granite State Gas Transmission, Inc., et al., docket No. CP66–37, et al 1295
*Great Plains Natural Gas Co., et al., docket No. CP65–13, et al 457
*Gresham, Wisconsin, Village of, project No. 2464 33, 534, 1196
Gulf Oil Corp., et al., docket No. G–6932, et al 67
*Gulf Oil Corp., et al., docket No. CI64–883, et al 1001
*Gulf Oil Corp., et al., docket No. CI64–1153, et al 579
Gulf Oil Corp., et al., docket No. CI66–68, et al 1555
*H. B. Zachry Co., Gasoline Production Division, et al., docket No. CI62–1023, et al 930
Hamon, Jake L., et al., docket No. RI61–408, et al 1243
*Harper Oil Co., et al., docket No. CI63–598, et al 771
Harrell Drilling Co., docket No. G–17074 1231
*Hawkins, H. L. & H. L. Hawkins, Jr., Operator, et al., docket No. G–18077, et al 897, 1330, 1472
*Hefener Production Co., et al., docket No. CI63–595, et al 771
*Heritage Petroleum Corp. (formerly Layton Brown Drilling Co., Inc. (Operator), et al.), et al., docket No. CI61–1567, et al 930
Hermann, Missouri, City of, et al., docket No. CP66–24 1371
*Highland Oil Co., et al., docket No. CI64–346, et al 930
*Hill, A. G., et al., docket No. CI61–497, et al 659
*Hodge, T. F., et al., docket No. CI63–81, et al 771

Page
Home Gas Co., et al., docket No. G–16402, et al 592
Home Gas Co., docket No. RP65–61 730
*Horn, L. B. (Operator), et al., docket No. CI64–908, et al 1001
*Howell, H. H. (Operator), et al., docket No. G–20595, et al 930
*Hudson, W. H. (Operator), et al., docket No. CI62–1074, et al 1001
Humble Gas Transmission Co., docket No. CP65–395 873, 1127
Humble Gas Transmission Co., et al., docket No. CP65–395, et al 1415
Humble Oil & Refining Co., et al., docket No. G–9287, et al 2, 1167
Humble Oil & Refining Co. (Operator), et al., docket No. G–14604 1105
*Humble Oil & Refining Co., et al., docket No. CI63–1057, et al 897
*Humble Oil & Refining Co., et al., docket No. CI64–297, et al 1001
*Hunt, Caroline, Trust Estate, et al., docket No. CI61–1344, et al 897
*Hunt, H. L., Operator, et al., docket No. CI61–1221, et al 897
*Hunt, H. L., et al., docket No. CI61–1282, et al 897
*Hunt, Hassie, Trust, Operator, et al., docket No. CI61–1283, et al 897
*Hunt, Lamar, Trust Estate, et al., docket No. CI61–1345, et al 897
*Hunt, Lamar (Operator), et al., docket No. CI61–1736, et al 930
*Hunt, Nelson Bunker, et al., docket No. CI61–1346, et al 897
Hunt Oil Co., docket No. CI65–1241 1136
Husky Pipeline Co., et al., docket No. CP65–379, et al 125
Ice Harbor Project, Snake River, Columbia River Basin, Washington, docket No. E–7235 714
Idaho Power Co., docket No. E–7229 1593
Idaho Power Co., docket No. E–7239 1160
Idaho Power Co., project No. 1971 1373
Idaho Power Co., project No. 1975 1123
Illinois Power Co., et al., docket No. CP65–343 58
Illinois Power Co., docket No. E–7245 860
Indiana Natural Gas Corp., et al., docket No. CP63–292 60
Indiana Natural Gas Corp., et al., docket No. CP65–376 1185
International Paper Co., project No. 2375 1162
Interstate Power Co., docket No. CP65–360 740
*Investors Syndicate of the Southwest, Inc., et al., docket No. G–18590, et al 1001
Iowa Power and Light Co., docket No. E–7252 1511
Iowa Public Service Co., docket No. E–7221 455

Page
*J. C. Miller Oil Co., Inc., et al., docket No. G–18743, et al. 132
*J. C. Trahan, Drilling Contractor, Inc., et al., docket No. CI62–123, et al. 1001
J. C. Trahan, Drilling Contractor, Inc., et al., docket No. RI64–722, et al. 554
*Jonnell Gas, Incorporated (Operator), et al., docket No. CI60–323, et al. 1001
*Joseph E. Seagram & Sons, Inc., d/b/a Texas Pacific Oil Co., et al., docket No. CI60–506, et al. 1001
*Jupiter Corp., The, et al., docket No. G–16679, et al. 486, 1124
*Jupiter Corp., The (Operator), et al., docket No. CI62–698, et al. 930
K–B Compression Co., Inc. (Operator), docket No. RI60–247 728
Kansas-Colorado Utilities, Inc., et al., docket No. G–2138, et al. 26
Kansas-Colorado Utilities, Inc., docket No. CP65–418 515
Kansas-Nebraska Natural Gas Co., Inc., docket No. CP65–289, et al. 70
Kansas-Nebraska Natural Gas Co., Inc., docket No. CP66–57 1214
Kansas-Nebraska Natural Gas Co., Inc., docket No. CP66–133 1491
Kansas-Nebraska Natural Gas Co., Inc., docket No. CP66–134 1451
Kansas-Nebraska Natural Gas Co., Inc., et al., docket No. RP65–43 118
*Katz Oil Co., et al., docket No. CI61–631, et al. 1001
*Keener Oil Co., et al., docket No. CI62–1480, et al. 771
Kentucky Gas Transmission Corp., et al., docket No. G–16403, et al. 592
Kentucky Power Co., et al., docket No. E–7184 1173
*Kerr-McGee Oil Industries, Inc., et al., docket No. G–16718, et al. 486, 1124
Kerr-McGee Oil Industries, Inc., et al., docket No. G–20479, et al. 587
Kerr-McGee Oil Industries, Inc., et al., docket No. RI66–81, et al. 1223
*Killam & Hurd, et al., docket No. CI61–626, et al. 1001
*Kilroy Properties, Incorporated, et al., docket No. CI60–478, et al. 897
*Kilroy, W. S. (Operator), et al., docket No. G–18175, et al. 897
*Kingwood Oil Co., et al., docket No. CI62–1514, et al. 771
*Kirby Petroleum Co., Operator, et al., docket No. CI60–610, et al. 897

Page

*Kirby Production Co., et al., docket No. CI63–85, et al. 771
Kittery Electric Light Co., et al., docket No. E–7220 17
Laclede Gas Co., docket No. CP66–11 1218
LaForce, W. Watson, et al., docket No. CI65–61, et al. 579
Lake Superior District Power Co., project No. 2430 862
*Lamb, Roy A. & A. G. Galt, d/b/a Pan American Engineering Co., et al., docket No. CI62–21, et al 1001
Lands Withdrawn in Power Site Reserve No. 8 and project No. 2273, docket No. DA–566–Idaho, Frank M. Sotin 12
Lands Withdrawn in Power Site Reserve No. 117, docket No. DA–578–Idaho, City of Idaho Falls 1356
Lands Withdrawn in Power Site Reserve No. 268 and project No. 334, docket No. DA–1058–California, Sacramento State College Foundation 1219
Lawrenceburg Gas Transmission Corp., et al., docket No. CP65–186, et al 527
License, Terms and Conditions of, Form L–6 (Revised September 1, 1965) 1114
License, Terms and Conditions of, Form L–11 (July 1, 1965) 602
Lincoln National Life Insurance Co., The, et al., project No. 2069 1602
*Livingston Oil Co., et al., docket No. CI60–508, et al. 1001
Lone Star Gas Co., docket No. CP66–10 762
Lone Star Gas Co., docket No. CP66–22 1187
Lone Star Gas Co., docket No. CP66–32 850
Lone Star Gas Co., docket No. CP66–124 1444
Lone Star Gas Co., et al., docket No. RP60–4, et al. 1616
*Lone Star Producing Co., et al., docket No. CI61–918, et al. 930
Loretto, Tennessee, City of, et al., docket No. CP65–305 120
*Lundells, Inc. (Operator), et al., docket No. CI64–810, et al. 1001
*McCurdy & McCurdy, et al., docket No. G–18434, et al. 1001
*McWood Corp., et al., docket No. CI63–751, et al. 1001
*Maguire, Russell, et al., docket No. CI64–933, et al. 1001
*Manilla, Iowa, Town of, et al., docket No. RP64–46, et al. 1139, 1417
Manufacturers Light and Heat Co., The, et al., docket No. G–16404, et al 592
Manufacturers Light and Heat Co., The, et al., docket No. CP66–42 1130
*Marathon Oil Co., et al., docket No. CI60–497, et al. 897
*Marathon Oil Co. (Plymouth), et al., docket No. CI61–169, et al 659
*Marathon Oil Co., et al., docket No. CI63–313, et al. 771
Marathon Oil Co., docket No. RI64–549 763
Marshall R. Young Drilling Co., et al., docket No. G–12245, et al 554

Page
*Mayfair Minerals, Inc., et al., docket No. CI61–1661, et al.. 1001
Michigan Gas Storage Co., docket No. CP65–383..... 882
Michigan Wisconsin Pipe Line Co., et al., docket No. CP63–20..... 1056
Michigan Wisconsin Pipe Line Co., docket No. CP65–191.. 445, 1566
Michigan Wisconsin Pipe Line Co., docket No. CP65–366.. 447
Michigan Wisconsin Pipe Line Co., docket No. CP65–396.. 896
Michigan Wisconsin Pipe Line Co., et al., docket No. CP66–2..... 1067
Michigan Wisconsin Pipe Line Co., et al., docket No. CP66–46..... 1347
Michigan Wisconsin Pipe Line Co., et al., docket No. CP66–56..... 1133
Michigan Wisconsin Pipe Line Co., docket No. CP66–65.... 1539
*Michigan Wisconsin Pipe Line Co., docket No. RP60–9.. 621, 1188
*Midwest Oil Corp., et al., docket No. CI62–1350, et al..... 771
Midwest Oil Corp., et al., docket No. CI64–1429, et al..... 579
*Midwestern Gas Transmission Co., et al., docket No. CP64–308, et al..... 457
Midwestern Gas Transmission Co., et al., docket No. CP65–159..... 582
Midwestern Gas Transmission Co., et al., docket No. CP66–15, et al..... 1379
*Midwestern Gas Transmission Co., et al., docket No. RP61–19, et al..... 506, 973, 1132, 1327
*Milwaukee Gas Light Co., et al., docket No. CP64–174, et al..... 457
Milwaukee Gas Light Co., et al., docket No. CP66–56..... 1133
Mississippi Power Co., docket No. E–7112..... 658
Mississippi River Corp. (formerly Mississippi River Fuel Corp.), docket No. G–7376, et al..... 1191
*Mississippi River Fuel Corp., et al., docket No. CP61–341, et al..... 771
*Mississippi River Transmission Corp., et al., docket No. CP61–341, et al..... 771
Mississippi River Transmission Corp., et al., docket No. CP65–343..... 58
Mississippi River Transmission Corp., et al., docket No. CP65–385, et al..... 1220
Mississippi River Transmission Corp., docket No. CP66–59.. 1191
Mississippi Valley Gas Co., et al., docket No. RP66–9, et al.. 1415
Missouri Edison Co., et al., docket No. CP66–69..... 1493
Monongahela Power Co., project No. 2477..... 523
*Monsanto Co. (Operator), et al., docket No. CI62–824, et al. 930

Page
*Monsanto Co., et al., docket No. CI63–58, et al 930
Montana-Dakota Utilities Co., docket No. CP65–108 1364
Montana Power Co., The, et al., docket No. E–7237 1255
Montana Power Co., The, project No. 5 12
Montana Power Co., The, project No. 2188 1397
Montana Power Co., The, project No. 2301 1328
*Montego Oil Co. (Operator), et al., docket No. CI63–790, et al 930
*Mosbacher, Robert, Operator, et al., docket No. CI60–343, et al 897
*Mosser, H. J., et al., docket No. CI61–694, et al 1001
*MPS Production Co. (Operator), et al., docket No. CI62–314, et al 930
*Mueller, Fred C., et al., docket No. CI62–1531, et al 771
*Mueller, Thomas C., et al., docket No. CI62–1467, et al 771
National Power Survey Regional Advisory Committees, Order Establishing 14
Natural Gas Companies-Emergency Planning—System Flow Diagrams, docket No. R–257 1158
*Natural Gas Pipeline Co. of America, et al., docket No. CP62–243, et al 771
*Natural Gas Pipeline Co. of America, et al., docket No. CP64–150, et al 1258
*Natural Gas Pipeline Co. of America, et al., docket No. CP65–169, et al 86, 110, 484, 507
Natural Gas Pipeline Co. of America, et al., docket No. CP65–303 963
Natural Gas Pipeline Co. of America, et al., docket No. CP65–312 876
Natural Gas Pipeline Co. of America, et al., docket No. CP65–318, et al 1360
Natural Gas Pipeline Co. of America, docket No. CP65–371 .. 580
Natural Gas Pipeline Co. of America, docket No. CP65–397 .. 448
Natural Gas Pipeline Co. of America, docket No. CP65–404 .. 568
Natural Gas Pipeline Co. of America, docket No. CP65–409 .. 526
Natural Gas Pipeline Co. of America, docket No. CP65–419 .. 615
Natural Gas Pipeline Co. of America, docket No. CP65–420 .. 741
Natural Gas Pipeline Co. of America, docket No. CP65–425, et al 1342
Natural Gas Pipeline Co. of America, docket No. CP66–39 ... 1168
Natural Gas Pipeline Co. of America, docket No. CP66–74 ... 1222
Natural Gas Pipeline Co. of America, docket No. CP66–85 ... 1382
Natural Gas Pipeline Co. of America, docket No. CP66–96 ... 1478
Natural Gas Pipeline Co. of America, docket No. CP66–129 .. 1594

Page

Natural Gas Pipeline Co. of America, docket No. CP66–135.. 1453
Natural Gas Pipeline Co. of America, docket No. RP61–8... 437
*Natural Gas Pipeline Co. of America, et al., docket No. RP63–6, et al..... 506, 973, 1132, 1327
Natural Gas Pipeline Co. of America, et al., docket No. RP65–25, et al..... 1616
Natural Gas Pipeline Co. of America, docket No. RP65–50.. 72, 1495
Nekoosa-Edwards Paper Co., project No. 2498..... 1375
Nekoosa-Edwards Paper Co., project No. 2499..... 1281
*Neuhaus, V. F., et al., docket No. G–18861, et al..... 1001
Nevada Irrigation District, project No. 2266..... 1398
New Hampshire Electric Co., et al., docket No. E–7220..... 17
New London Gas Co., et al., docket No. CP63–20..... 1056
*Newman, John A. (Operator), et al., docket No. G–18481, et al..... 897
Niagara Mohawk Power Corp., docket No. E–7241..... 1603
*Niagara Mohawk Power Corp., project No. 2318, et al..... 1298
Niagara Mohawk Power Corp., project No. 2330..... 1423
*North Central Oil Corp., Operator, et al., docket No. CI60–434, et al..... 897
*North Central Oil Corp. (Operator), et al., docket No. CI60–435, et al..... 159, 418, 846, 1068, 1082, 1198, 1286
*North Central Oil Corp., et al., docket No. CI60–496, et al... 897
North Central Oil Corp. (Operator), et al., docket No. CI65–815, et al..... 584
*North Star Natural Gas Co. of Wisconsin, Inc., et al., docket No. CP65–9, et al..... 457
North Star Natural Gas Co., et al., docket No. CP65–159... 582
Northern Electric Cooperative, Inc., The, docket No. E–6670. 481
*Northern Natural Gas Co., et al., docket No. G–17485, et al. 1139, 1417
Northern Natural Gas Co., docket No. CP62–85..... 450
Northern Natural Gas Co., docket No. CP64–255 (Phase I). 594
Northern Natural Gas Co., docket No. CP64–255 (Phase II). 148, 968
*Northern Natural Gas Co., et al., docket No. CP65–1, et al.. 86, 110, 484, 507
Northern Natural Gas Co., docket No. CP65–344..... 15
Northern Natural Gas Co., docket No. CP65–363..... 8
Northern Natural Gas Co., et al., docket No. CP65–389, et al. 1239
Northern Natural Gas Co., docket No. CP65–399..... 570
Northern Natural Gas Co., docket No. CP65–414..... 764
Northern Natural Gas Co., docket No. CP65–415..... 742
Northern Natural Gas Co., docket No. CP66–44..... 1318

	Page
Northern Natural Gas Co., docket No. CP66–71	1193
Northern Natural Gas Co., docket No. CP66–75	1272
Northern Natural Gas Co., docket No. CP66–80	1383
Northern Natural Gas Co., docket No. CP66–98	1454
Northern Natural Gas Co., docket No. RP66–3	1162
Northern States Power Co. (Minnesota), docket No. E–7140	883
Northern States Power Co., docket No. E–7232	74, 127
Northern Virginia Power Co., project No. 2425	95
Northwest Pipeline Corp., et al., docket No. CP66–28, et al	1385
*Obering, E. A., et al., docket No. CI63–139, et al	771
Ohio Fuel Gas Co., The, docket No. CP66–5	616
Ohio Fuel Gas Co., The, et al., docket No. RP65–45, et al	592
*Oil Reserves Corp., Operator, et al., docket No. CI61–468, et al	897
*Oklahoma Illinois Gas Pipeline Co., et al., docket No. CP62–260, et al	771
*Oklahoma Natural Gas Co., et al., docket No. CP64–273, et al	1258
*Oklahoma Natural Gas Storage Co., et al., docket No. CP64–273, et al	1258
Orange and Rockland Utilities, Inc., docket No. E–7230	107
Orange and Rockland Utilities, Inc., docket No. E–7246	1365
Order No. 301, docket No. R–253	76
Order No. 302, docket No. R–277	87
Order No. 303, docket No. R–257	536
Order No. 304, docket No. R–281	851
Order No. 305, docket No. R–285	991
Order No. 306, docket No. R–286	999
Order No. 307, docket No. R–287	1176
Order No. 308, docket No. R–279	1202
Order No. 309, docket No. R–272	1399
Order No. 310, docket No. R–283	1436
Order No. 311, docket No. R–284	1437
Order No. 312, docket No. R–289	1499
Order No. 313, docket No. R–294	1546
Order No. 314, docket No. R–295	1550
Order No. 315, docket No. R–268	1551
Order No. 316, docket No. R–296	1607
*Owen, K. D., d/b/a Owen and Moss, et al., docket No. CI61–1579, et al	1001
Pacific Gas & Electric Co., docket No. E–7240	571
Pacific Gas & Electric Co., project No. 2106	60
Pacific Gas & Electric Co., project No. 2107	1241
Pacific Gas & Electric Co., project No. 2310	148
Pacific Gas Transmission Co., docket No. CP65–213, et al	1480

Page

Pacific Northwest Pipeline Corp., et al., docket No. G–13018, et al 1385
Pacific Power & Light Co., docket No. E–7123 1165
Pacific Power & Light Co., docket No. E–7236 1196
Pacific Power & Light Co., docket No. E–7238 ..... 866, 993
Pacific Power & Light Co., docket No. E–7247 1248
Pacific Power & Light Co., project No. 2082 ..... 65, 552, 1387
*Pan American Petroleum Corp., et al., docket No. CI61–438, et al 659
*Pan American Petroleum Corp., et al., docket No. CI62–1347, et al 771
*Pan American Petroleum Corp., et al., docket No. CI63–1263, et al 1001
*Pan American Petroleum Corp., et al., docket No. CI63–1445, et al 897
Pan American Petroleum Corp., docket No. CI65–584 852
Pan American Petroleum Corp. (Operator), et al., docket No. RI66–61 ..... 1223, 1401
Pan American Petroleum Corp., docket No. RI66–154 1250
Pan American Petroleum Corp., et al., issued September 10, 1965 847
*Panhandle Eastern Pipe Line Co., et al., docket No. CP63–106, et al 771
Panhandle Eastern Pipe Line Co., et al., docket No. CP65–240 131
Panhandle Eastern Pipe Line Co., docket No. CP65–255 1274
Panhandle Eastern Pipe Line Co., et al., docket No. CP65–380 1598
Panhandle Eastern Pipe Line Co., et al., docket No. CP65–406 443
Panhandle Eastern Pipe Line Co., docket No. CP66–7 1134
Panhandle Eastern Pipe Line Co., et al., docket No. CP66–21, et al 1476
Panhandle Eastern Pipe Line Co., et al., docket No. CP66–23 961
Panhandle Eastern Pipe Line Co., et al., docket No. CP66–24 1371
Panhandle Eastern Pipe Line Co., docket No. CP66–33, et al 1265
Panhandle Eastern Pipe Line Co., docket No. CP66–48 1268
Panhandle Eastern Pipe Line Co., et al., docket No. CP66–69 1493
Panhandle Eastern Pipe Line Co., et al., docket No. CP66–70 1121
*Parker, George, et al., docket No. G–19718, et al 930
Peacock, Frank E., project No. 2427 ..... 1344, 1473
Pennsylvania Electric Co., docket No. E–6899 766
Pennsylvania Electric Co., et al., project No. 2280 ..... 1407, 1567
Pennsylvania Gas Co., et al., docket No. CP65–421 745
Penrose Production Co., et al., docket No. RI66–155 1253

	Page
Petersburg, Alaska, City of, project No. 2521	868
*Petro-Associates, Inc. (Op., et al.), docket No. CI61–936, et al.	659
Phelps Dodge Corp., project No. 2304	1232
Philadelphia Electric Co., project No. 2355	156
Philadelphia Electric Co., et al., project No. 2355, et al	517
Philadelphia Electric Power Co., et al., project No. 405, et al.	517
Philadelphia Gas Works Division of United Gas Improvement Co., The, et al., docket No. RP65–52, et al	98, 732
Phillips Petroleum Co., docket No. G–11217, et al	1138
*Phillips Petroleum Co., et al., docket No. G–16611, et al.	486, 1124
*Phillips Petroleum Co., et al., docket No. G–18201, et al	659
*Phillips Petroleum Co., et al., docket No. G–19498, et al	1001
*Phillips Petroleum Co., et al., docket No. CI62–1453, et al	771
Phillips Petroleum Co., et al., docket No. CI64–719, et al	579
*Pirtle, George W., et al., docket No. CI62–1481, et al	771
*Placid Oil Co., Operator, et al., docket No. CI61–1682, et al.	897
Portland General Electric Co., project No. 2195	1276
Potomac Light & Power Co., project No. 2343	1104
*Pratt, J. N., et al., docket No. CI62–1373, et al	930
*Producing Properties, Inc., docket No. CI61–1236, et al	930
*Producing Properties, Inc. (Operator), et al., docket No. CI63–814, et al	930
*Public Service Co. of Indiana, Inc., docket No. E–7163	1513
Public Service Co. of New Hampshire, et al., docket No. E–7220	17
Public Utility District No. 1 of Chelan County, Washington, project No. 2324, et al	66
Pure Oil Co., The, et al., docket No. CI64–1085, et al	579
*Ralph E. Fair, Inc., et al., docket No. CI62–780, et al	930
*Ramada Oil & Gas Co., et al., docket No. CI63–304, et al	1001
Rate and Certificate Filings by Small Independent Producers, docket No. R–279	434
Rocky Mountain Power Co., project No. 2289	539
Roy M. Huffington, Inc., et al., docket No. G–18680	1277
Roy M. Huffington, Inc., et al., docket No. RI63–478	1279
Rudman, M. B., et al., docket No. CI65–930, et al	579
Rumford Falls Power Co., project No. 2333	27
Rushing, J. S., docket No. G–6085	1460
Sabine Pipe Line Co., docket No. CP64–97	1280
Sacramento Municipal Utility District, project No. 2101	1104
St. Charles Gas Corp., docket No. CP65–388	1225
St. Charles Gas Corp., et al., docket No. CP65–388, et al	1220
St. Croix Paper Co., project No. 2492	1482
St. Joseph Light & Power Co., et al., docket No. CP66–46	1347
*Sands, Caroline Hunt, et al., docket No. CI61–1343, et al	897

Page

*Schafer Oil Corp. (now H&Y Oil Co.), et al., docket No. CI61–1774, et al 659
*Schnapp, Ben H. (Operator), et al., docket No. CI60–642, et al 897
Sharples and Co. Properties (Operator), et al., docket No. G–14624 1233
*Shell Oil Co., et al., docket No. G–18439, et al 1001
*Shell Oil Co., et al., docket No. G–18805, et al 897
*Shell Oil Co. (Operator), et al., docket No. CI61–783, et al .. 1001
*Shell Oil Co., et al., docket No. CI62–653, et al 930
*Shell Oil Co., et al., docket No. CI62–1401, et al 771
Short, Bill D., project No. 1944 1269
Sierra Pacific Power Co., project No. 743, et al 1215
Sierra Pacific Power Co., project No. 938, et al 109
Signal Oil & Gas Co. (Operator), docket No. RI61–438, et al .. 1608
Sinclair Oil & Gas Co., docket No. G–13528, et al 1106
*Sinclair Oil & Gas Co., et al., docket No. G–16760, et al. 930, 1357
*Sinclair Oil & Gas Co., et al., docket No. CI63–766, et al 771
Sinclair Oil & Gas Co. (Operator), et al., docket No. CI65–1267, et al 1239
Skelly Oil Co., et al., docket No. G–18638, et al 1348
*Skelly Oil Co., et al., docket No. G–20155, et al 897
Skelly Oil Co., et al., docket No. CI64–1225, et al 579
*Slats Honeymon Drilling Co., et al., docket No. CI62–1463, et al 771
Socony Mobil Oil Co., Inc., et al., docket No. G–12201, et al. 30, 1167
*Socony Mobil Oil Co., Inc., et al., docket No. CI61–34, et al .. 159, 418, 1082
Socony Mobil Oil Co., Inc., et al., docket No. CI62–825, et al .. 579
Socony Mobil Oil Co., Inc. (Operator), et al., issued August 26, 1965 595
*Sohio Petroleum Co. (Operator), et al., docket No. CI62–826, et al 1001
*Sohio Petroleum Co., et al., docket No. CI63–34, et al 771
Sohio Petroleum Co., docket No. CI66–193 1483
*Sojourner, W. C., et al., docket No. CI62–1470, et al 771
South Carolina Electric & Gas Co., et al., docket No. E–7227 .. 453
South Carolina Natural Gas Co., docket No. RP66–11 1500
South Georgia Natural Gas Co., docket No. CP65–392 122
South Georgia Natural Gas Co., et al., docket No. CP66–84 .. 1325
South Texas Natural Gas Gathering Co., et al., docket No. G–18907, et al 1348
South Texas Natural Gas Gathering Co., et al., docket No. CP65–314, et al 1360
South Texas Natural Gas Gathering Co., docket No. CP66–8 .. 744

	Page
Southeastern Kansas Gas Co., Inc., docket No. CP65-368	64
Southern California Edison Co., project No. 120	158
Southern California Edison Co., project No. 174, et al	64
Southern California Edison Co., project No. 372	1329
Southern Natural Gas Co., et al., docket No. CP64-259, et al	655, 1172
Southern Natural Gas Co., et al., docket No. CP65-353	597
Southern Natural Gas Co., docket No. CP66-38	1236
Southern Natural Gas Co., et al., docket No. CP66-51	1208
Southern Natural Gas Co., docket No. CP66-116	1610
Southern Natural Gas Co., et al., docket No. RP63-4	547
Southern Natural Gas Co., et al., docket No. RP63-7, et al	88
Southern Tier Gas Corp., docket No. CP66-26	855
Southern Union Gas Co., et al., docket No. G-513, et al	1584
*Southern Union Production Co., et al., docket No. CI63-54, et al	771
*Southland Royalty Co. (Operator), et al. (formerly Katz Oil Co.), et al., docket No. CI62-334, et al	930
Southland Royalty Co., et al., issued September 10, 1965	847
Southwestern Oil & Refining Co. (Operator), et al., docket No. G-3881, et al	439
*Southwestern Public Service Co., docket No. E-7038	841
*Sparta Oil Co., The, et al., docket No. G-19964, et al	897
Stevenson, Malcolm S., project No. 2502	1538
*Stockard, W. A., et al., docket No. CI61-751, et al	930
Sugar Hill, Georgia, City of, et al., docket No. CP65-10, et al	655, 1172
Sumiton, Alabama, Town of, et al., docket No. CP65-353	597
*Sun Oil Co., et al., docket No. CI60-348, et al	897
*Sun Oil Co., et al., docket No. CI63-989, et al	1001
Sun Oil Co., docket No. RI66-198	1502
Sun Oil Co., issued October 21, 1965	1195
*Sunray DX Oil Co., et al., docket No. CI62-1383, et al	771
*Superior Oil Co., The, et al., docket No. G-20359, et al	897
Superior Oil Co., The, et al., docket No. RI64-273, et al	1284
*Susanoil, Inc., et al., docket No. G-18212, et al	1001
Susquehanna Power Co., The, et al., project No. 405, et al	517
T. L. James & Co., Inc., et al., docket No. G-16492, et al	1216, 1612
Tacoma, Washington, City of, project No. 2016	1577
*Taggart, Jr., George K., Operator, et al., docket No. G-18796, et al	1001
Tarpon Oil Corp., The, et al., docket No. CI60-582, et al	554
*Tenneco Oil Co., et al., docket No. G-18223, et al	1001

Page

*Tenneco Oil Co. (Operator), et al., docket No. CI63-334, et al 1001
Tennessee Gas Transmission Co., docket No. CP60-94 451
Tennessee Gas Transmission Co., et al., docket No. CP64-92 1057
Tennessee Gas Transmission Co., et al., docket No. CP64-165, et al 655, 1172
Tennessee Gas Transmission Co., docket No. CP65-342 452
Tennessee Gas Transmission Co., docket No. CP65-352 115
Tennessee Gas Transmission Co., docket No. CP65-381 128
Tennessee Gas Transmission Co., et al., docket No. CP65-390 532
Tennessee Gas Transmission Co., docket No. CP66-20 1058
Tennessee Gas Transmission Co., et al., docket No. CP66-25, et al 1379
Tennessee Gas Transmission Co., et al., docket No. CP66-40, et al 1295
Tennessee Gas Transmission Co., docket No. CP66-54 1060
Tennessee Gas Transmission Co., et al., docket No. CP66-55, et al 1403
Tennessee Natural Gas Lines, Inc., docket No. CP66-4 1061
Texaco Inc., et al. (formerly Sunray DX Oil Co., et al., docket No. G-4281, et al.), docket No. G-8087, et al 129, 1098
Texaco Inc., et al., docket No. G-20451, et al 587
Texaco Inc., et al., docket No. CI61-879, et al 418, 1082
*Texaco Inc., et al., docket No. CI64-375, et al 1001
*Texas Eastern Transmission Corp., et al., docket No. CP63-192, et al 930
Texas Eastern Transmission Corp., et al., docket No. CP63-292 60
Texas Eastern Transmission Corp., et al., docket No. CP64-5, et al 572
Texas Eastern Transmission Corp., et al., docket No. CP65-305 120
Texas Eastern Transmission Corp., et al., docket No. CP65-375 130
Texas Eastern Transmission Corp., et al., docket No. CP66-42 1130
Texas Eastern Transmission Corp., et al., docket No. CP66-47 1126
Texas Eastern Transmission Corp., docket No. CP66-62 1595
Texas Eastern Transmission Corp., docket No. CP66-90 1418
Texas Eastern Transmission Corp., et al., docket No. RP65-59, et al 98, 732
Texas Eastern Transmission Corp., docket No. RP66-12 1099, 1179
Texas Gas Pipe Line Corp., docket No. G-20073, et al 575
Texas Gas Transmission Corp., docket No. CP64-107 1408

Page

Texas Gas Transmission Corp., et al., docket No. CP65–185, et al 527
Texas Gas Transmission Corp., et al., docket No. CP65–376 1185
Texas Gas Transmission Corp., docket No. CP65–416 617
Texas Gas Transmission Corp., et al., docket No. CP65–423, et al 1457
Texas Gas Transmission Corp., docket No. CP66–41 1393
Texas Gas Transmission Corp., et al., docket No. CP66–60, et al 1555
Texas Gas Transmission Corp., et al., docket No. CP66–97, et al 1558
*Thomas N. Berry & Co., et al., docket No. CI62–1465, et al 771
*Tidewater Oil Co., et al., docket No. CI63–119, et al 771
*Tidewater Oil Co., et al., docket No. CI63–1134, et al 897
*Tidewater Oil Co., et al., docket No. CI64–788, et al 930
Transcontinental Gas Pipe Line Corp., docket No. CP64–270, et al 562, 655
Transcontinental Gas Pipe Line Corp., et al., docket No. CP64–270, et al 1172
Transcontinental Gas Pipe Line Corp., et al., docket No. CP65–369, et al 584
Transcontinental Gas Pipe Line Corp., docket No. CP65–403 969
Transcontinental Gas Pipe Line Corp., docket No. CP65–424 618
Transcontinental Gas Pipe Line Corp., docket No. CP66–67 1226
Transcontinental Gas Pipe Line Corp., docket No. CP66–91 1351
Transcontinental Gas Pipe Line Corp., docket No. CP66–122 1446
Transcontinental Gas Pipe Line Corp., et al., docket No. RP65–31, et al 30, 441, 1167
*Transwestern Pipeline Co., et al., docket No. G–20464, et al 659, 845
Transwestern Pipeline Co., docket No. CP64–34 1560
Transwestern Pipeline Co., et al., docket No. CP65–208, et al 86, 110, 484, 507
Transwestern Pipeline Co., docket No. CP66–89 1485
Transwestern Pipeline Co., docket No. CP66–143 1461
*Trice Production Co. (Operator), et al., docket No. G–19340, et al 930
Trunkline Gas Co., docket No. CP65–117 891
Trunkline Gas Co., et al., docket No. RI64–273, et al 1284
Tuolumne County Water District No. 2, et al., project No. 2410, et al 1583
*Turnbull & Zoch Drilling Co. (Operator), et al., docket No. G–17960, et al 1001, 1367
*Turnbull, Paul R. (Operator), et al., docket No. CI61–1, et al 930
*Turner, R. C. (Operator), et al., docket No. CI64–439, et al 1001

Page

Union Electric Co., project No. 2277 ..... 590, 1169
*Union Oil Co. of California, et al., docket No. G–18389, et al. 930
*Union Oil Co. of California, et al., docket No. CI61–715, et al 659
Union Oil Co. of California, docket No. CI65–683 1505
Union Oil Co. of California, et al., docket No. CI65–1351, et al 1457
Union Producing Co., docket No. G–13811, et al 1421
Union Texas Petroleum, a Division of Allied Chemical Corp. (Operator), et al., docket No. CI66–27, et al 1476
United Fuel Gas Co., docket No. CP64–164 620
United Fuel Gas Co., docket No. CP65–207 1170
United Fuel Gas Co., docket No. CP65–329 585
United Fuel Gas Co., et al., docket No. CP65–394 613
United Gas Pipe Line Co., docket No. CP60–14 892
United Gas Pipe Line Co., docket No. CP63–62 1506
United Gas Pipe Line Co., et al., docket No. CP64–92 1057
United Gas Pipe Line Co., docket No. CP65–119 1320
United Gas Pipe Line Co., docket No. CP65–337 91
United Gas Pipe Line Co., et al., docket No. CP65–373, et al. 554
United Gas Pipe Line Co., docket No. CP65–391 123
United Gas Pipe Line Co., docket No. CP65–405 1063
United Gas Pipe Line Co., docket No. CP65–413 531
United Gas Pipe Line Co., docket No. CP66–3 892
United Gas Pipe Line Co., docket No. CP66–52 1065
United Gas Pipe Line Co., docket No. CP66–66 1171
United Gas Pipe Line Co., docket No. CP66–78 1597
United Gas Pipe Line Co., et al., docket No. RP65–15, et al. 2, 10
United Gas Pipe Line Co., et al., docket No. RP66–1, et al. 88
United Natural Gas Co., et al., docket No. CP65–421 745
United Natural Gas Co., docket No. CP65–422 577
*United States Department of the Interior, Bonneville Power Administration, docket No. E–6611, et al 1462
United States Department of the Interior, Southwestern Power Administration, docket No. E–6943 608
Utah Power & Light Co., project No. 671 875
Valley Gas Transmission, Inc., docket No. CP65–280 117
Vanceburg Electric Light, Heat and Power System, et al., docket No. E–7184 1173
*Vaughn, Jr., G. H., et al., docket No. G–18678, et al 1001
Vermont Marble Co., project No. 2445 540
*Viersen, Sam K., et al., docket No. CI63–521, et al 771
Warren Petroleum Corp. (Operator), et al., docket No. G–20478, et al 587, 1616
Washington Water Power Co., The, et al., docket No. E–7237. 1255

	Page
Weir, Mississippi, Town of, et al., docket No. CP65–375	130
Western Gas Service Co., et al., docket No. CP65–355, et al	6
Western Indiana Public Service Co., Inc., et al., docket No. CP65–380	1598
Westfield Gas Corp., et al., docket No. CP65–240	131
*Willett, H. L., et al., docket No. CI62–1488, et al	771
Wisconsin Michigan Power Co., project No. 1759	1410
Wisconsin Michigan Power Co., project No. 2394	1321
Wisconsin Power & Light Co., et al., docket No. CP66–2	1067
Wisconsin Public Service Corp., project No. 2433	558
*Wood, James A., Trustee (Operator), et al., docket No. CI60–383, et al	1001
*Woods Exploration and Producing Co., et al., docket No. CI60–495, et al	897
Yadkin, Inc., et al., project No. 2197, et al	25
Zenith Natural Gas Co., docket No. CP65–387	503
*Zimet Brothers, Inc., Agent (Operator), et al., docket No. G–18987, et al	1001

TABLE OF CASES CITED

Page

Acker *v.* U.S., 298 U.S. 426 (1936) 177
Addison *v.* Holly Hill Products, Inc., 322 U.S. 607 (1944) 1202
Aetna Insurance Co. *v.* Hyde, 275 U.S. 440 (1928) 180
Air Freight Rate Investigation, 9 CAB 340 360
Alabama-Tennessee Natural Gas Co. (G–585), 11 FPC 75, *affirmed* Alabama-Tennessee Natural Gas Co. *v.* F.P.C., 203 F. 2d 494 (CA3–1953) 978
Alabama Power Co. *v.* F.P.C., 128 F. 2d 280 (CADC–1942) 29, 817, 972
Alston Coal Co. *v.* F.P.C., 137 F. 2d 740 (CA10–1943) 983
Amerada Petroleum Corp. (CI62–1544), 31 FPC 623 ..... 900, 934, 1005
Amerada Petroleum Corp. *v.* F.P.C., 334 F. 2d 404 (CA8–1964) 758
American Louisiana Pipe Line Co. (G–2306), 16 FPC 897 472
American Louisiana Pipe Line Co. (G–2306), 20 FPC 575 ..... 673, 823, 975
American Louisiana Pipe Line Co. (G–2306), 28 FPC 41 1585
American Louisiana Pipe Line Co. (G–2306), 28 FPC 211 821
American Louisiana Pipe Line Co. (G–18419), 29 FPC 932 654
American Louisiana Pipe Line Co. *v.* F.P.C., 344 F. 2d 525 (CADC–1965) 686, 800
Appalachian Power Co. (E–6900), 28 FPC 1199, *affirmed* 328 F. 2d 237 (CA4–1964), cert. denied 379 U.S. 829 (1965) 766
Area Rate Proceeding (Permian Basin) (AR61–1), 34 FPC 159 ..... 421, 425, 763, 1072
Arizona Grocery Co. *v.* Atchison, T. & S.F. Ry. Co., 284 U.S. 370 (1932) 230
Arkansas-Louisiana Gas Co. (G–17567), 27 FPC 697, *reversed sub nom.* Granite City Steel Co. *v.* F.P.C., 320 F. 2d 711 (CADC–1963) 779
Arkansas Power & Light Co. (E–7090), 34 FPC 747 1514
Armour & Co. *v.* Wantock, 323 U.S. 126 (1944) 644
Ashbacker Broadcasting Corp. *v.* F.C.C., 326 U.S. 327 (1945) 661, 674, 776
Associated Oil & Gas Co. *v.* F.P.C., 280 F. 2d 31 (CA5–1960) 1285
Associated Securities Corp. *v.* S.E.C., 283 F. 2d 773 (CA10–1960) 1076
Atlantic Refining Co. *v.* F.P.C., 316 F. 2d 677 (CADC–1963) 226, 904, 939, 1018
Atlantic Refining Co. *v.* P.S.C. of New York (CATCO), 360 U.S. 378 (1959) 136, 175, 495, 654, 692, 816, 900, 933, 1019, 1138, 1338
Atlantic Seaboard Corp. (G–1384), 11 FPC 43 ..... 681, 976
Ayshire Collieries Corp. *v.* U.S., 335 U.S. 573 (1949) 178
Baltimore & Ohio R. Co. *v.* U.S., 277 U.S. 291 (1928) 652
Baltimore & Ohio R. Co. *v.* U.S., 345 U.S. 143 (1953) 1081
Bel Oil Corp. *v.* F.P.C., 255 F. 2d 548 (CA5–1958), cert. denied 358 U.S. 804 (1958) 174
Ben Bolt Gathering Co. *v.* F.P.C., 323 F. 2d 610 (CA5–1963) 144
Bi-Metallic Investment Co. *v.* Colorado, 239 U.S. 441 (1915) 1305
Bluefield Water Works and Improvement Co. *v.* F.P.C., 262 U.S. 679 (1923) 200
Border Pipe Line Co. *v.* F.P.C., 171 F. 2d 149 (CADC–1948) 494
Bowles *v.* Willingham, 321 U.S. 503 (1944) 178, 1081
California *v.* F.P.C., 345 F. 2d 917 (CA9–1965) 29, 972
California *v.* F.P.C., 369 U.S. 482 (1962) 1201
California *v.* Lo-Vaca Gathering Co., 379 U.S. 366 (1965) 1259
California Co., The (G–9892), 22 FPC 211 512
California Oil Co., Western Div. *v.* F.P.C., 315 F. 2d 652 (CA10–1963) 904, 939, 1006
Callery Properties, Inc. *v.* F.P.C., 335 F. 2d 1004 (CA5–1964) 226, 904, 937, 1004, 1358
Central City, Kentucky (G–9916), 18 FPC 163 464
Central Illinois Public Service Co. (G–394), 4 FPC 1043 813
Central Illinois Public Service Co. *v.* F.P.C., 338 F. 2d 682 (CA7–1964) 760
Central Maine Power Co. *v.* F.P.C., 345 F. 2d 875 (CA1–1965) 24, 1300

Page

Central New York Power Corp. (DI–179), 8 FPC 390 1281, 1300, 1376
Central West Utility Co. *v.* F.P.C., 247 F. 2d 306 (CA3–1957) 691
Chattahoochee Valley Gas District (CP63–163), 32 FPC 811 1157
Cities Service Gas Co. (G–141), 3 FPC 459, *affirmed* Cities Service Gas Co. *v.* F.P.C., 155 F. 2d 694 (CA10–1946), cert. denied 329 U.S. 773 (1946) 205
Cities Service Gas Co. (G–2569), 14 FPC 134, *affirmed sub nom.* Signal Oil & Gas Co. *v.* F.P.C., 238 F. 2d 771 (CA3–1956), cert. denied 353 U.S. 923 (1957) 175
Cities Service Gas Co. *v.* F.P.C., 155 F. 2d 694 (CA10–1946), cert. denied 329 U.S. 773 (1947) 196
Cities Service Gas Co. *v.* Peerless Oil and Gas Co., 340 U.S. 179 (1950) 253
Cities Service Production Co. (G–9510), 28 FPC 1114 1425
Clarion River Power Co. *v.* Smith, 59 F. 2d 861 (CADC–1932) 1310
Coastal Transmission Corp. (G–18338), 26 FPC 677 709
Colorado Interstate Gas Co. (CP64–294), 33 FPC 281 511
Colorado Interstate Gas Co. *v.* F.P.C., 209 F. 2d 717 (CA10–1953) 682
Colorado Interstate Gas Co. *v.* F.P.C., 324 U.S. 581 (1945) 143, 178, 637, 816, 939
Connecticut Light & Power Co. *v.* F.P.C., 141 F. 2d 14 (CADC–1944) 759
Connecticut Light & Power Co. *v.* F.P.C., 324 U.S. 515 (1945) 756, 1260, 1528
Consolidated Edison Co. of N.Y., Inc. (project 2338), 33 FPC 965 1
Consolidated Gas Supply Corp. (CP65–282), 34 FPC 733 1339
Continental Oil Co. (G–11024), 17 FPC 880 175
Continental Oil Co. (G–11024), 27 FPC 96 216, 1338
Continental Oil Co. (CI63–979), 31 FPC 1079 140
Covington & Lexington Turnpike Road Co. *v.* Sandford, 164 U.S. 518 (1896) 180
Cox, Edwin L. (CI61–153), 32 FPC 1301 1006
Daniel Ball, The, 77 U.S. 557 (1870) 23
Dayton-Goose Creek Railroad Co. *v.* U.S., 263 U.S. 456 (1924) 819
Deep South Oil Co. of Texas (G–2952), 14 FPC 83 137
Detroit, Michigan, City of *v.* F.P.C., 230 F. 2d 810 (CADC–1955), cert. denied 352 U.S. 829 (1956) 174, 939
Dorchester Gas Production Co. (G–18671), 33 FPC 1265 1545
East Tennessee Natural Gas Co. (G–1136), 11 FPC 426 464
East Tennessee Natural Gas Co. (CP64–21), 32 FPC 158 463
El Paso Natural Gas Co. (G–4769), 22 FPC 260 638
El Paso Natural Gas Co. (G–12580), 22 FPC 900 499
El Paso Natural Gas Co. (G–16235), 30 FPC 77 799
El Paso Natural Gas Co. (G–17849), 29 FPC 1175 949
El Paso Natural Gas Co. (CP65–178), 33 FPC 945 792
Enterprise Co., The *v.* F.C.C., 231 F. 2d 708 (CADC–1955) 798
F.C.C. *v.* RCA, 346 U.S. 86 (1952) 784
F.P.C. *v.* Amerada Petroleum Corp., 379 U.S. 687 (1965) 758, 1259
F.P.C. *v.* East Ohio Gas Co., 338 U.S. 467 (1950) 758
F.P.C. *v.* Hope Natural Gas Co., 320 U.S. 591 (1944) 178, 496, 507, 813, 983, 1081, 1152
F.P.C. *v.* Hunt, 376 U.S. 515 (1964) 228, 1076
F.P.C. *v.* Idaho Power Co., 344 U.S. 17 (1952) 29
F.P.C. *v.* Lo-Vaca Gathering Co., 379 U.S. 366 (1965) 758
F.P.C. *v.* Marr, 311 U.S. 381 (1940) 1263
F.P.C. *v.* Natural Gas Pipeline Co., 315 U.S. 575 (1942) 178, 645, 1312
F.P.C. *v.* Niagara Mohawk Power Corp., 347 U.S. 239 (1954) 1304
F.P.C. *v.* Sierra Pacific Power Co., 350 U.S. 348 (1955) 180, 679
F.P.C. *v.* Southern California Edison Co., 376 U.S. 205 (1964) 752, 1527
F.P.C. *v.* Tennessee Gas Transmission Co., 371 U.S. 145 (1962) 228, 996, 1076, 1484
F.P.C. *v.* Texaco Inc., 377 U.S. 33 (1964) 236
F.P.C. *v.* Transcontinental Gas Pipe Line Corp., 365 U.S. 1 (1961) 135, 812, 1023, 1261
F.P.C. *v.* Union Electric Co., 381 U.S. 90 (1965) 1509
Fifteen Per Cent Case, 45 ICC 303 229
First Iowa Hydro-Electric Cooperative *v.* F.P.C. 328 U.S. 152 (1946) 1306
First Transportation Gas Corp., Inc. (CI61–985), 32 FPC 1362 513
Fisher *v.* U.S., 328 U.S. 463 (1946) 1313
Florida Economic Advisory Council *v.* F.P.C., 251 F. 2d 643 (CADC–1957) cert. denied 356 U.S. 959 (1958) 824

Page
Florida Gas Transmission Co. (G–9262), 27 FPC 1123 639
Florida Gas Transmission Co. (RP61–3), 31 FPC 1402 465
Florida Public Utilities Co. (E–6136), 9 FPC 3 752
Fogelson, E. E. (G–19013), 31 FPC 476 512
Foreman and Co., Inc., In the Matter of, 3 SEC 132 1317
Forest Oil Corp., *v.* F.P.C., 263 F. 2d 622 (CA5–1959) 174
Fox River Paper Co. *v.* R.R. Commission of Wisc., 274 U.S. 651 (1927) 1309
Fuels Research Council, Inc. (CP62–57), 30 FPC 1138 1157
Goode *v.* Gaines, 145 U.S. 141 (1892) 644
Granite City Steel Co. *v.* F.P.C., 320 F. 2d 711 (CADC–1963) 793
Grant City, Missouri, City of (CP62–303), 29 FPC 754 647, 821
Graridge Corp. (Operator) (G–19246), 30 FPC 1156 956, 1008
Grigsby, Jack W. (Operator) (RI61–96), 32 FPC 529 712
Gulf Oil Corp. (G–9520), 29 FPC 837 1279
Gulf Oil Corp. (CP64–5), 30 FPC 1559 853
Guss *v.* Utah Labor Board, 353 U.S. 1 (1957) 1261
Hamon, Jake L. (G–16747), 29 FPC 784 1005
Hartford Electric Light Co. *v.* F.P.C., 131 F. 2d 953 (CA2–1942), cert. denied 319 U.S. 741 (1943) 759, 1535
Hawkins, H. L. & H. L. Hawkins, Jr. (Operator) (G–18077), 34 FPC 897 1013
Hill *v.* F.P.C., 335 F. 2d 355 (CA5–1964) 800
Home Gas Co. *v.* F.P.C., 231 F. 2d 253 (CADC–1956) 813
Hope Natural Gas Co. (G–12571), 19 FPC 405 498
Hope Natural Gas Co. *v.* F.P.C., 134 F. 2d 287 (CA4–1943), *reversed* F.P.C. *v.* Hope Natural Gas Co., 320 U.S. 591 (1944) 1285
Hope Natural Gas Co. *v.* F.P.C., 196 F. 2d 803 (CA4–1952) 646
Houston Texas Gas & Oil Corp. (G–9262), 16 FPC 118, *affirmed* Florida Economic Advisory Council *v.* F.P.C., 251 F. 2d 643 (CADC–1957), cert. denied 356 U.S. 959 (1958) 823, 904
Houston Texas Gas & Oil Corp. (G–9262), 17 FPC 303 639, 904
Humble Oil & Refining Co. (G–9287), 32 FPC 49 2, 11, 233, 442, 712, 728, 1100, 1244, 1425, 1616
Humble Oil & Refining Co. (G–9287), 33 FPC 830 11, 442, 728, 1617
Hunt, H. L. (RI62–467), 28 FPC 897 216
Hunt, Hassie (G–19115), 30 FPC 1438 902, 933, 1005
Hunt, Hassie Trust (Operator) (G–19115), 31 FPC 447 1331
Hunt, Hassie Trust (Operator) (G–19115), 31 FPC 946 1331
Hunt, Hassie Trust (CI65–596), 33 FPC 866 1338
Hunt Oil Co. (G–9065), 28 FPC 623 215
Hunt Oil Co. (G–9065), 30 FPC 220 1100
Hunt *v.* F.P.C., 306 F. 2d 334 (CA5–1962) 136
Hunt Oil Co. *v.* F.P.C., 334 F. 2d 474 (CA5–1964) 919
Hunt *v.* State, 248 Ala. 217, 27 So. 2d 186 (1946) 238
Idaho Power Co. *v.* F.P.C., 346 F. 2d 956 (CA9–1965) 29
Indiana & Michigan Electric Co. (E–7089), 33 FPC 739 748, 1514
Interstate Commerce Commission *v.* Diffenbaugh, 222 U.S. 42 (1911) 645
Interstate Natural Gas Co. *v.* F.P.C., 331 U.S. 682 (1947) 758
Interstate Power Co. *v.* F.P.C., 236 F. 2d 372 (CA8–1956), cert. denied 352 U.S. 967 (1957) 984
Iowa, State of *v.* Savre, 129 Iowa 122, 105 N.W. 387 (1905) 1317
J. M. Huber Corp. *v.* F.P.C., 236 F. 2d 550 (CA3–1956), cert. denied 352 U.S. 971 (1957) 140
Jersey Central Power & Light Co. *v.* F.P.C., 319 U.S. 61 (1943) 137, 1517
Jupiter Corp., The (RI63–212), 28 FPC 942 3
Kansas Pipeline and Gas Co. (G–106), 2 FPC 29 674, 786, 1020
Kansas-Nebraska Natural Gas Co., Inc. (CP62–215), 29 FPC 1058 821
Kentucky Natural Gas Corp. *v.* F.P.C., 159 F. 2d 215 (CA6–1947) 673, 796
Kirk *v.* Lynd, 106 U.S. 315 (1882) 644
Leiter Minerals, Inc. *v.* U.S., 352 U.S. 220 (1957) 1216
Linkletter *v.* Walker, 381 U.S. 618 (1965) 490
Lo-Vaca Gathering Co. (CI60–693), 26 FPC 606, *affirmed sub nom.* California *v.* Lo-Vaca Gathering Co., 379 U.S. 366 *reversing* 323 F. 2d 190 (CA5–1963) 488
Lone Star Gathering Co. (CP62–179), 28 FPC 683 143
Lynchburg Gas Co. (G–18322), 24 FPC 955 813
Lynchburg Gas Co. *v.* F.P.C., 336 F. 2d 942 (CADC–1964) 813
Marrash *v.* U.S., 168 Fed 225 (CA2–1909) 1317

Page
Market St. Railway Co. *v.* Railroad Commission of California, 324 U.S. 548 (1945) 760
Massachusetts, Commonwealth of *v.* Robinson, 146 Mass 571, 16 N.E. 452 (1882) 1317
McFayden *v.* Public Utilities Consolidated Corp., 299 P. 671 (1931) 784
McNary Project, Columbia River, Washington-Oregon (E–6383), 33 FPC 411 715
Medina Gathering Corp. (CP62–194), 30 FPC 227 144, 512, 1037
Metropolitan Edison Co. *v.* F.P.C., 169 F. 2d 719 (CA3-1948) 29, 1301
Metropolitan Edison Co. *v.* P.S.C., 191 A. 678 (1937) 784
Michigan Consolidated Gas Co. *v.* F.P.C., 246 F. 2d 904 (CA3–1957) 691
Michigan Consolidated Gas Co. *v.* F.P.C., 282 F. 2d 854 (CADC–1960) 1132
Michigan Consolidated Gas Co. *v.* F.P.C., 283 F. 2d 204 (CADC–1960), cert. denied 364 U.S. 913 (1961) 137
Michigan Gas and Electric Co. *v.* F.P.C., 290 F. 2d 374 (CADC–1961) 649
Michigan Wisconsin Pipe Line Co. (G–1156), 9 FPC 127 637
Michigan Wisconsin Pipe Line Co. (G–13246), 21 FPC 552 647
Michigan Wisconsin Pipe Line Co. (G–17512), 22 FPC 603 978
Michigan Wisconsin Pipe Line Co. (G–20569), 24 FPC 177 647
Michigan Wisconsin Pipe Line Co. (CP61–102), 27 FPC 449 119, 413, 434
Michigan Wisconsin Pipe Line Co. (RP60–9), 34 FPC 621 1189
Mid-America Pipeline Co. *v.* F.P.C., 330 F. 2d 226 (CADC–1964) 594, 680
Midwestern Gas Transmission Co. (G–9451), 20 FPC 575 799
Midwestern Gas Transmission Co. (G–16841), 21 FPC 653 689
Midwestern Gas Transmission Co. (G–18313), 22 FPC 775 646, 799
Midwestern Gas Transmission Co. (G–18313), 22 FPC 1157, *affirmed sub nom.* Michigan Gas and Electric Co. *v.* F.P.C., 290 F. 2d 374 (CADC–1961) 646
Midwestern Gas Transmission Co. (RP61–19), 32 FPC 993 438
Midwestern Gas Transmission Co. *v.* F.P.C., 258 F. 2d 660 (CADC–1958) 674, 798
Minimum Rates Applicable to Air Freight (Order No. E–17370), 34 CAB 263 229
Minneapolis & St. Louis Railway Co. *v.* U.S., 361 U.S. 173 (1959) 776
Minneapolis Gas Co. *v.* F.P.C., 278 F. 2d 870 (CADC–1960) 1151
Minnesota Power & Light Co. *v.* F.P.C., 344 F. 2d 53 (CA8–1965) 1291
Mississippi River Fuel Corp. (G–1281), 9 FPC 198 708
Missouri Pacific R. Co. *v.* Norwood, 283 U.S. 249 (1931) 652
Mondakota Gas Co. *v.* Montana-Dakota Utilities Co. (G–220), 5 FPC 64 653
Montello, The, 87 U.S. 430 (1874) 23
Montana Power Co., The *v.* F.P.C., 330 F. 2d 781 (CA9–1964) 1309
Namekagon Hydro Co. *v.* F.P.C., 216 F. 2d 509 (CA7–1954) 36
National Coal Association *v.* F.P.C., 191 F. 2d 462 (CADC–1951) 1132
National Coal Association *v.* F.P.V., 247 F. 2d 86 (CADC–1957) 699
National Fuel Corp. (G–20426), 33 FPC 1048 1608
Natural Gas Pipeline Co. of America (G–4280), 16 FPC 80 691
Natural Gas Pipeline Co. *v.* F.P.C., 315 U.S. 575 (1942) 1081
Nebbia *v.* New York, 291 U.S. 502 (1934) 177
New England Divisions Case, The, 261 U.S. 184 (1923) 227
New England Power Co. *v.* F.P.C., 349 F. 2d 258 (CA5–1965) 729
New York *v.* U.S., 331 U.S. 284 (1947) 178
New York Power and Light Corp. (DI–177), 8 FPC 231 50, 1300
Niagara Falls Power Co. *v.* F.P.C., 137 F. 2d 787 (CA2–1943), cert. denied 320 U.S. 792 (1944) 1306
N.L.R.B. *v.* Wichita Television Corp., 277 F. 2d 579 (CA10–1960), cert. denied 364 U.S. 871 (1961) 1190
North Carolina, State of *v.* Morgan, 136 N.C. 628, 48 S.E. 670 (1904) 1317
North Carolina *ex rel* Utilities Commission *v.* Carolina Power & Light Co., 250 N.C. 421, 109 S.E. 2d 253 624
Northeastern Gas Transmission Co. *v.* F.P.C., 195 F. 2d 872 (CA3–1952) 798
Northern Natural Gas Co. (G–1382), 11 FPC 123 205, 681
Northern Natural Gas Co. (G–1881), 11 FPC 278 507
Northern Natural Gas Co. (G–2217), 14 FPC 11, *affirmed* 236 F. 2d 372 (CA8–1956), cert. denied 352 U.S. 967 (1957) 624, 682
Northern Natural Gas Co. (G–2409), 15 FPC 1634, *affirmed sub nom.* National Coal Association *v.* F.P.C., 247 F. 2d 86 (CADC–1957) 678
Northern Natural Gas Co. (G–17485), 22 FPC 164 689, 1143

Page

Northern Natural Gas Co. (G–17485), 34 FPC 1139 1417
Northern Natural Gas Co. (G–20570), 25 FPC 1234 651
Northern Natural Gas Co. (CP61–132), 28 FPC 1155 ..... 201, 681
Northern Natural Gas Co. (CP62–85), 30 FPC 859 ..... 315, 677, 821, 1149
Northern Natural Gas Co. (CP64–228), 33 FPC 501 874
Northern Natural Gas Co. *v.* State Corporation Commission of Kansas, 372 U.S. 84 (1963) 136
Northern States Power Co. *v.* F.P.C., 118 F. 2d 141 (CA7–1941) 817
Northwestern Public Service Co. *v.* Montana-Dakota Utilities Co., 181 F. 2d 19 (CA8–1950), *affirmed* 341 U.S. 246 (1951) 1285
Northwest Paper Co. *v.* F.P.C., 344 F. 2d 47 (CA8–1965) 1291
Ohio Bell Telephone Co. *v.* P.U.C. of Ohio, 301 U.S. 292 (1937) 644
Ohio Oil Co. (G–15385), 27 FPC 551 ..... 917, 939
Oregon-Washington Railroad & Navigation Co. *v.* U.S., 205 Fed 337 (CA9–1913) 1317
Otter Tail Power Co. (IT–5544), 2 FPC 134 650
Otter Tail Power Co. (E–6196), 8 FPC 393 752
Pacific Mail S.S. Co. *v.* Western Pacific R.R. Co., 251 Fed 218 (CA9–1918) 1285
Pacific Power & Light Co. *v.* F.P.C., 333 F. 2d 689 (CA9–1965), cert. denied 379 U.S. 969 (1965) 29, 552
Pan American Petroleum Corp. (G–15438), 31 FPC 616 1350
Pan American Petroleum Corp. (RI63–481), 32 FPC 966 1216
Panhandle Eastern Pipe Line Co. (G–200), 6 FPC 196 818
Panhandle Eastern Pipe Line Co. (G–1116), 9 FPC 1330 818
Panhandle Eastern Pipe Line Co. (G–1116), 10 FPC 328 818
Panhandle Eastern Pipe Line Co. (G–1116), 13 FPC 53, *reversed on other grounds* City of Detroit *v.* F.P.C., 230 F. 2d 810 (CADC–1955) 205
Panhandle Eastern Pipe Line Co. (G–1141), 7 FPC 984 818
Panhandle Eastern Pipe Line Co. (CP64–18), 32 FPC 349 691
Panhandle Eastern Pipe Line Co. *v.* F.P.C., 169 F. 2d 881 (CADC–1948), cert. denied 335 U.S. 854 (1949) 796
Panhandle Eastern Pipe Line Co. *v.* F.P.C., 179 F. 2d 896 (CA8–1950) 507
Panhandle Eastern Pipe Line Co. *v.* F.P.C., 204 F. 2d 675 (CA3–1953) 691
Panhandle Eastern Pipe Line Co. *v.* F.P.C., 232 F. 2d 467 (CA3–1956), cert. denied 352 U.S. 891 (1957) 677
Panhandle Eastern Pipe Line Co. *v.* F.P.C., 236 F. 2d 289 (CA5–1956) 1152
Panhandle Eastern Pipe Line Co. *v.* F.P.C., 236 F. 2d 606 (CA3–1956) 228
Panhandle Eastern Pipe Line Co. *v.* F.P.C., 305 F. 2d 763 (CADC–1962), cert denied 372 U.S. 916 (1963) 196
Panhandle Eastern Pipe Line Co. *v.* F.P.C., 324 U.S. 635 (1945) 196
Panhandle Eastern Pipe Line Co. *v.* F.P.C., 332 U.S. 507 (1947) 817, 1261
Pennsylvania Water & Power Co. *v.* F.P.C., 343 U.S. 414 (1952) 750, 784, 1313, 1543
People *v.* Rotello, 339 Ill. 448, 171 N.E. 540 (1930) 238
People *ex rel.* New York Gas Co. *v.* McCall, 245 U.S. 345 (1918) 818
Peoples Gulf Coast Natural Gas Pipeline Co. (G–19963), 22 FPC 1013 709
Peoples Natural Gas Co. *v.* P.S.C. of Pennsylvania, 270 U.S. 550 (1926) 756
Permian Basin Pipeline Co. (G–1928), 12 FPC 85 831
Phillips Petroleum Co. (G–1148), 24 FPC 537, *affirmed sub nom.* Wisconsin *v.* F.P.C., 303 F. 2d 380 (CADC–1961), *affirmed* 373 U.S. 294 (1963) 175
Phillips Petroleum Co. (G–11990), 23 FPC 260 137
Phillips Petroleum Co. (G–16611), 34 FPC 486 1124
Phillips Petroleum Co. *v.* F.P.C., 349 F. 2d 535 (CA10–1965) 1138, 1284
Phillips Petroleum Co. *v.* Wisconsin, 347 U.S. 672 (1954) 174
Phinney Bay Water District *v.* City of Bremerton, 362 P. 2d 358 (1961) 624
Pierce *v.* U.S., 252 U.S. 239 (1920) 1317
Pittsburgh, City of *v.* F.P.C., 237 F. 2d 741 (CADC–1956) 691, 784, 1132
Placid Oil Co. (G–13183), 30 FPC 283, *remanded sub nom.* Callery Properties, Inc. *v.* F.P.C., 335 F. 2d 1004 (CA5–1964) 949, 1338
Portland General Electric Co. *v.* F.P.C., 328 F. 2d 165 (CA9–1964) 30, 1308
Postal Telegraph-Cable Co., 5 FCC 524 177
Potter *v.* U.S., 155 U.S. 438 (1894) 1317
P.S.C. of New Hampshire (project 2288), 27 FPC 830 ..... 23, 96, 152, 541, 543, 1299, 1321

P.S.C. of the State of New York *v.* F.P.C., 257 F. 2d 717 (CA3–1958), *affirmed sub nom.* Atlantic Refining Co. *v.* P.S.C. of New York, 360 U.S. 378 (1959) — Page 813
P.S.C. of the State of New York *v.* F.P.C., 284 F. 2d 200 (CADC–1960) — 902
P.S.C. of the State of New York *v.* F.P.C., 287 F. 2d 146 (CADC–1961), cert. denied *sub nom.* Hope Natural Gas Co. *v.* P.S.C. of New York, 365 U.S. 880 (1961) and Shell Oil Co. *v.* P.S.C., 365 U.S. 882 (1961) — 183, 919
P.S.C. of the State of New York *v.* F.P.C., 327 F. 2d 893 (CADC–1964) — 230, 1309
P.S.C. of the State of New York *v.* F.P.C., 329 F. 2d 242 (CADC–1962), cert. denied *sub nom.* Prado Oil & Gas Co. *v.* F.P.C., Skelly Oil Co. *v.* F.P.C., 377 U.S. 963 (1964) — 489, 904, 934, 1007
P.S.C. of New York *v.* F.P.C., 361 U.S. 195 (1959) — 495
P.U.C. of Ohio *v.* United Fuel Gas Co., 317 U.S. 456 (1943) — 1261
Public Service Co. of Indiana (E–6270), 9 FPC 617 — 1522
Pure Oil Co., The (G–17329), 23 FPC 704 — 956
Pure Oil Co., The (G–17930), 25 FPC 383 — 262
Radio Station KFH Co. *v.* F.C.C., 247 F. 2d 570 (CADC–1957) — 1190
Ramsey *v.* Mading, 217 P. 2d 1041 (1950) — 238
Reserve Oil and Gas Co. (G–18570), 33 FPC 1266 — 439
River Terminals Corp. *v.* Southwestern Sugar & Molasses Co., 253 F. 2d 922 (CA5–1958), *reversed* 360 U.S. 411 (1959) — 1285
Riverton Valley Electric Association *v.* Pacific Light & Power Co., 391 P. 2d 489 (1964) — 1197
Robert W. Parsons, The, 191 U.S. 17 (1903) — 1300
Rochester Telephone Co. *v.* U.S., 307 U.S. 125 (1939) — 1318
Roy M. Huffington, Inc. (G–18680), 34 FPC 1277 — 1339
Roy M. Huffington, Inc. (RI63–478), 30 FPC 1344 — 1279
Ryan *v.* U.S., 216 Fed 13 (CA7–1914) — 1317
St. Charles, City of *v.* Illinois Commerce Commission, 21 Ill. 2d 259, 172 N.E. 2d 353 (1961) — 624
San Juan Pipe Line Co. (G–1067), 9 FPC 170 — 831
Savannah River Electric Co. *v.* F.P.C., 164 F. 2d 408 (CA4–1947) — 1538
S.E.C. *v.* Morgan, Lewis, & Bockius, 209 F. 2d 44 (CA3–1953) — 1315
Shrewsbury Municipal Light Department *v.* New England Power Co. (E–7021), 32 FPC 373 — 729
Sillin, Leland F., Jr. (ID–1473), 33 FPC 1006 — 1167
Skelly Oil Co. (G–18638), 28 FPC 401, *remanded* P.S.C. of N.Y. *v.* F.P.C., 329 F. 2d 242 (CADC–1964), cert. denied 377 U.S. 963 (1964) — 902, 933, 1005, 1349
Slaughter House Cases, 83 U.S. 36 (1873) — 784
Spurr *v.* U.S., 174 U.S. 728 (1899) — 1317
Socony Mobil Oil Co., Inc. (G–12193), 31 FPC 1101 — 1425
Socony Mobil Oil Co., Inc. (Operator), issued August 26, 1965, 34 FPC 595 — 847, 961, 1250, 1353
Socony Mobil Oil Co., Inc. *v.* Brooklyn Union Gas Co., 299 F. 2d 692 (CA5–1962), cert. denied 371 U.S. 887 (1962) — 1285
South Carolina Electric & Gas Co. *v.* F.P.C., 338 F. 2d 898 (CA4–1964) — 972
South Georgia Natural Gas Co. (G–9892), 22 FPC 211 — 499, 681
Southern Natural Gas Co. (G–19632), 25 FPC 925 — 874
Southern Natural Gas Co. (G–20509), 29 FPC 323 — 201, 643, 1190
Southern Natural Gas Co. (CP63–26), 31 FPC 789 — 826
Southwestern Public Service Co. (E–7038), 33 FPC 343 — 860
Springfield, Tennessee, City of *v.* Louisville N.R. Co., 53 ICC 603 — 229
State Corporation Commission of Kansas *v.* F.P.C., 206 F. 2d 690 (CA8–1953), cert. denied 346 U.S. 922 (1954) — 200
Sun Oil Co. (G–8592), 32 FPC 1183 — 902, 949, 1018
Sun Oil Co. *v.* F.P.C., 364 U.S. 170 (1960) — 136
Sunray DX Oil Co. (G–4281), 33 FPC 1240 — 692
Sunray Mid-Continent Oil Co. *v.* F.P.C., 270 F. 2d 404 (CA10–1959) — 1044
Sunray Mid-Continent Oil Co. *v.* F.P.C., 290 F. 2d 552 (CA10–1961) — 1350
Sunray Mid-Continent Oil Co. *v.* F.P.C., 364 U.S. 134 (1960) — 136, 816, 1261
Sunshine Anthracite Coal Co. *v.* Adkins, 310 U.S. 381 (1940) — 177
Superior Oil Co., The (G–6067), 32 FPC 243 — 921, 949, 1338
Susquehanna Power Co. (project 405), 32 FPC 826 — 517
Tagg Bros. & Moorhead *v.* U.S., 29 F. 2d 750 (CADC–1928), *affirmed* Tagg Bros. *v.* U.S., 280 U.S. 420 (1930) — 177, 180
Tarpon Oil Corp. (CI60–582), 26 FPC 635 — 708

Page
Tennessee Gas Transmission Co. (G–11980), 27 FPC 202 642, 682, 983
Tennessee Gas Transmission Co. (CP64–165), 31 FPC 1290 685
Tennessee Gas Transmission Co. *v.* F.P.C., 283 F. 2d 729 (CA5–1960) 852, 1076
Texaco Inc. (G–8087), 33 FPC 1228 223, 1426
Texaco Seaboard, Inc. (CI61–118), 29 FPC 593 902, 933, 1005
Texas & Pacific Railway Co. *v.* U.S., 289 U.S. 627 (1933) 645
Texas Gas Transmission Corp. (G–17335), 22 FPC 378 499
Tipton County Utilities Co., Inc. (G–9231), 15 FPC 1362 464
Transcontinental Gas Pipe Line Corp. (G–1277), 9 FPC 32 642, 831
Transcontinental Gas Pipe Line Corp. (G–1842), 11 FPC 94 635
Transcontinental Gas Pipe Line Corp. (G–10000), 30 FPC 1044 1140
Transcontinental Gas Pipe Line Corp. (G–13143), 20 FPC 264, *affirmed sub nom.* United Gas Improvement Co. *v.* F.P.C., 269 F. 2d 865 (CA3–1959), *reversed sub nom.* P.S.C. of New York *v.* F.P.C., 361 U.S. 195 (1959) (per curiam) 498, 654, 919
Transcontinental Gas Pipe Line Corp. (G–16603), 22 FPC 836 499
Transcontinental Gas Pipe Line Corp. (CP63–222), 33 FPC 237 678, 1259
Transcontinental Gas Pipe Line Corp. (CP63–228), 30 FPC 38 115
Transcontinental Gas Pipe Line Corp. (RP61–13), 27 FPC 187 442
Trunkline Gas Co. (G–15394), 21 FPC 704, *affirmed* 281 F. 2d 42 (CADC–1960) 498, 639, 692, 902
Turnbull & Zoch Drilling Co. (G–17960), 32 FPC 877 512
Turnbull & Zoch Drilling Co. (G–17960), 34 FPC 1001 1370
Twachtman *v.* Connelly, 106 F. 2d 501 (CA6–1939) 645
Union Producing Co. (G–13811), 31 FPC 41 301
Union Texas Petroleum (G–13221), 32 FPC 254 488, 854, 904, 933, 1020, 1338
United Fuel Gas Co. (G–20270), 31 FPC 1342 593, 982
United Fuel Gas Co. *v.* Railroad Commission of Kentucky, 278 U.S. 300 (1929) 817
United Gas Improvement Co. *v.* Callery Properties, Inc., cert. granted 380 U.S. 931 (1965), affirmed 382 U.S. 223 (1965) 1331, 1359, 1369, 1484
United Gas Improvement Co. *v.* F.P.C., 269 F. 2d 865 (CA3–1959) 499
United Gas Improvement Co. *v.* F.P.C., 283 F. 2d 817 (CA9–1960), cert. denied *sub nom.* The Superior Oil Co. *v.* United Gas Improvement Co., 365 U.S. 879 (1961) 264, 903, 936, 1019
United Gas Improvement Co. *v.* F.P.C., 287 F. 2d 159 (CA10–1960) 183, 919
United Gas Improvement Co. *v.* F.P.C., 290 F. 2d 133 (CA5–1961), cert. denied *sub nom.* Sun Oil Co. *v.* United Gas Improvement Co., 368 U.S. 823 (1961) 182, 903
United Gas Improvement Co. *v.* F.P.C., 290 F. 2d 147 (CA5–1961), cert. denied *sub nom.* The Superior Oil Co. *v.* United Gas Improvement Co., 366 U.S. 965 (1961) 919
United Gas Improvement Co. *v.* F.P.C., 361 U.S. 195 (1959) 500
United Gas Pipe Line Co. (CP60–36), 30 FPC 329 1338
United Gas Pipe Line Co. (RP63–1), 31 FPC 1180 982
United Gas Pipe Line Co. (RP65–1), 32 FPC 1164 229
United Gas Pipe Line Co. *v.* Mobile Gas Service Corp., 350 U.S. 332 (1956) 229, 497
United Gas Pipe Line Co. *v.* Memphis Light & Water Division, 358 U.S. 103 (1958) 229
U.S. *v.* Associated Air Transport, Inc., 275 F. 2d 827 (CA5–1960) 1285
U.S. *v.* Appalachian Power Co., 311 U.S. 377 (1940) 28, 1306
U.S. *v.* Corrick, 298 U.S. 435 (1936) 177
U.S. *v.* Detroit & Cleveland Navigation Co., 326 U.S. 236 (1945) 654, 812
U.S. *v.* El Paso Natural Gas Co., 376 U.S. 651 (1964) 182, 807
U.S. *v.* Illinois Central Railroad Co., 303 U.S. 239 (1938) 1317
U.S. *v.* I.C.C., 352 U.S. 158 (1956) 1285
U.S. *v.* Murdock, 290 U.S. 389 (1933) 1317
U.S. *v.* Pennsylvania Railroad Co., 242 U.S. 208 (1916) 652
U.S. *v.* P.U.C. of California, 345 U.S. 295 (1953) 729, 752, 1536
U.S. *v.* Rio Grande Dam and Irrigation Co., 174 U.S. 690 (1899) 24
U.S. *v.* Rock Royal Co-op., 307 U.S. 533 (1939) 177
U.S. *v.* San Francisco, City and County of, 310 U.S. 16 (1940) 1315
U.S. *v.* Union Pacific Railroad Co., 169 Fed. 65 (CA8–1909) 1317
United States Department of the Interior, Southeastern Power Administration (E–7160), 32 FPC 4 1466
Utah Power & Light Co. *v.* U.S., 243 U.S. 389 (1917) 1315

Page
Valvoline Oil Co. *v.* U.S., 308 U.S. 141 (1939) 137
Veazie *v.* Moor, 55 U.S. 567 (1852) 23
Virginia Electric & Power Co. *v.* F.P.C., 351 F. 2d 408 (CA4–1965) 1257
Virginia Gas Transmission Corp. (G–1245) 9 FPC 453 831
Virginia Petroleum Jobbers Association *v.* F.P.C., 259 F. 2d 921 (CADC–1958) 971, 1076
Virginia Petroleum Jobbers Association *v.* F.P.C., 265 F. 2d 364 (CADC–1959) 1132
W. S. Butterfield Theaters *v.* F.C.C., 237 F. 2d 552 (CADC–1956) 820
Warren Petroleum Corp. (Operator) (G–20478), 33 FPC 1212 1608
Washington Gas Light Co. *v.* Baker, 188 F. 2d 11 (CADC–1950), cert. denied, 340 U.S. 952 (1951) 200
Webster *v.* Fall, 266 U.S. 252 (1924) 642
Western Transmission Corp. (CP63–329), 31 FPC 1295 144
Western Union Telegraph Co., The, 25 FCC 535 177
White *v.* Aronson, 302 U.S. 16 (1937) 644
Wilcox *v.* Consolidated Gas Co., 212 U.S. 19 (1909) 201
Wisconsin *v.* F.P.C., 373 U.S. 294 (1963) 176
Wisconsin *v.* Phillips Petroleum Co., 347 U.S. 642 (1954) 487
Wisconsin Michigan Power Co. (DI–155), 3 FPC 449 ..... 50, 1321
Wisconsin Michigan Power Co. (E–6268), 10 FPC 170, *affirmed* 197 F. 2d 472 (CA7–1952), cert. denied 345 U.S. 934 (1953) 752, 1535
Wisconsin Michigan Power Co. (E–7026), 31 FPC 1445 1536
Wisconsin Power & Light Co. (project 2347), 33 FPC 275 ..... 541, 1270, 1376
Wisconsin Public Service Corp. *v.* F.P.C., 147 F. 2d 743 (CA7–1945), cert. denied 325 U.S. 880 (1945) 50, 1306
Wisconsin Southern Gas Co. (G–236), 4 FPC 188 464

TABLE OF STATUTES CITED

United States:

	Page
Act of February 27, 1899, 30 Stat. 904, as amended by Act of February 27, 1900, 31 Stat. 33	1290
Act of June 14, 1926, 44 Stat. 791	1219
Administrative Procedure Act of 1946, 60 Stat. 237:	
Sec. 3(a)(1)	1177
Sec. 4	434, 851, 999, 1177, 1548, 1550
Sec. 4(b)	536
Sec. 5	238
Sec. 5(c)	238
Sec. 5(d)	535
Bonneville Act, The, 50 Stat. 731 (1937), 16 U.S.C. 407 (1958)	715, 1470
Sec. 5	1464
Sec. 6	714, 1464
Sec. 7	714, 1465
Bituminous Coal Act of 1937, 49 Stat. 991	177
Boulder Canyon Project Act, 45 Stat. 1057 (1928)	1466
Communications Act of 1934, 48 Stat. 1064, 47 U.S.C. 151	177
Federal Power Act, 49 Stat. 838 (1935), 16 U.S.C. 791 (1958):	
Sec. 3	992
Sec. 3(8)	23, 37, 50
Sec. 3(11)	109, 149, 1095, 1215, 1374, 1423
Sec. 3(13)	1304
Sec. 4	1550
Sec. 4(a)	1438, 1499
Sec. 4(b)	38, 542, 1271, 1283, 1377, 1438, 1499
Sec. 4(c)	1438, 1499
Sec. 4(e)	38, 61, 95, 151, 540, 540, 543, 558, 599, 657, 862, 1108, 1170, 1271, 1281, 1283, 1289, 1321, 1344, 1375, 1377, 1410, 1471, 1474, 1508, 1567
Sec. 4(f)	523, 856, 868
Sec. 4(g)	29
Sec. 6	29, 38, 109, 542, 875, 1237, 1271, 1283, 1301, 1377, 1466
Sec. 7(a)	29
Sec. 7(b)	525
Sec. 9	857, 868, 1211
Sec. 10	28, 1304
Sec. 10(a)	28, 35, 51, 519, 540, 1084, 1508, 1546
Sec. 10(c)	38, 519, 542, 1271, 1283, 1377, 1551, 1568
Sec. 10(d)	542, 604, 1271, 1283, 1300, 1377
Sec. 10(e)	13, 973, 1300, 1400
Sec. 10(f)	25, 38, 542, 571, 858, 1217, 1271, 1283, 1377
Sec. 10(g)	29, 1301
Sec. 10(i)	38, 542, 1271, 1283, 1377
Sec. 11	542, 1271, 1283
Sec. 12	542, 1271, 1283
Sec. 13	1473
Sec. 14	38, 541, 606, 1119, 1270, 1282, 1304, 1376
Sec. 15	38, 541, 606, 1119, 1270, 1282, 1376
Sec. 18	542
Sec. 19	38, 542, 1271, 1283, 1377
Sec. 20	38, 542, 1271, 1283, 1377
Sec. 21	519
Sec. 22	38, 542, 1271, 1283, 1377
Sec. 23(a)	38, 542, 1271, 1283, 1290, 1310, 1377
Sec. 23(b)	23, 38, 51, 558, 1290, 1300, 1356
Sec. 24	12, 1219, 1356

United States—Continued
Federal Power Act—Continued Page
Sec. 27 29
Sec. 201 84, 748, 1514
Sec. 201(a) 1528
Sec. 201(b) 84, 749, 1514
Sec. 201(c) 758, 1420
Sec. 201(d) 749, 1514
Sec. 201(e) 748, 1420
Sec. 202 730, 1395
Sec. 202(a) 14, 82
Sec. 202(b) 729, 1388
Sec. 202(e) 80, 481, 1228
Sec. 202(f) 80
Sec. 203 18, 78, 107, 453, 456, 1196, 1255, 1340, 1442, 1511, 1603
Sec. 204 74, 92, 108, 127, 866, 1160, 1248, 1365, 1441
Sec. 204(a) 1161, 1366, 1442
Sec. 204(e) 1161, 1366, 1442
Sec. 204(f) 75, 94, 108, 520, 867, 1161, 1249, 1366, 1442
Sec. 205 658, 749, 860, 883, 1176, 1395, 1514, 1593, 1606
Sec. 205(b) 645
Sec. 205(c) 231, 1519
Sec. 205(d) 231, 753, 885, 1538
Sec. 205(e) 231
Sec. 206 658, 751, 860, 1514, 1593, 1606
Sec. 206(a) 231
Sec. 207 1395, 1593
Sec. 208 84, 860, 1593
Sec. 301 84, 860, 1593
Sec. 301(a) 1438, 1499
Sec. 301(b) 861
Sec. 302 1438, 1499
Sec. 304 992, 1438, 1499, 1593, 1606
Sec. 304(a) 1400, 1553
Sec. 305(b) 1166
Sec. 306 1395
Sec. 307 84, 860, 1395, 1593
Sec. 308 84, 540, 659, 730, 860, 1395, 1593
Sec. 309 84, 659, 730, 860, 992, 1177, 1301, 1395, 1400, 1438, 1499, 1550, 1553, 1593, 1606
Sec. 311 14, 992, 1438, 1500
Sec. 313(a) 44, 64, 65, 98, 149, 155, 158, 521, 526, 543, 546, 561, 602, 711, 858, 865, 870, 973, 1114, 1239, 1242, 1272, 1284, 1294, 1325, 1328, 1346, 1375, 1377, 1393, 1399, 1423, 1511, 1576, 1578, 1602
Sec. 313(b) 554
Sec. 316 1395
Sec. 317 1395
Sec. 318 20, 108
Federal Reports Act of 1942, 56 Stat. 1078, 5 U.S.C. 139 1159
Federal Tort Claims Act, 63 Stat. 984, 28 U.S.C. 2680 1568
Federal Water Power Act of 1920, 41 Stat. 1063:
Sec. 10(a) 1546
Sec. 10(e) 13
Flood Control Act of 1944, 58 Stat. 890:
Sec. 5 1464
Hepburn Act of 1906, 34 Stat. 589:
Sec. 4 230
Interstate Commerce Act, 41 Stat. 494, 49 U.S.C.:
Sec. 3(1) 645
Sec. 15 652
Sec. 15(2) 230
Land and Water Conservation Act of 1965, 78 Stat. 897, 16 U.S.C. § 4601 1548
Natural Gas Act, 52 Stat. 821 (1938), 15 U.S.C. 717 (1958):
Sec. 1(a) 817
Sec. 1(b) 135, 698, 759, 816, 1259

United States—Continued
Natural Gas Act—Continued Page
Sec. 1(c)---- 64, 125, 855, 999, 1183, 1218, 1225, 1259, 1578, 1580
Sec. 2---- 1539
Sec. 3---- 458, 1265, 1443, 1584
Sec. 4---- 90, 139, 171, 421, 435, 438, 488, 537, 576, 594, 653, 681, 735, 788, 855, 874, 908, 944, 997, 1012, 1101, 1164, 1204, 1225, 1251, 1254, 1327, 1337, 1353, 1404, 1416, 1459, 1503, 1505
Sec. 4(a)---- 234, 998
Sec. 4(b)---- 645, 1404, 1415
Sec. 4(c)---- 229, 622
Sec. 4(d)---- 228, 851, 1253, 1285
Sec. 4(e)---- 100, 172, 419, 424, 494, 576, 589, 596, 663, 997, 1044, 1074, 1289, 1427, 1614
Sec. 5---- 90, 171, 537, 594, 681, 874, 977, 1101, 1152, 1225, 1327, 1416, 1484
Sec. 5(a)---- 102, 175, 438, 488, 589, 595, 663, 960, 974, 1075, 1143, 1163, 1415, 1496
Sec. 7---- 133, 171, 424, 435, 458, 496, 508, 537, 563, 626, 667, 790, 873, 899, 939, 1003, 1127, 1152, 1201, 1204, 1330, 1367, 1425, 1484, 1505, 1607
Sec. 7(a)---- 9, 58, 87, 120, 130, 131, 443, 458, 532, 582, 597, 634, 826, 876, 961, 963, 1067, 1121, 1133, 1185, 1208, 1325, 1334, 1347, 1371, 1494
Sec. 7(b)---- 8, 21, 70, 117, 136, 363, 421, 440, 503, 515, 529, 531, 554, 578, 580, 584, 585, 613, 618, 620, 708, 735, 762, 764, 1171, 1187, 1191, 1193, 1214, 1220, 1337, 1360, 1555, 1580, 1588, 1594
Sec. 7(c)---- 4, 6, 15, 21, 70, 84, 87, 91, 111, 113, 115, 122, 123, 128, 137, 234, 420, 444, 447, 448, 452, 458, 485, 491, 515, 521, 526, 527, 554, 564, 565, 567, 568, 570, 573, 577, 578, 581, 585, 611, 613, 615, 616, 617, 661, 733, 736, 738, 740, 741, 742, 744, 746, 762, 764, 816, 849, 850, 854, 871, 877, 879, 880, 882, 892, 896, 905, 941, 965, 967, 969, 975, 1010, 1058, 1060, 1061, 1063, 1065, 1126, 1130, 1134, 1152, 1168, 1193, 1199, 1222, 1226, 1230, 1236, 1259, 1266, 1268, 1272, 1295, 1318, 1335, 1343, 1351, 1361, 1364, 1378, 1379, 1382, 1383, 1393, 1403, 1413, 1418, 1439, 1444, 1446, 1447, 1449, 1451, 1453, 1454, 1457, 1461, 1476, 1478, 1485, 1488, 1489, 1491, 1539, 1555, 1558, 1581, 1587, 1589, 1591, 1595, 1597, 1610
Sec. 7(e)---- 5, 7, 17, 22, 71, 85, 92, 114, 116, 122, 124, 129, 138, 375, 420, 445, 447, 449, 453, 496, 516, 522, 527, 529, 556, 564, 566, 568, 570, 577, 579, 581, 586, 612, 614, 615, 617, 618, 654, 668, 734, 737, 739, 740, 742, 743, 744, 746, 762, 765, 773, 849, 851, 854, 872, 878, 879, 881, 882, 894, 896, 905, 941, 966, 968, 970, 975, 1010, 1059, 1061, 1062, 1064, 1065, 1126, 1131, 1135, 1152, 1169, 1194, 1222, 1227, 1231, 1236, 1269, 1273, 1297, 1319, 1336, 1343, 1352, 1365, 1379, 1381, 1382, 1384, 1394, 1405, 1414, 1418, 1440, 1445, 1446, 1448, 1450, 1452, 1454, 1455, 1458, 1462, 1477, 1479, 1486, 1488, 1490, 1492, 1543, 1556, 1559, 1582, 1588, 1590, 1592, 1596, 1598, 1610
Sec. 7(g)---- 796
Sec. 10---- 77, 992, 1101, 1436
Sec. 14---- 1101
Sec. 15---- 90, 667, 788, 971, 997, 1251, 1254, 1353, 1416, 1503
Sec. 16---- 77, 88, 90, 176, 435, 537, 596, 653, 851, 992, 999, 1101, 1177, 1204, 1225, 1309, 1416, 1436, 1607
Sec. 19---- 1330, 1357
Sec. 19(a)---- 243
Sec. 19(c)---- 1076
Sec. 20(a)---- 708
Sec. 21---- 769
Sec. 21(a)---- 673

United States—Continued
Packers & Stockyard Act, 42 Stat. 159, 7 U.S.C. 181: Page
Sec. 306 230
Sec. 310 230
Sec. 313 230
Public Law 88–29, 77 Stat. 49, 16 U.S.C. 4601 1546
Public Utility Holding Company Act of 1935, 49 Stat. 803 20, 108
Wheeler Rayburn Act of 1935 1528
River and Harbor Act of March 2, 1945, 59 Stat. 10 714
Sec. 2 716
River and Harbor Bill of 1965, 79 Stat. 1073 1110
Sherman Act, 26 Stat. 209, 15 U.S.C. 1 806
Transportation Act of 1920, 41 Stat. 484:
Sec. 418 230
United States Arbitration Act 13
Unpatented Mining Claims Relief Act of October 23, 1962, 76 Stat. 1127 12
States:
Wisconsin Statutes, Sec. 31.06(3) 46
Wisconsin Statutes, Sec. 184.04(4) 478

TABLE OF RULES OF COMMISSION CITED *

	Page
Sec. 1.7(e)	535, 1500
Sec. 1.8	79, 84, 91, 659, 730, 861, 991, 1102, 1228, 1251, 1254, 1341, 1354, 1366, 1396, 1442, 1503, 1512, 1594, 1605
Sec. 1.8(e)	826
Sec. 1.9(d)	1240
Sec. 1.10	79, 1228, 1341, 1366, 1442, 1512, 1605
Sec. 1.11(d)	66
Sec. 1.11(d)(1)	82
Sec. 1.12	970
Sec. 1.12(d)	1017
Sec. 1.13	992
Sec. 1.13(d)	73, 1408
Sec. 1.15	1000
Sec. 1.16	1000
Sec. 1.18	90, 439, 1225, 1416
Sec. 1.18(e)	67, 69, 549, 550, 712, 768, 894, 1231, 1277, 1279, 1424, 1608
Sec. 1.28	591, 1420
Sec. 1.28(a)	610, 871, 1018, 1480
Sec. 1.28(b)	934
Sec. 1.29(b)	14
Sec. 1.30	90
Sec. 1.30(e)	562, 970
Sec. 1.30(f)	238
Sec. 1.31(a)	1190
Sec. 1.31(d)	14
Sec. 1.32(b)	469
Sec. 1.34(b)	1370
Sec. 1.37	84, 659, 730, 861, 1102, 1396, 1594
Sec. 1.37(f)	91, 1251, 1254, 1354, 1503
Sec. 2.7	1549
Sec. 2.58	1607
Sec. 2.58(c)	1419
Sec. 2.58(d)	1607
Sec. 2.58(e)	1607
Sec. 2.59	91
Sec. 2.60	267
Sec. 2.61	184
Sec. 2.61(e)	685
Sec. 3.4(e)	1176
Sec. 3.5	34
Sec. 3.5(d)	1201, 1417
Sec. 4.41	526, 865, 1113, 1325, 1391, 1510, 1547, 1550, 1569
Sec. 4.41(1)(iii)	1550
Sec. 4.50	541, 1270, 1282, 1376
Sec. 11.20	1302, 1399
Sec. 11.20(a)(1)	1301
Sec. 11.20(a)(3)	1400
Sec. 11.20(a)(4)	1401
Sec. 11.21	1374
Sec. 11.27	858
Sec. 11.27(a)	1218
Sec. 11.27(b)	1218

*The Commission's Rules and Regulations are contained in Title 18, Chapter I, of the Code of Federal Regulations.

	Page
Sec. 11.31	1162
Sec. 12.1	1553
Sec. 12.2	1553
Sec. 12.3	1553
Sec. 12.4	1553
Sec. 12.5	1553
Sec. 12.6	1554
Sec. 13.1	25, 571
Sec. 34.1a	1161, 1366, 1442
Sec. 34.1a(a)	1249
Sec. 34.1a(a)(2)	1161, 1366, 1442
Sec. 34.1a(b)	94, 1249
Sec. 34.1a(c)	94, 1249
Sec. 34.2(g)	75, 94, 127, 158, 867, 993
Sec. 34.2(h)	94, 159, 867, 993
Sec. 34.2(h)(1)	75, 127
Sec. 34.9	75, 95, 127, 159, 868, 993
Sec. 35	753, 1531
Sec. 35.2(d)	1519
Sec. 35.3	753, 1175
Sec. 35.3(c)	1538
Sec. 35.11	886, 1176
Sec. 35.13(b)(4)(iv)	861, 1594, 1606
Sec. 141.1	991, 1438
Sec. 141.1(a)	1438
Sec. 141.51	1499
Sec. 141.51(a)	1500
Sec. 141.52	1499
Sec. 141.55	1499
Sec. 152.1	999
Sec. 152.2	999
Sec. 152.4	999
Sec. 152.5	999
Sec. 153.10	472
Sec. 153.11	472
Sec. 154	103, 119, 131, 132, 139, 421, 435, 731, 735, 768, 855, 908, 944, 1012 1204, 1244, 1337, 1404, 1459, 1498, 1607, 1613
Sec. 154.1	622
Sec. 154.10	1206
Sec. 154.21	1157
Sec. 154.22	101, 1157
Sec. 154.23	1350
Sec. 154.63(b)(3)	150
Sec. 154.63(e)(4)(i)	851
Sec. 154.82	653
Sec. 154.83	653
Sec. 154.91	435, 1205
Sec. 154.91(a)	262, 420, 941
Sec. 154.91(e)	208
Sec. 154.92–102	435
Sec. 154.92(b)	1027
Sec. 154.93	262, 1027
Sec. 154.93(a)	243
Sec. 154.93(b)	243
Sec. 154.93(c)	243
Sec. 154.94(b)	421, 1011
Sec. 154.94(f)	421, 906, 944, 1011, 1099, 1332, 1359, 1369
Sec. 154.101	1350
Sec. 154.103	435, 1206
Sec. 154.104	435, 1206
Sec. 154.110	435
Sec. 156	87, 826
Sec. 156.5	826
Sec. 156.7	87
Sec. 157	139, 421, 435, 735, 790, 855, 1204, 1337, 1459, 1607

Page

Sec. 157.6 1607
Sec. 157.7(b) 447, 738, 744, 1272, 1418, 1445, 1447, 1479, 1486, 1591
Sec. 157.7(b)(3) 447, 739, 745, 1273, 1448, 1452, 1489, 1592
Sec. 157.7(c) 736, 1065, 1449, 1452, 1489, 1491, 1581, 1610
Sec. 157.7(c)(1)(i) 1065, 1455
Sec. 157.7(c)(1)(ii) 1065
Sec. 157.7(c)(3) 1450
Sec. 157.7(c)(7) 737, 1066, 1456, 1491, 1493, 1582, 1611
Sec. 157.7(c)(8) 737, 1066, 1450, 1456, 1491, 1493, 1582, 1611
Sec. 157.7(c)(9) 1582, 1610
Sec. 157.7(d) 618
Sec. 157.7(d)(4)(i) 1320
Sec. 157.14 1475
Sec. 157.14(a) 1386
Sec. 157.14(a)(10) 683
Sec. 157.14(a)(10)(iv) 822
Sec. 157.14(a)(11) 683, 785
Sec. 157.14(a)(16) 650, 683
Sec. 157.14(a)(18)(i) 686
Sec. 157.14(a)(18)(ii) 686, 785
Sec. 157.14(a)(18)(ii)(a) 690
Sec. 157.17 ..... 111, 704, 1128
Sec. 157.20 ..... 5, 7, 17, 22, 71, 85, 92, 112, 114, 116, 123, 124, 129, 445, 448, 449, 453, 485, 515, 516, 522, 527, 530, 556, 565, 566, 568, 569, 571, 575, 578, 579, 582, 586, 612, 614, 615, 617, 618, 657, 701, 737, 739, 741, 742, 745, 747, 763, 765, 840, 846, 849, 851, 872, 878, 880, 881, 883, 894, 897, 966, 968, 970, 1059, 1061, 1062, 1064, 1066, 1127, 1131, 1135, 1169, 1173, 1194, 1222, 1227, 1231, 1237, 1269, 1273, 1297, 1319, 1343, 1352, 1365, 1379, 1381, 1383, 1384, 1394, 1405, 1414, 1419, 1440, 1445, 1447, 1448, 1450, 1452, 1454, 1455, 1459, 1462, 1477, 1479, 1486, 1489, 1490, 1492, 1543, 1557, 1559, 1582, 1588, 1590, 1592, 1596, 1598, 1611
Sec. 157.23–30 435
Sec. 157.28 142
Sec. 157.31 ..... 435, 1207
Sec. 157.39 1207
Sec. 157.40 ..... 435, 1204
Sec. 157.40(a)(3) 1199
Sec. 250 1207
Sec. 250.10 ..... 1199, 1207
Sec. 250.11 1207
Sec. 260 ..... 435, 537
Sec. 260.1 ..... 76, 435, 991, 1436
Sec. 260.2 ..... 435, 1436
Sec. 260.2(a) 1437
Sec. 260.7 184
Sec. 260.8 537
Sec. 260.8(a) 537
Sec. 260.8(b) 538
Sec. 260.8(c) 539

TABLE OF MISCELLANEOUS CITATIONS

	Page
Accounting for Oil and Gas Exploration Costs (Arthur Anderson & Company, 1963)	251
American Gas Association, "Gas Facts", p. 6, 1957 Ed	184
American Petroleum Institute, Independent Petroleum Association of America and the Mid-Continent Oil & Gas Association, "Joint Association Survey"	292
Budget, Bureau of, Circular No. A–47, December 31, 1952	715, 1466
17A C.J.S., *Contracts*, § 296(2)	1014
Census, United States Bureau of, Census of Mineral Industries (1958)	197
Census, United States Bureau of, Historical Statistics of the United States (1960)	255
Chase Manhattan Bank, "Annual Analysis of the Petroleum Industry" (1961)	292
Chase Manhattan Bank, "Financial Analysis of 33 Petroleum Companies" (1962)	345
Chase Manhattan Bank, "Future Growth of the Natural Gas Industry" (1957)	314
Committee on Oil & Gas Availability, Report to the National Petroleum Council, January 29, 1952	314
Executive Order No. 10485, September 3, 1953	80, 461, 1228, 1584
Executive Order No. 11017, April 27, 1962	1546
"F.P.C. Regulation of Independent Producers of Natural Gas," 75 Harv. L. Rev. 549 (1962)	174
Federal Power Commission, 2nd Annual Report (1921)	558, 1321
Federal Power Commission Order No. 174, 13 FPC 1195 (1954)	490
Federal Power Commission Order No. 230, 24 FPC 1058 (1960)	1285
Federal Power Commission Order No. 232, 25 FPC 379 (1961)	262, 379
Federal Power Commission Order No. 232–A, 25 FPC 609 (1961)	262
Federal Power Commission Order No. 242, 27 FPC 339 (1962)	236
Federal Power Commission Order No. 279, 31 FPC 750 (1964)	315
Federal Power Commission, "Sales by Producers of Natural Gas Pipeline Companies" (1963)	246
Federal Power Commission, The National Power Survey Report (1964)	1525
Inter-Agency Committee on Water Resources, Report on "Proposed Practices for Economic Analysis of River Basin Projects" (sometimes referred to as "The Green Book"), May, 1958	714
4 Jones, *Evidence*, § 1685	238
4 Jones, *Evidence*, §§ 1865–1966	238
Minerals Yearbook, 1958, Vol. II	197
Paton, Asset Accounting, pp. 440–41, 1952 Ed	272
President of the United States, Economic Report of (1964) p. 285	344
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Statement of General Policy No. 61–1, 24 FPC 818	175, 440, 551, 666, 712, 734, 855, 899, 911, 932, 1021, 1107, 1137, 1203, 1244, 1337, 1368, 1424.
Statement of General Policy No. 61–1, Second Amendment, 24 FPC 1107	69, 439, 549
Statement of General Policy No. 61–1, Fifth Amendment, 28 FPC 441	1025
Statement of General Policy No. 61–1, Seventh Amendment, 30 FPC 1370	894, 1106
Statement of General Policy No. 61–1, Ninth Amendment, 32 FPC 422	69, 895, 1106

	Page
Texas Railroad Commission, Oil and Gas Division Annual Reports, 1959, p. 29	385
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United States House of Representatives:	
Hearings, Committee on Interstate and Foreign Commerce on H.R. 5423, 74th Cong., 1st Sess., p. 432 (1935)	1528
Hearings, Committee on Interstate and Foreign Commerce on H.R. 5423, 74th Cong., 2d Sess., pp. 392, 2170 (1936)	645
Hearings, Committee on Interstate and Foreign Commerce on H.R. 11662, 74th Cong., 2d Sess., pp. 10, 46 (1936)	645
Hearings, Committee on Interstate and Foreign Commerce on H.R. 5249, 77th Cong., 1st Sess. (1941)	496, 816, 1152
House Document No. 172, 79th Cong., 1st Sess., p. 24 (1945)	1466
House Report No. 1290, 77th Cong., 1st Sess. (1941)	496, 796
United States Senate:	
Senate Document No. 248, 79th Cong., 2d Sess., p. 207 (1946)	238
Senate Report No. 180, 66th Cong., 1st Sess., p. 3 (1919)	1306
Senate Report No. 948, 77th Cong., 2d Sess. (1942)	496, 796, 1152
Senate Report No. 167, on Supplemental Appropriation Bill 1965, p. 28, H.R. 7091, 89th Cong., 1st Sess. (1965)	1466
3 Wigmore, *Evidence*, §§ 151, 153	238
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Wisconsin Lumberman, The, p. 290, February, 1874	51

FOREWORD

The Federal Power Act was originally enacted as the Federal Water Power Act, approved June 10, 1920 (41 Stat. 1063, 16 U.S.C. 791–823). The Federal Power Commission was reorganized January 1, 1931, as an independent Commission under the act approved June 23, 1930 (46 Stat. 797). By Title II of the Public Utility Act of 1935, approved August 26, 1935 (49 Stat. 838), the original Federal Water Power Act was made part I of the "Federal Power Act" and parts II and III were added. The Federal Power Act was amended May 28, 1948 (62 Stat. 275), August 7, 1953 (67 Stat. 461), August 15, 1953 (67 Stat. 587), June 4, 1956 (70 Stat. 226), and August 28, 1958 (72 Stat. 941 at 947). The Commission also administers the Natural Gas Act, approved June 21, 1938 (52 Stat. 821, 15 U.S.C. 717–717w), as amended February 7, 1942 (56 Stat. 83, 15 U.S.C. 717f), July 25, 1947 (61 Stat. 459, 15 U.S.C. 717f), March 27, 1954 (68 Stat. 36, 15 U.S.C. 717(c)), and August 28, 1958 (72 Stat. 941 at 947, 15 U.S.C. 717r), and has certain duties under the Tennessee Valley Authority Act, approved May 18, 1933 (48 Stat. 1075), and amendments thereto; the Bonneville Act, approved August 20, 1937 (50 Stat. 731); the Fort Peck Act, approved May 18, 1938 (52 Stat. 403); and under various Flood Control and River and Harbor Acts (notably the Flood Control Act of 1944, approved December 22, 1944 (58 Stat. 887)), and other statutes, as well as Executive Orders.

This volume, the thirty-fourth of a series, contains all the formal opinions and accompanying orders of the Federal Power Commission rendered, July 1, 1965 to December 31, 1965, inclusive. In addition to the formal opinions, there have been included intermediate decisions which have become final and selected orders of the Commission issued during such period.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., PROJECT NO. 2338

ORDER DENYING APPLICATION FOR REHEARING AND PETITION TO REOPEN PROCEEDINGS

(Issued July 1, 1965)

On April 26, 1965, Scenic Hudson Preservation Conference (Scenic Hudson), Town of Cortlandt, Town of Putnam Valley, and Town of Yorktown, Interveners in this proceeding, filed joint motions (1) to transfer the scheduled hearing of May 4, 1965, from Washington, D.C. to New York City; (2) to provide for an adjourned hearing at which interested parties would have an opportunity to present evidence and to cross-examine Consolidated Edison; and (3) to expand the scope of the hearing (a) to include consideration of underground transmission, (b) to include consideration of certain legal rights relating to ordinances concerning regulation of underground transmission lines, and (c) to permit certain testimony with respect to fish life.

In our order issued April 30, 1965, on the petition of the Secretary of the Interior to intervene and his motion for prehearing conference and continuance of the hearing, we indicated that the examiner would determine in the light of the circumstances prevailing at the time of hearing, the order in which the issues would be heard, the nature, timing and place of presentation, and whether to grant a reasonable postponement for cross-examination and preparation of rebuttal testimony. For this reason, by our order of May 6, 1965, 33 FPC 964, we denied the motions to transfer and adjourn the hearing.

Pursuant to our order of April 30, the examiner, on May 4, 1965, permitted the participants to confer and approved an agenda suggested by them. In accordance with the schedule adopted at the suggestion of the participants, after the transmission evidence of Consolidated Edison and the staff was completed on May 6, 1965, all interveners on the transmission line issue were granted a week's continuance before putting on their rebuttal testimony. Scenic Hudson did not participate in the sessions devoted to transmission. It represented that two of its fish biologists would not be able to be in Washington the week of May 4, 1965, but that during the following week possibly all of its witnesses would be in Washington on other business. At the request of Scenic Hudson, cross-examination of the fish biologists and engineers called by Consolidated Edison and the Department of the Interior was deferred several days and biologists testifying on behalf of Scenic Hudson were not called until May 12, 1965.

The joint application for rehearing of our order of May 6, 1965, filed June 4, 1965, no longer concerns itself with such procedural matters as continuances, in view of the relief accorded by the presiding examiner to all participants at the hearing. The moving parties state, however, that they were precluded from introducing evidence with respect to comparative cost and reliability of overhead and underground power lines.

Our order of May 6, 1965 stated, with reference to the motion to expand the transmission line aspect of the hearings commencing May 4, 1965, that it was in effect an application for rehearing of our order of March 9, 1965, 33 FPC 428, issuing a license, in which we specifically defined the scope of the May 4 hearings. In our Opinion No. 452–A, also issued May 6, 1965, 33 FPC 965, we explained why rehearing of the order issuing a license should not be granted. Opinion No. 452–A outlined the reasons why the scope of the hearing should not be expanded.

312-270—69——4

Those reasons are incorporated herein by reference and are our reasons for denying the application for rehearing and the petition to reopen proceedings filed June 4, 1965.

The Commission finds:

The application for rehearing of order denying motions and the petition to reopen proceedings, filed June 4, 1965, present no fact or legal principle which would warrant any change or modification of our order of May 6, 1965.

The Commission orders:

The application for rehearing of order denying motions and the petition to reopen proceedings filed jointly by the Scenic Hudson Preservation Conference, the Town of Cortlandt, the Town of Putnam Valley and the Town of Yorktown, are hereby denied.

Commissioner Ross *dissenting* for the reasons stated in his dissent to Opinion No. 452.

Commissioner Bagge *not participating.*

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

HUMBLE OIL & REFINING COMPANY, DOCKET NO. G–9287, ET AL.; UNITED GAS PIPE LINE COMPANY, DOCKET NO. RP65–15

ORDER AMENDING PRIOR ORDER

(Issued July 1, 1965)

The Commission by order issued April 21, 1965, in *Humble Oil & Refining Co.*, Docket No. G–9287, *et al.*, 33 FPC 830, released portions of the refunds resulting from the settlement of Humble's rate proceedings in those dockets. Humble and the pipelines in the resale chain between Humble and the ultimate consumer, were directed by that order to defer the flow-through of refunds to those natural gas companies which were not specifically obligated by prior order of the Commission to flow through to their customers. The order further provided that if a natural gas company which otherwise would have received the deferred refund filed an agreement to flow through such amounts, we would direct the release of such amounts.

United Gas Pipe Line Company on May 3, 1965 filed an agreement to flow through the amounts attributable to purchases under Humble's Rate Schedule Nos. 123, 149 and 154 prior to January 1, 1963. The refund of these amounts by Humble to United had been deferred by the Commission's order. Accordingly it is appropriate that the refund attributable to the purchases under the aforementioned rate schedules be released to United for flow-through by it pursuant to paragraph (F) of the order issued April 21, 1965.

The Commission orders:

(A) Paragraph (B) of the order issued April 21, 1965, is amended by deleting subparagraph 2 and the funds are released for flow-through pursuant to Paragraph (F) of that order.

(B) The order of April 21, 1965, in all other respects shall remain in full force and effect.

Before Commissioners Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

AREA RATE PROCEEDING, ET AL. (SOUTHERN LOUISIANA AREA), DOCKET NO. AR61-2, ET AL.

ORDER DENYING INTERVENTION

(Issued July 2, 1965)*

On May 5, 1965, The Jupiter Corporation (Jupiter) filed a petition to intervene in the above-designated proceedings. The Commission staff filed an answer in opposition to Jupiter's petition on May 14, 1965, particularly with respect to its lack of timeliness.

By order issued February 18, 1963, Jupiter was deleted as a respondent in these proceedings. In that order we stated:

> As to The Jupiter Corporation (formerly Commonwealth Oil Corporation), it appears that this respondent performs transportation services, does not have any production in the area, and, therefore, it has been determined to delete it as a respondent herein.

Jupiter did not object at the time and has not objected since to the issuance of said order nor did it choose to petition to intervene prior to May 5, 1965. On December 5, 1962, we instituted an investigation of these transportation services, by order issued in Docket No. RI63-212, 28 FPC 942.

In weighing the contentions in the petition, the present posture of the proceeding must be considered. Following the filing of prepared direct and rebuttal evidence by all parties in December, 1963, and March, 1964, these proceedings have been in hearing before a Presiding Examiner since April, 1964. The hearings are now approaching the final phase. Clearly it would not be appropriate to permit any late intervention into the proceeding at this time unless the petitioning party could show that there are extraordinary circumstances which prevented a more timely application. Jupiter has made no such showing.

Jupiter's first contention is that when we removed it as a party respondent in the proceeding in our order of February 18, 1963, it "had no way of knowing at that time that such deletion of Jupiter as a party to that proceeding would be prejudicial to Jupiter." Since the alleged prejudice relates to the possibility that we might treat the type of operation Jupiter was engaged in as a transportation of natural gas in interstate commerce, rather than its production, there is clearly no point to this contention. For in instituting Docket No. RI63-212 on December 5, 1962, over two months earlier the Commission had expressly acted on the assumption that Jupiter was performing a transportation service for both Pure Oil under its Rate Schedule No. 7 and for Phillips Petroleum Corporation (Phillips) and Kerr-McGee Oil Industries, Inc. (Kerr-McGee) under its Rate Schedule No. 8, and there instituted an investigation to determine whether the "rates, charges, or classifications for or in connection with the transportation of natural gas by Jupiter, subject to the jurisdiction of the Commission * * * may be unjust, unreasonable, unduly discriminatory or preferential." (*The Jupiter Corporation*, 28 FPC 942, 943). Similarly, as indicated above, the order of February 18, 1963 in this proceeding, severed Jupiter because it appeared to be engaged in transportation activities rather than acting as a producer. Accordingly Jupiter's suggestion that it could not know until December 8, 1964 that the Commission proposed to treat Jupiter as a transporter where rates would be

*Reconsideration denied by order issued August 23, 1965, 34 FPC 562. Affirmed, *The Jupiter Corporation* v. *F.P.C.*, 362 F. 2d 92 (CA7-1966).

determined like other natural gas companies transporting gas in interstate commerce is totally without substance.

Commencing about December 16, 1964, Jupiter filed a series of applications and pleadings all calculated to delay the proceedings in Docket No. RI63–212. Among many other things Jupiter on March 10, 1965 sought to consolidate the proceeding in Docket No. RI63–212, with the area rate proceeding in AR61–2. This we denied on April 29, 1965, 33 FPC 901, pointing out *inter alia* that to the extent that Jupiter might believe that the area rates to be fixed in AR61–2 might be relevant to the issue as to Jupiter's rates in Docket No. RI63–212, it could introduce evidence as to this nature in Docket No. RI63–212, or so contend in its brief after hearing.

Jupiter suggests that there may have been evidence introduced into Docket No. AR61–2 which is inconsistent with its present theory that it is not providing jurisdictional transmission services with respect to either of the rate schedules referred to above it has long had on file with the Commission relating to the Pure and Phillips-Kerr-McGee sales. Assuming *arguendo* this to be the case, there is no issue in Docket No. AR61–2 relating to Jupiter's status and nothing we can or will determine therein can prejudice its argument in Docket No. RI63–212. To permit it to intervene in the area rate proceeding to introduce evidence or cross-examine with respect to its status would only serve to delay both proceedings. It will have a full opportunity to present its position in Docket No. RI63–212: it needs no more.

The Commission orders:

The petition to intervene filed by The Jupiter Corporation on May 5, 1965, is denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

COLORADO INTERSTATE GAS COMPANY, DOCKET NO. CP65–330

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued July 6, 1965)

On April 19, 1965, Colorado Interstate Gas Company (Applicant) filed in Docket No. CP65–330 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain facilities for the transportation and delivery of natural gas to Alamo Chemical Company (Alamo), all as more fully set forth in the application.

Applicant presently purchases natural gas at the wellhead in the Greenwood-Sparks area of Colorado and Kansas, gathers such gas and delivers it to its Morton County, Kansas Compressor Station. Under the instant proposal, Applicant will deliver approximately 71,000 Mcf of this gas per day on a firm basis to Alamo prior to delivery of such gas to its Morton County Compressor Station, pursuant to an agreement between the parties dated April 1, 1965. Alamo will process the gas for removal of helium and other liquifiable hydrocarbons at its proposed cryogenics plant to be located adjacent to Applicant's Morton County Compressor Station, and will return the residue gas to Applicant.

Deliveries of gas to Alamo will be made from Applicant's gathering system, and thus will not affect Applicant's peak day transmission system capacity. In

addition, Alamo agrees to redeliver to Applicant gas of at least the same average heating value as that delivered by Applicant to it, and further agrees to redeliver such gas at a pressure not less than that at which it is received. Approximately 10 percent of the volume of gas processed will be sold to Alamo as gas shrinkage and gas used in plant operations.

Applicant proposes to construct and operate tap and valve facilities in order to enable it to deliver gas to Alamo and accept redelivery of gas after processing. The total estimated cost of such facilities is $22,700, and will be financed with current working funds.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on July 1, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits thereto, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Colorado Interstate Gas Company, a Delaware corporation having its principal place of business in Colorado Springs, Colorado, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of June 5, 1945, in Docket No. G–294 (4 FPC 936).

(2) The proposed construction and operation of facilities and transportation and delivery of natural gas hereinbefore described, as more fully described in the application in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The proposed construction and operation of facilities and transportation and delivery of natural gas are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

The Commission orders:

(A) A certificate of public convenience and necessity is hereby issued to Applicant, Colorado Interstate Gas Company, authorizing the construction and operation of facilities and the transportation and delivery of natural gas hereinbefore described, as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation and the transportation and delivery of natural gas shall be undertaken, as provided by paragraph (b) of Section 157.20 of the aforesaid Regulations, within one year from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

COLORADO INTERSTATE GAS COMPANY, DOCKET NO. CP65-341; WESTERN GAS SERVICE COMPANY, DOCKET NO. CP65-355

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

(Issued July 6, 1965)

On April 26, 1965, Colorado Interstate Gas Company (Colorado) filed in Docket No. CP65-341 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing it to construct and operate two meter stations on its Fourway-Kit Carson main transmission line and to sell and deliver for a period of two years natural gas to Western Gas Service Company (Western) for resale, all as more fully set forth in the application.

On May 6, 1965, Western Gas Service Company (Western) filed in Docket No. CP65-355 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of facilities to purchase natural gas from Colorado Interstate Gas Company (Colorado) from Colorado's main transmission line, all as more fully set forth in the application.

The proposed meter stations of Colorado, located in Sherman County, Texas, and in Cimarron County, Oklahoma, will be utilized by Colorado to deliver an aggregate maximum daily volume of 10,000 Mcf (1,150 Mcf on a firm basis) at a flat rate of 21.5 cents per Mcf under its proposed X-24 Rate Schedule. Western's first year requirement is estimated to be 576,840 Mcf (14.65 psia).

The estimated cost of the proposed facilities of Colorado is $20,295, and will be defrayed from current funds.

Western proposes to construct 1.095 miles of 4½-inch pipeline main to connect its present facilities to a new tap on Colorado's Fourway Kit Carson pipeline at Stratford, Texas, and a new tap on the same pipeline near Keyes, Oklahoma. Western states that these two new taps will provide gas for Western's new irrigation well customers in these areas. Temporary certificate was granted Western on May 11, 1965 for the 1.095 miles of pipelines connecting with Colorado's mainline at Stratford, Texas.

The cost of the new facilities of Western is estimated to be $10,400.

Western has agreed to purchase from Colorado up to a maximum of 10,000 Mcf per day over a two-year period and anticipates that it will require 576,840 Mcf during the first year. The letter agreement further provides that Western will take or pay for a minimum volume of 34,500 Mcf each month.

Colorado concurrently filed with its application in this docket Original Sheet Nos. 112-117 to its FPC Gas Tariff, Second Revised Volume No. 2, as its proposed X-24 Rate Schedule (letter agreement between Applicant and Western dated March 5, 1965).

The Commission on May 11, 1965, issued a temporary certificate authorizing Colorado to construct and operate metering facilities necessary to sell and deliver 10,000 Mcf of natural gas daily to Western, and accepted for filing Colorado's Original Sheet Nos. 112-117 to its FPC Gas Tariff Second Revised Volume No. 2, comprising its X-24 Rate Schedule, effective May 11, 1965.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the applications has been filed.

At a hearing held on July 1, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the

applications and exhibits, submitted in support of the authorizations, and upon consideration of the record,

The Commission finds:

(1) Colorado Interstate Gas Company, a Delaware corporation having its principal place of business in Colorado Springs, Colorado, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order issued June 5, 1945 in Docket No. G–294 (4 FPC 936).

(2) Western Gas Service Company, a Delaware corporation having its principal place of business in El Paso, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order issued October 9, 1963 in Docket No. CP63–308 (30 FPC 986).

(3) The proposed construction and operation of facilities and sale of natural gas, as hereinbefore described and as more fully described in the applications and exhibits in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(4) The aforesaid proposed construction and operation of facilities and sale of natural gas are required by the public convenience and necessity and certificates therefor should be issued as hereinafter ordered and conditioned.

(5) Colorado and Western are able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(6) Public convenience and necessity require that the certificates issued hereinafter and the rights granted thereunder be conditioned upon Colorado's and Western's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (b), (c) (3), (c) (4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) Certificates of public convenience and necessity are hereby issued to Colorado and Western authorizing the construction and operation of facilities and the sale of natural gas as more fully described in the applications in this proceeding, subject to the jurisdiction of the Commission, upon the terms and conditions of this order.

(B) The certificates issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon Colorado's and Western's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (b), (c) (3), (c) (4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be completed and placed in actual operation and the transportation of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 6 months from the date on which this order issues.

(D) The certificates issued to Colorado and Western by paragraph (A) above shall be limited to a period of two years following the date of the issuance of this order.

(E) The certificate issued hereby to Colorado is granted on the express condition that the interruptible service authorized herein shall be curtailed or interrupted to the extent required to meet existing or future contracted maximum delivery obligations of Colorado for firm service to its customers.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

NORTHERN NATURAL GAS COMPANY, DOCKET NO. CP65-363

FINDINGS AND ORDER AFTER STATUTORY HEARING PERMITTING AND APPROVING ABANDONMENT

(Issued July 6, 1965)

On May 14, 1965, Northern Natural Gas Company (Applicant), filed in Docket No. CP65-363, an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon certain natural gas facilities, all as more fully set forth in the application.

Applicant proposes to abandon a measuring and regulating station in Dakota County, Minnesota, presently serving, through Applicant's Peoples Natural Gas Division (Peoples), the Joint Independent School District No. 191 (School District).

Peoples has entered into a sales agreement with Minneapolis Gas Company (Minneapolis) transferring certain natural gas distribution equipment and associated property, and assigning Peoples' gas service contract with School District to Minneapolis. Thus the facilities will no longer be useful to serve School District since Minneapolis proposes to construct a new measuring and regulating station for that purpose.

After due notice, no petition to intervene, notice of intervention, or protest to the granting of the application has been filed.

At a hearing held on July 1, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought, and upon consideration of the record,

The Commission finds:

(1) Applicant, Northern Natural Gas Company a Delaware corporation having its principal place of business in Omaha, Nebraska, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of April 6, 1943, Docket No. G-280 (3 FPC 967).

(2) The facilities proposed to be abandoned, as hereinbefore described and as more fully described in the application herein, are used in the transportation and sale of natural gas in interstate commerce subject to the jurisdiction of the Commission, and such abandonment is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(3) The proposed abandonment of the aforesaid facilities is permitted by the public convenience and necessity and approval thereof should be granted as hereinafter ordered.

The Commission orders:

(A) Permission for and approval of the abandonment of the facilities hereinbefore described, as more fully described in the application in this proceeding, are hereby granted to Applicant, Northern Natural Gas Company.

(B) Applicant shall advise the Commission of the date of abandonment of the facilities as authorized in paragraph (A) above within 10 days of such abandonment.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

COMMUNITY NATURAL GAS COMPANY, INC., DOCKET NO. CP64-302

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE AND DELIVERY OF NATURAL GAS

(Issued July 7, 1965)

Community Natural Gas Company, Inc., (Applicant) filed in Docket No. CP64-302, an application on June 17, 1964, an amendment on August 17 and supplements thereto on August 13 and September 24, 1964, pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Texas Gas Transmission Corporation (Texas Gas) to establish physical connection of its natural gas transmission facilities with the facilities proposed to be constructed by Applicant, and to sell and deliver natural gas to Applicant for resale and distribution in the Town of Worthington, Greene County, Indiana, all as more fully set forth in the application and supplements thereto.

Applicant proposes to construct and operate approximately 2.2 miles of 4-inch transmission line from Texas Gas' 12-inch transmission line to Worthington and the necessary distribution facilities within the town. The estimated total cost of the proposed facilities is $226,160 and will be financed by the issuance of $90,000 in stock and the sale of $136,000 of 20-year 6% first mortgage bonds.

Annual and maximum day requirements of Worthington for the initial three-year period are estimated to be as follows:

	(Mcf)		
	First year	Second year	Third year
Annual	49,917	54,778	59,937
Maximum day	444	490	538

and will be purchased by Applicant under Texas Gas' Rate Schedule SG-3.

An application filed by Indiana Natural Gas Corporation on August 17, 1960, in Docket No. CP61-45 seeking an order directing Texas Gas to establish physical connection of its transmission facilities with those proposed by Indiana Natural, and to sell and deliver natural gas to it for resale also in the Town of Worthington, Indiana, was withdrawn by Indiana Natural on May 21, 1965 (effective under Commission authorization on June 21, 1965).

On July 17, 1964, Respondent, Texas Gas filed an answer to the application and stated it has no objection to the rendering of the requested service providing Applicant's third year peak day requirement does not exceed 538 Mcf and an appropriate service agreement therefor is executed by the Applicant.

Due notice of the filing of the application and opportunity for hearing thereon has been given by publication in the Federal Register on October 24, 1964 (29 F.R. 14605). No protest, petition to intervene, notice of intervention, or request for hearing has been filed in this proceeding. The competitive application of Indiana Natural, noted above, has been withdrawn.

The Commission finds:

(1) The Respondent, Texas Gas Transmission Corporation, a Delaware corporation having its principal place of business in Owensboro, Kentucky, is a

"natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order dated March 30, 1948, in Docket No. G–855 (7 FPC 213).

(2) Applicant, Community Natural Gas Company, Inc., is a legal entity duly authorized to sell and distribute natural gas in the State of Indiana and has received the necessary local franchises to render the service proposed.

(3) It is necessary and desirable in the public interest to direct Texas Gas to establish physical connection of its transmission facilities with those proposed to be constructed and operated by Applicant, and to sell and deliver to Applicant under its appropriate rate schedule and a service agreement to be executed by Applicant with Texas Gas in accordance with the Commission's Regulations, up to 538 Mcf of natural gas per day for distribution and resale as hereinbefore described.

(4) The requirement that Texas Gas serve Applicant, as hereinafter ordered, will not (a) place an undue burden upon Texas Gas, (b) require Texas Gas to enlarge its transportation facilities or (c) impair Texas Gas' ability to render adequate service to its existing customers.

(5) Applicant should be prepared to receive natural gas from Texas Gas for distribution in the community of Worthington, Indiana, within one year from the date of the issuance of this order.

The Commission orders:

(A) Respondent, Texas Gas Transmission Corporation is directed to establish physical connection of its facilities with the facilities proposed to be constructed and operated by Applicant, as hereinbefore described and to sell and deliver up to 538 Mcf of natural gas per day to Applicant under a service agreement to be executed by Applicant with Texas Gas in accordance with the Commission's Regulations, for the transportation, distribution and resale as hereinbefore described. Such service shall be rendered pursuant to Texas Gas' presently filed appropriate rate schedule.

(B) Texas Gas shall report to the Commission the date of commencement of service to Applicant within 15 days after such service begins.

(C) Applicant shall be prepared to receive service from Texas Gas as directed herein within one year from the date of issuance of this order.

(D) Applicant shall submit proof that the Indiana Public Service Commission has approved its financial plan within 90 days after the date of the issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black

JAMES P. EVANS, JR., ET AL., DOCKET NO. RI60–237; UNITED GAS PIPE LINE COMPANY, DOCKET NO. RP65–15

ORDER RELEASING REFUNDS

(Issued July 7, 1965)

The Commission by order issued November 4, 1964[1] approved Evans' offer of settlement of a pending rate proceeding and ordered Evans to retain the refund to its customer (United Gas Pipe Line Company) pending further order. This retention was directed in keeping with our policy expressed in the order approv-

[1] "Order Accepting Offer of Settlement, Requiring Filing of Notice of Change, and Terminating Proceedings," *James P. Evans, Jr., et al.*, Docket No. RI60–237, 32 FPC 1269.

ing the Humble settlement [2] wherein we stated that it is "our duty to insure that the ultimate consumers of gas actually receive all of the benefits of our rate regulation to which they may be entitled," and that we were taking action "to assure that, within the limits of our jurisdictional reach, the refunds to be ordered actually flow to those parties legally and equitably entitled thereto.

Review of the flow-through obligations of Evans' pipeline customer, United Gas, shows that United Gas is obligated to flow-through the jurisdictional portion of the refund in this proceeding. All of the other pipelines in the resale chain are similarly obligated to flow-through all significant, jurisdictional amounts with the exception of Texas Eastern Transmission Corporation and Southern Natural Gas Company. Texas Eastern is obligated to flow-through the amounts received from United Gas which are attributable to purchases prior to June 15, 1961, but claims that it has no such obligation for subsequent periods. Southern claims the right to retain amounts attributable to purchases between December 31, 1962 and April 1, 1964. Accordingly, we hereinafter provide that United Gas shall defer the flow-through and retain those amounts which Texas Eastern and Southern claim they are not obligated to flow-through.

The Commission orders:

(A) James P. Evans, Jr., shall release and pay over to the United Gas Pipe Line Company within thirty days of this order the total amount assigned to United Gas as specified in Evans' refund report filed November 30, 1964, together with all interest earned on such amount while in deposit in savings accounts.

(B) United Gas with respect to the amounts received pursuant to Paragraph (A) above shall, pending further order of the Commission, retain and defer the flow-through of those portions which are attributable to purchases by:

1. Texas Eastern subsequent to June 14, 1961; and
2. Southern between December 31, 1962 and April 1, 1964.

(C) The amounts ordered to be retained pursuant to Paragraph (B) shall be retained by United Gas in accordance with the methods set forth in Paragraph (J) of the Commission's "Order Releasing Refunds in Part" issued April 21, 1965 in *Humble Oil & Refining Company*, Docket No. G-9287, *et al.*, 33 FPC 830.

(D) Except as specifically ordered to retain amounts and defer the flow-through to specified parties, each company shall flow-through the refunds received pursuant to this order and submit a report thereon in accordance with the applicable Commission orders governing its flow-through obligation.

(E) Where amounts have been retained pursuant to Paragraph (B) and the party which otherwise would have received such amounts is presently obligated to pass on such amounts by prior order of the Commission or will voluntarily assume the obligation to pass on such amounts, a report setting forth the details of such obligation or an agreement assuming obligation to pass on the refund shall be filed by such a party within ten days.

(F) Where any pipeline subject to the jurisdiction of this Commission receives a refund pursuant to this order and contrary to our conclusion that the jurisdictional portion thereof will flow-through to its customers, claims the right to retain such amounts, that pipeline shall report to the Commission within ten days of the date of this order the basis of such claim, and when the amount is received, that pipeline shall retain, in accordance with Paragraph (C), the amount in dispute subject to our further order.

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[2] "Order Conditionally Approving Rate Settlement Proposal, Severing and Terminating Proceedings, and Prescribing Refunds," *Humble Oil & Refining Company*, Docket No. G-9287, *et al.*, issued July 8, 1964, 32 FPC 49.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

LANDS WITHDRAWN IN POWER SITE RESERVE NO. 8 AND PROJECT NO. 2273, DOCKET NO. DA-566-IDAHO, FRANK M. SOTIN

FINDINGS AND ORDER UNDER SECTION 24 OF THE FEDERAL POWER ACT

(Issued July 7, 1965)

Application (Idaho 013983) was filed by Frank M. Sotin (Applicant) of Lucile, Idaho, with the Boise Land Office of the Bureau of Land Management, for restoration to entry of the following-described lands of the United States withdrawn for power site purposes, thereby requiring Commission consideration under Section 24 of the Federal Power Act.

BOISE MERIDIAN, IDAHO

T. 25 N., R. 1 E., sec. 14: lot 8

It appears that Applicant is seeking to acquire the land upon which he has erected residential improvements. Applicant has filed his request to acquire the lands under the terms of the Unpatented Mining Claims Relief Act of October 23, 1962 (76 Stat. 1127).

The land is withdrawn in Power Site Reserve No. 8, dated July 2, 1910, and is also withdrawn pursuant to the filing on August 22, 1960, of an amended application for license for Nez Perce Project No. 2273.

The land lies on the east bank of the Salmon River about 79 miles upstream from its mouth at the Snake River and 2½ miles above the town of Lucile, Idaho. The land ranges in altitude from 1,625 feet at the river level to about 2,000 feet up the canyon wall.

Applicant's dwelling and appurtenant facilities now located on the subject lands are situated at approximately the 1,640-foot elevation which places the improvements well below the U.S. Corps of Engineers' suggested Freedom site flow line of 1,780 feet. The subject lands have power value which is protected by the aforesaid withdrawals.

The Commission finds:

Restoration to entry of the above-described lands would injure their power value.

The Commission orders:

The aforesaid application for restoration to entry of the above-described lands is denied.

Commissioners O'Connor and Ross *dissenting.*

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

THE MONTANA POWER COMPANY, PROJECT NO. 5

ORDER DENYING PETITION TO VACATE HEARING AND REQUEST FOR ORAL ARGUMENT AND DEFERRING ACTION ON PETITION TO DISMISS APPLICATION FOR READJUSTMENT OF ANNUAL CHARGES

(Issued July 7, 1965)

The Montana Power Company (Licensee), on April 14, 1965, filed a motion to dismiss an application by the Confederated Salish and Kootenai Tribes of the

Flathead Reservation (Confederated Tribes) for readjustment of annual charges for use of tribal lands after a period of twenty years of operation of the Kerr hydroelectric development, Project No. 5, under the license and Section 10(e) of the Federal Power Act, and to vacate the hearing ordered by the Commission's order of March 29, 1965, 33 FPC 647, which as modified, is now scheduled to be held on September 21, 1965.

The Licensee contends that if the Commission proceeds with the scheduled hearing, its rights under Article 30(D) of the license will be violated. Section 10(e) of the Water Power Act of 1920 under which the license was issued provided for readjustment of annual charges for use of Indian lands in a manner to be described in each license. Article 30(D) of the license for Project No. 5 provides for readjustment of annual charges by agreement between the Licensee and Commission with approval of the Secretary of the Interior, and in the event of disagreement provides for arbitration under the United States Arbitration Act (U.S.C., Title 9).

The Confederated Tribes filed a reply on April 15, 1965, opposing the motion of the Licensee, maintaining that the negotiation and arbitration of annual charges provided for in Article 30(D) are procedural, and that when in 1935 Section 10(e) was amended so as to provide for readjustment of annual charges by the Commission after notice and opportunity for hearing, the Licensee's substantive rights remained the same and that there had only been an alteration in the forum where recalculation would take place.

A request for oral argument was filed on June 4, 1965, by the Licensee for the reasons that the motion to dismiss the application for readjustment raises the issues of Commission jurisdiction, that this question should be determined before testimony on what the annual charges should be is taken, and that the question of jurisdiction is a legal question that can be determined without the necessity for a hearing.

The Montana Power Company raised these same issues by a petition seeking to enforce arbitration of the question of readjustment of annual charges for occupancy of Indian land under Article 30(D) of its license, which was filed on April 14, 1965, in the United States District Court for the District of Montana, Butte Division. That Court in its Order 1251, dated May 24, 1965, held that the question sought to be brought before it was one over which the Commission had exclusive jurisdiction in the proceeding in which a hearing was set by it in its order of March 29, 1965.

The Licensee takes the position that no readjustment of annual charges for occupancy of Indian land is necessary after twenty years of operation of the Kerr Project. The Commission's order of March 29, 1965 clearly states that it is not necessary to decide prior to a hearing whether readjustment is necessary, or whether the amount of readjusted annual charges, if any, is to be arrived at under Section 10(e) as amended in 1935, or in the manner described in Article 30(D):

> * * * Under either situation, the Commission would have to determine whether it believes any readjustment is appropriate and this determination, we believe, can be made only after an evidentiary hearing.

The point made by the Licensee in its request for oral argument that the issue involved arbitration is a legal issue which should be resolved by argument prior to a hearing was considered by the Commission in its order of March 29, 1965, as follows:

> * * * Since the latter question appears to be solely a matter of law, we do not contemplate that any evidence will be introduced thereon but the parties may, of course, argue the matter to the examiner and the Commission by way of a brief.

If the Licensee or any other party to the proceedings feels that argument by way of its brief is not sufficient, a request may be made under Section 1.29(b) or Section 1.31(d) of the Commission's Rules of Practice and Procedure for oral argument before the Presiding Examiner or before the Commission on exceptions to the decision of the Examiner.

The Commission finds:

The Licensee has not shown good cause for vacating the hearing now fixed for September 21, 1965, or for granting oral argument at this time.

The Commission orders:

The portion of the petition to vacate the hearing on this matter, and the request for oral argument at this stage of the proceedings are denied, and the portion of the petition to dismiss the application for readjustment of annual charges for use of Indian lands is deferred until further order of the Commission after a hearing.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

ORDER ESTABLISHING NATIONAL POWER SURVEY REGIONAL ADVISORY COMMITTEES

(Issued July 7, 1965)*

The Federal Power Commission is directed by Section 202(a) of the Federal Power Act (16 U.S.C. 792–825r) to promote and encourage voluntary interconnection and coordination of the nation's electric power facilities in the interest of economy and conservation, and is authorized by Section 311 of the Act to conduct broad investigations covering all aspects of the entire power industry. In order to accomplish more effectively the objectives of the National Power Survey, a report issued by the Commission in December 1964, and in accordance with the Executive Order 11007 of February 26, 1962 (27 F.R. 1875) relating to the Formation and Use of Advisory Committees, we have concluded that it is in the public interest that six National Power Survey Regional Committees, as listed below, be, and hereby are, established:

Northeast	East Central	West Central
Southeast	South Central	West

1. *Purpose.* The Regional Advisory Committees will assist the Commission in updating the guidelines of the National Power Survey, and in encouraging the utility systems in each Region to pursue courses of action consistent with them. The Committees will facilitate the exploration of all practicable opportunities for more efficient development and operation of power systems in each region. Meetings of the Committees will constitute forums for the exchange of ideas and for fostering better communication and understanding among all utilities of the region involved. All systems of every segment of the industry would be encouraged to support the analyses through an expression of their needs and desires. The Committees will be consultative only and they will operate within the limits established by the Commission and enunciated on many occasions, that the National Power Survey was not intended as a blueprint or as a means of compelling the construction of particular facilities.

2. *Selection of Committee Members.* All Committee members and alternates shall be selected by the Chairman of the Commission with the approval of the Commission.

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*Published in the Federal Register on July 14, 1965 (30 F.R. 8868).

3. *Conduct of Meetings.* The Chairman of the Commission, or in his absence, the Acting Chairman, or any full-time employee of the Commission designated by the Chairman or Acting Chairman of the Commission, shall act as chairman of Committee meetings and shall be responsible for opening and conducting meetings and for adjourning meetings when, in his judgment, adjournment is in the public interest.

4. *Minutes.* The Chairman of the Commission having made a finding that maintenance of a verbatim transcript would be impracticable and not in the public interest, there shall be kept by the Secretary of each Committee, in lieu thereof, a record of persons present, a description of matters discussed and conclusions reached, and copies of all reports received, issued, or approved by each Committee.

5. *Secretary of the Committee.* The Chairman of the Commission shall appoint a Secretary of each Committee from the Commission staff who shall be responsible for preparing summary minutes of all Committee meetings, preparing agenda, notifying members of the meetings, and maintaining all records related to organization, membership and operations of each Committee. The Secretary or his alternate shall be present during all meetings and shall certify the accuracy of all minutes.

6. *Location and Time of Meetings.* The initial meeting of each Committee will convene at the call of the Chairman or Acting Chairman of the Commission at the Office of the Federal Power Commission, 441 G Street, NW., Washington, D.C., 20426. Subsequent meetings normally will be convened at the call of the appropriate Regional Engineer with meetings being held in the Commission's regional offices. Ordinarily, meetings will be held during the regular working hours of the Federal Power Commission.

7. *Report of the Committee.* The reports of the Committees will be presented to the Commission in written form. These reports, among other things, will outline the possibilities for meeting early goals for improvement in electric power supply, and will project longer range potential patterns for attaining major gains in the interest of the public welfare and economy of each region.

8. *Duration of the Committee.* Each Committee shall terminate not later than two years subsequent to its date of establishment, unless the Commission determines in writing, not more than 60 days prior to the expiration of such two-year period, that continued existence of the Committee is in the public interest. A like determination by the Commission shall be required not more than 60 days prior to the end of each subsequent two-year period to continue the existence of each Committee thereafter.

9. The Secretary of the Commission shall cause prompt publication of this order to be made in the Federal Register in accordance with the provisions of the Bureau of the Budget Circular No. A–63.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

NORTHERN NATURAL GAS COMPANY, DOCKET NO. CP65–344

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued July 7, 1965)

On April 28, 1965, Northern Natural Gas Company (Applicant) filed in Docket No. CP65–344 an application pursuant to Section 7(c) of the Natural Gas Act

for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities and the sale and/or transportation and delivery of natural gas to existing customers, all as more fully set forth in the application in this proceeding.

Specifically, Applicant proposes to construct and operate 24 miles of 30-inch pipeline loop in northern Kansas and a 2,000 horsepower compressor unit addition at Ogden, Iowa. The total estimated cost of the project is $3,236,000, which cost will be financed from cash on hand, reserve accruals and retained earnings.

Applicant proposes an increase (decrease) in the contract demands of the following customers:

	Mcf
Town of Harlan, Iowa	400
Iowa Southern Utilities Company	70
Northern States Power Company	9,005
Peoples Natural Gas Division	7,700
Town of Remsen, Iowa	50
Superior Water, Light and Power Co	1,500
Town of Watertown, South Dakota	400
Iowa Power and Light Company	2,000
Metropolitan Utilities District	(2,000)
Total Increase	19,125

Applicant states that of the 400 Mcf increase requested by the Town of Harlan, 40 Mcf will be resold, on a firm basis, to an existing interruptible consumer, Western Iowa Pork, Inc. Superior Water, Light and Power Company's requested increase of 1,500 Mcf will be resold on a firm basis to Superior Fiber Products, Inc. Further, Applicant, through its Peoples Division, will sell an additional 7,700 Mcf of firm gas to Reserve Mining Company. Applicant also proposes to deliver, through its Peoples Division, an additional 100 Mcf of gas per day to Clinton Engines at Maquoketa, Iowa. This volume is to be delivered from amounts heretofore allocated to Peoples for its Billing Group 4B. The remaining 9885 Mcf of the requested 19,125 Mcf increase in contract demand is required to enable the above-listed customers to meet the necessary growth requirements for presently served communities.

A petition to intervene by Iowa Southern Utilities Company and a notice of intervention by the Public Service Commission of Wisconsin were filed herein. Neither the Wisconsin Commission nor Iowa Southern request formal hearing or object to the hearing and disposition of the subject application under the shortened procedure provided for by the Commissions' Rules. Inasmuch as the shortened procedure is being used herein, no further action on said petition or notice appears necessary.

After due notice, no other petition to intervene, other notice of intervention or protest to the granting of the application has been filed.

At a hearing held on July 1, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Northern Natural Gas Company, a Delaware corporation having its principal place of business in Omaha, Nebraska, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of April 6, 1943, in Docket No. G-280 (3 FPC 967).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the sale and/or transportation and delivery of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the proposed sales and/or transportation and delivery of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the proposed sales and/or transportation and delivery of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is hereby issued authorizing Applicant, Northern Natural Gas Company, to construct and operate the proposed facilities and to sell and/or transport and deliver natural gas as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation and the sales and/or transportation and delivery of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 6 months from the date on which this order issues.

(D) This certificate shall not entitle the industrial customers to whom firm deliveries are authorized herein to any priorities to additional gas for meeting any future increases in their requirements at the expense of firm resale customers desiring to acquire additional gas to meet any future increases in their requirements.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE, NEW HAMPSHIRE ELECTRIC COMPANY AND KITTERY ELECTRIC LIGHT COMPANY, DOCKET NO. E-7220

ORDER AUTHORIZING ACQUISITION, MERGER OR CONSOLIDATION OF FACILITIES

(Issued July 8, 1965)

Public Service Company of New Hampshire (Public Service), New Hampshire Electric Company (New Hampshire), and Kittery Electric Light Company (Kit-

tery), filed a joint application with the Federal Power Commission on April 23, 1965, seeking an order pursuant to Section 203 of the Federal Power Act granting the necessary authority for the merger or consolidation of the facilities of New Hampshire and Kittery with the facilities of Public Service.

Public Service is incorporated under the laws of the State of New Hampshire, is qualified to do business in the States of New Hampshire, Maine and Vermont and owns and operates a single integrated system engaged in the generation, purchase and transmission of electric energy and its distribution and sale to the public in 10 cities and 180 communities in New Hampshire, to 9 communities in the State of Maine and 6 communities in the State of Vermont and the sale at wholesale to 10 electric utilities.

New Hampshire is incorporated under the laws of the State of New Hampshire and is qualified to do business in the State of New Hampshire and the State of Maine. It is a wholly-owned subsidiary of Public Service and owns transmission facilities connected to those of Public Service over which it sells electricity in interstate commerce to Kittery and to the Navy Yard in Kittery, Maine. It also serves the public in New Hampshire in the Counties of Cheshire, Hillsboro, Merrimack, Rockingham and Strafford.

Kittery, a wholly-owned subsidiary of New Hampshire is incorporated under the laws of the State of Maine and is qualified to do business in the State of Maine. It owns transmission and distribution facilities connected to the facilities of New Hampshire, over which it transmits and distributes in Maine electricity purchased from New Hampshire. Kittery also serves the public in the County of York in Maine.

According to the application, Kittery proposes to transfer all of its facilities and assets to New Hampshire in exchange for surrender by New Hampshire for cancellation of all the stock of Kittery which is held by New Hampshire and the assumption by New Hampshire of all the debts and obligations of Kittery. It is further proposed to transfer all facilities and assets of New Hampshire, including those acquired by New Hampshire from Kittery, to Public Service in exchange for surrender by Public Service for cancellation of all stock of New Hampshire which is held by Public Service, and the assumption by Public Service of all debts and obligations of New Hampshire, including those of Kittery assumed by New Hampshire.

Kittery proposes to transfer to New Hampshire all of its operating facilities used for the transmission and distribution of electricity and represents that the proposed use will be identical with the present use. New Hampshire proposes to transfer to Public Service all of its operating facilities used for generation, transmission and distribution of electricity including those acquired by it from Kittery and represents that the proposed use will be identical with the present use.

The following statement shows the utility plant accounts of Public Service, New Hampshire and Kittery before the mergers and of Public Service after the mergers:

	As of December 31, 1964			
	Before mergers			After mergers: Public Service
	Public Service	New Hampshire	Kittery	
Electric Utility Plant:				
Electric Plant in Service:				
Intangible Plant	$45,057	$1,654		$46,711
Steam Production Plant	60,668,657	2,910,629		63,579,286
Hydraulic Production Plant	18,108,756			18,108,756
Inter. Comb. Eng. Prod. Plant	430,294			430,294
Transmission Plant	31,879,816	2,201,295	$194,466	34,275,577
Distribution Plant	62,967,924	8,920,478	1,278,340	73,166,742
General Plant	3,371,435	408,083	24,787	3,804,305
Total	177,471,939	14,442,139	1,497,593	193,411,671
Construction Work in Progress	788,497	7,128		795,625
Held for Future Use	147,122			147,122
Total	178,407,558	14,449,267	1,497,593	194,354,418
Reserves Applicable to Utility Plant:				
Accumulated Provision for Depreciation of Electric Plant in Service	36,932,270	*3,957,260	344,357	*41,233,887
Other	58,339			58,339
Total	36,990,609	3,957,260	344,357	41,292,226
Net Plant	141,416,949	10,492,007	1,153,236	153,062,192

*Includes $240,616 transferred from Miscellaneous Operating Reserves.

The merger of Kittery into New Hampshire will not result in the creation of an acquisition adjustment on the books of New Hampshire, and the merger of New Hampshire into Public Service will not result in the creation of an acquisition adjustment on the books of Public Service.

According to the application, the proposed merger or consolidation of the three companies will not result in any change in control or service performed for the public. The electric facilities of the companies have been operated and will continue to be operated as a single integrated system by Public Service. The applicants state that the consolidation of three companies "* * * will simplify the intercorporate structure, will produce some economies in operation, will simplify future proceedings before various regulatory authorities and will reduce the number of reports required to be filed with regulatory authorities and other state and federal agencies."

Also, according to the application, Public Service proposes to make effective as of the date of transfer, throughout the territory in the States of New Hampshire and Maine presently being served by New Hampshire and Kittery, the standard electric tariff of Public Service then in effect in its service area in New Hampshire. The standard electric tariff for Public Service is and has been for some time identical with that of New Hampshire. Service under Public Service's tariff will have the effect of a rate reduction for the customers presently being served by Kittery.

Written notice of the application has been given to the Public Utilities Commission of Maine and the Public Utilities Commission of New Hampshire. Notice was also published in the Federal Register on May 22, 1965 (30 F.R. 6952), stating that any person desiring to be heard or to make any protest with reference to the application, should on or before June 1, 1965, file petitions or protests with the Federal Power Commission, Washington, D.C., 20426. No petition or protest or request to be heard in opposition to the granting of the application has been received. By order entered June 21, 1965, the Public Utilities Commission of New Hampshire approved the proposed transaction.

The Commission finds:

(1) Public Service, a corporation, is a public utility within the meaning of Section 203 of the Federal Power Act, subject to the jurisdiction of the Commission, as heretofore described and set forth in the Commission's order issued February 24, 1965, *In the Matter of Public Service Company of New Hampshire*, Docket No. E–7152 (33 FPC 317).

(2) New Hampshire, a corporation, owns and operates facilities for the transmission and sale at wholesale of electric energy which is generated in the State of New Hampshire and consumed in the State of Maine, all of which facilities are in addition to and do not include facilities used for the generation of electric energy facilities used in local distribution or only for the transmission of electric energy in interstate commerce, or facilities for the transmission of electric energy consumed wholly by the transmitter, and New Hampshire is, therefore, a public utility within the meaning of Section 203 of the Federal Power Act.

(3) Kittery, a corporation, owns and operates facilities for the transmission and sale at wholesale of electric energy which is generated in the State of New Hampshire and consumed in the State of Maine, all of which facilities are in addition to and do not include facilities used for the generation of electric energy facilities used in local distribution or only for the transmission of electric energy in interstate commerce, or facilities for the transmission of electric energy consumed wholly by the transmitter, and Kittery is, therefore, a public utility within the meaning of Section 203 of the Federal Power Act.

(4) By the proposed first step in the transaction, New Hampshire will merge or consolidate its facilities subject to the jurisdiction of the Commission with those of Kittery, another person, within the meaning and subject to the requirements of Section 203 of the Federal Power Act.

(5) By the proposed second step in the transaction, Public Service will merge or consolidate its facilities subject to the jurisdiction of the Commission with those of New Hampshire, another person, within the meaning and subject to the requirements of Section 203 of the Federal Power Act.

(6) The proposed acquisition of facilities by New Hampshire and the proposed acquisition of facilities by Public Service, as described above, upon the terms and conditions set forth in the application, and subject to the provisions of this order will be consistent with the public interest as expressed in Section 203 of the Federal Power Act.

(7) Neither Public Service nor New Hampshire is subject to a requirement of the Public Utility Holding Company Act of 1935 or of a rule, regulation, or order thereunder, which would exempt them or either of them, pursuant to Section 318 of the Federal Power Act from the requirements of Section 203 thereof with respect to any matter with which the order is concerned.

The Commission orders:

(A) The proposed acquisition by New Hampshire of the electric facilities of Kittery, all as described above, is authorized and approved upon the terms and conditions and for the purposes set forth in the application subject to the provisions of this order.

(B) The proposed acquisition by Public Service of the electric facilities of New Hampshire, all as described above, is authorized and approved upon the terms and conditions and for the purposes set forth in the application subject to the provisions of this order.

(C) New Hampshire and Public Service shall record the proposed transactions herein authorized and the facilities and properties referred to above as provided in the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees.

(D) This authorization shall expire unless the transactions herein authorized and approved are consummated within 90 days from the date of issuance of this order.

(E) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuations, estimates or determinations of cost, or any matter whatsoever now pending or which may come before this Commission or any other regulatory body and nothing herein shall be construed as an acquiescence by this Commission in any estimate or determination of cost of any valuation of property claimed or asserted by this Commission.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

CARNEGIE NATURAL GAS COMPANY, DOCKET NO. CP65-331

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND PERMITTING AND APPROVING ABANDONMENT OF FACILITIES

(Issued July 9, 1965)

On April 19, 1965, Carnegie Natural Gas Company (Applicant) filed in Docket No. CP65-331 an application, as supplemented May 24 and May 27, 1965, pursuant to Sections 7(b) and 7(c) of the Natural Gas Act for permission and approval to abandon certain natural gas facilities and for a certificate of public convenience and necessity authorizing the construction and operation of certain other facilities, all as more fully set forth in the application.

Applicant proposes to construct and operate approximately 34.2 miles of 20-inch pipeline, together with necessary measuring and regulating facilities, extending from a point of connection with the facilities of Texas Eastern Transmission Corporation (Texas Eastern) in Greene County, Pennsylvania to Applicant's city gate near Pittsburgh, Pennsylvania. In addition, Applicant proposes to abandon 14.58 miles of 16-inch and 7-inch gathering pipeline extending in a direction generally north and east of Applicant's Waynesburg Compressor Station in Greene County, Pennsylvania. This line is old, of obsolete construction, and requires extensive maintenance for its continued operation.

The proposed 20-inch line will enable Applicant to meet the increased firm natural gas requirements of United States Steel Corporation (U.S. Steel), expected to total 45,000 Mcf per day by 1967. U.S. Steel will utilize this additional gas in the operation of its Homestead and Clairton Works, located in Allegheny County, Pennsylvania.

Applicant proposes to purchase the necessary additional volumes of gas from Texas Eastern, pursuant to an agreement between the parties dated April 14, 1965.

Total estimated cost of Applicant's proposed construction is $2,549,000, and will be financed with cash on hand and cash generated through operations.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on July 8, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits and supplements thereto, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Carnegie Natural Gas Company, a Pennsylvania corporation having its principal place of business in Munhall, Pennsylvania, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of August 3, 1943, in Docket No. G–263 (3 FPC 1052).

(2) The proposed construction and operation of facilities by Applicant are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The proposed construction and operation of facilities by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) The proposed abandonment of facilities by Applicant is permitted by the public convenience and necessity, and approval therefor should be granted as hereinafter ordered.

(6) The public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is hereby issued to Applicant, Carnegie Natural Gas Company, authorizing construction and operation of the facilities hereinbefore described, as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the aforesaid Regulations, within one year from the date on which this order issues.

(D) Permission for and approval of the abandonment by Applicant of the facilities hereinbefore described, as more fully described in the application in this proceeding, are hereby granted.

(E) Applicant shall advise the Commission of the date of abandonment of said facilities within 10 days thereof.

(F) The certificate hereby issued to Applicant is conditioned upon Texas Eastern Transmission Corporation receiving appropriate authorization in Docket No. CP64–5 for the sale of the necessary additional volumes of natural gas to Applicant.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

BANGOR HYDRO-ELECTRIC COMPANY, PROJECT NO. 2403

ORDER DENYING APPLICATION FOR REHEARING

(Issued July 12, 1965)

On March 18, 1965, Bangor Hydro-Electric Company (Applicant) filed an application seeking rehearing on the Commission's February 18, 1965, 33 FPC 278, order granting a license to Applicant for its Veazie Project located on the Penobscot River, Penobscot County, Maine, Project No. 2403.[1] Applicant alleges that the Commission erred in establishing January 1, 1938, as the effective date of the license, and on rehearing requests that the Commission amend the license order to provide for a fifty-year license with April 1, 1962, as the effective date.

The Applicant's position is that:

> The Commission's decision to make the Veazie Project [license] become effective January 1, 1938 and a termination date of December 31, 1987, thereby granting an actual usable term of less than twenty-three years is unreasonable and constitutes an abuse of administrative discretion and unfairly discriminates against the license. Such action denies Hydro the right of due process under the Constitution of the United States and had reasonable weight been given to the circumstances surrounding Hydro's application for the license, later dates would have been selected (Application for Rehearing, p. 6).

Applicant suggests that the Commission's order is inconsistent with the policy with regard to backdating which we enunciated in *Public Service Company of New Hampshire* (*The Androscoggin case*), 27 FPC 830 (1962). Applicant contends that under *Androscoggin* the license should not be backdated to 1938 because the reach of the Penobscot River on which Applicant's Veazie Project is located was declared non-navigable by the Supreme Court in 1852, and was not specifically determined to be navigable until the date of the order in this case.

Applicant further contends that the construction of its Power House B in 1938 was not a sufficient reason for backdating the license to 1938 because this construction was not "significant" enough to come within the *Androscoggin* rule requiring backdating of licenses to the time of the construction of any improvements if such construction was subsequent to the 1935 enactment of Section 23(b) of the Federal Power Act.

We are of the opinion that the Applicant's contentions are grounded upon a misapprehension of this Commission's prior decisions and that this application for rehearing must be denied for the reasons set out below.

First. Applicant makes much of the fact that the reach of the Penobscot River on which its Veazie Project is located was declared by the Supreme Court to be non-navigable in the 1852 case of *Veazie* v. *Moor*, 55 U.S. 345. Because of this holding, Applicant contends that it was not unreasonable to assume that no license would be necessary for its project until such time as the Commission made a formal determination of navigability pursuant to the Federal Power Act. In our view, the *Veazie* decision on which Applicant relies has clearly been drained of force by *The Daniel Ball*, 77 U.S. 557 (1870); *The Montello*, 87 U.S. 430 (1874); and other cases defining "navigable waters" which were adopted in sub-section 3(8) of the Federal Power Act.

[1] By order issued April 14, 1965 we granted rehearing for further consideration.

Second. In 1938 Applicant commenced construction of Power House B at the Veazie project. It did so without filing a declaration of intention or an application for a license as required by Section 23(b) of the Act.

In making the license for Applicant's project effective as of January 1, 1938 the Commission followed its uniform policy where project works were constructed after the 1935 amendment to the Act. As the Commission observed in *Androscoggin* (27 FPC at 832, note 2):

> The construction of any project work *subsequent* to the enactment of Section 23(b) of the Act of 1935 without the concurrent filing of a license application or declaration of intention plainly violates that section. There is little room for dispute that licenses for such project should be made effective not later than the date of construction of such project works.

In an order issued September 11, 1964 denying an application for rehearing filed by Central Maine Power Company in Project No. 2335, we refused to depart from this consistent policy of the Commission (32 FPC 733). Our disposition of that case was recently upheld by the United States Court of Appeals for the First Circuit. *Central Maine Power Company* v. *F.P.C.*, 345 F. 2d 875 (1st Circ., May 18 ,1965). In its opinion the court referred to that part of Section 23(b) which is quoted above and said:

> It must be that, at the very least, this portion of the statute was directed toward the doctrine embodied in such cases as *United States* v. *Rio Grande Dam and Irrigation Co.*, 1899, 174 U.S. 690, that Congress had a legitimate interest in non-navigable waters the diversion or impeding of which could affect navigation in navigable waters. * * * Under Section 23(b) if the location is one where injury could be done, it is for the Commission to make the decision as to whether "the interest of interstate or foreign commerce would be affected by such proposed construction." So viewed, we cannot possibly condemn the Commission's determination that petitioner was unreasonable, if not even recalcitrant in not recognizing and complying with the second portion of the statute by filing a declaration of intention.

Third. The Applicant contends that the 1938 construction of its Power House B is not a sufficient reason, under the Androscoggin decision, to justify backdating the license to 1938 because, says Applicant, this construction was not "significant". The construction and operation of Power House B, with a nameplate rating of 3,000 kw, is not insignificant where as here the total generating capacity of the entire project is only 8,400 kw.

The Commission further finds:

The assignments of error and grounds for rehearing set forth in the application for rehearing filed by Applicant on March 18, 1965, of the Commission's order issued herein on February 18, 1965, present no facts or principles of law which were not considered by the Commission when it issued its aforesaid order, or which having now been considered warrant any change or modification of the said order.

The Commission orders:

Bangor Hydro-Electric Company's application filed on March 18, 1965 for rehearing of the Commission's order issued February 18, 1965 in Project No. 2403 is denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

CAROLINA POWER & LIGHT COMPANY, PROJECT NO. 2206; YADKIN, INC., PROJECT NO. 2197

ORDER APPROVING HEADWATER BENEFITS SETTLEMENT

(Issued July 12, 1965)

This order determines, under subsection 10(f) of the Federal Power Act (16 U.S.C. 803(e)), that the United States' W. Scott Kerr development in the Yadkin-Pee Dee river basin does not provide any significant headwater benefits to the downstream Project No. 2197 of Yadkin, Inc. (Yadkin), and Project No. 2206 of the Carolina Power & Light Company (Carolina Power). The order also approves, pursuant to Section 13.1 of the Regulations under the Federal Power Act in lieu of a headwater benefits determination under subsection 10(f) of the Act, agreements between Yadkin and Carolina Power concerning compensation for headwater benefits provided by Yadkin's Project No. 2197 to Carolina Power's downstream Project No. 2206.

Yadkin's Project No. 2197 consists of the High Rock, Tuckertown, Narrows, and Falls developments, and Carolina Power's Project 2206 consists of the Tillery and Blewett Falls developments.

Preliminary investigation indicates that any headwater benefits which the United States' W. Scott Kerr project might provide to Yadkin's Project No. 2197 and Carolina Power's Project No. 2206 are *de minimis*.

On September 23, 1963, Yadkin filed a contract dated February 19, 1926, between its predecessor, Tallassee Power Company (Tallassee), and Carolina Power. This contract provides that Tallassee will construct the High Rock reservoir and operate it and Tallassee's Narrows reservoir to impound and subsequently release the flood waters of the Yadkin River in such a way that the river flow will be equalized throughout the year to the end that during each calendar year the minimum flow will be sustained at the highest practicable amount. The contract provides, also, for the storage of energy in equivalent amounts of water by Carolina Power in the High Rock and Narrows reservoirs when storage is available in the High Rock and Narrows reservoirs. Carolina Power agrees to pay Tallassee annually the sum of $100,000 for the benefits from stream flow regulation by these reservoirs. The contract continues in force until December 31, 1967, and thereafter until terminated by mutual consent of the parties, but in no event longer than 99 years from January 1, 1968. By a letter agreement dated January 26, 1956, Yadkin and Carolina Power stipulated that the payments provided in the contract of February 19, 1926, are deemed to cover any benefits which might be provided by Yadkin's Tuckertown development to Carolina Power's Project No. 2206.

The Commission finds:

(1) The United States' W. Scott Kerr development does not confer any significant headwater benefits upon the downstream Project No. 2197 of Yadkin, Inc. and Project No. 2206 of the Carolina Power & Light Company.

(2) The agreements dated February 19, 1926, and January 26, 1956, between Yadkin, Inc., or its predecessor Tallassee Power Company on the one hand and South Carolina Power & Light Company on the other constitute an effective and reasonable method of compensation for headwater benefits provided by Yadkin's Project No. 2197 to Carolina Power's Project No. 2206 in the Yadkin-Pee Dee river basin in North Carolina.

The Commission orders:

The agreements dated February 19, 1926, and January 26, 1956, between Yadkin, Inc., or its predecessor Tallassee Power Company on the one hand and Carolina Power & Light Company on the other are approved with respect to settlement of headwater benefits under Section 13.1 of the Regulations under the Federal Power Act in lieu of a headwater benefits determination under subsection 10(f) of the Federal Power Act until a further order of the Commission is required by changes in conditions.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

KANSAS-COLORADO UTILITIES, INC., DOCKET NO. G–2138; COLORADO INTERSTATE GAS COMPANY, DOCKET NO. CP61–256

FINDINGS AND ORDER AMENDING ORDERS DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE AND DELIVERY OF NATURAL GAS AND ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued July 12, 1965)

On April 12, 1965, Colorado Interstate Gas Company (Applicant) filed in Docket Nos. G–2138 and CP61–256 an application to amend the Commission's orders issued October 5, 1953, 12 FPC 750, in the former docket, and June 30, 1961, 25 FPC 1304, in the latter docket, to delete from such orders certain limitations contained therein upon the sale and delivery of natural gas to Kansas-Colorado Utilities, Inc. (Kansas-Colorado), all as more fully set forth in the application to amend in this proceeding.

In Docket No. G–2138 Applicant was directed to establish physical connection of its transmission facilities with the facilities of Kansas-Colorado and to sell and deliver up to 500,000 Mcf of natural gas per year through the delivery point at McClave, Colorado. Deliveries were limited to the months of May, June, July, August, September and October of each year. In Docket No. CP61–256, Applicant was authorized to add a new Springfield, Colorado delivery point at which it could deliver part of this gas to Kansas-Colorado. Deliveries under both authorizations are interruptible.

Applicant now requests that the orders in these dockets be amended to delete therefrom the above-described volume and seasonal limitations and that it be authorized to sell and deliver gas at the Springfield and McClave delivery points on both firm and interruptible bases and at any time throughout the year. Applicant has entered into a service agreement with Kansas-Colorado, dated April 7, 1965, reflecting the instant proposals and providing for service under Applicant's FPC Gas Rate Schedules P–1 and IS–2. Pursuant to said agreement Applicant can deliver up to 5,000 Mcf per day of combined firm and interruptible volumes at either or both the McClave and Springfield delivery points.

Applicant requests these modifications since, due to drought conditions in the subject service area during the past few years, Kansas-Colorado's irrigation customers have begun taking gas in larger quantities and at earlier dates than they had previously been doing.

On April 15, 1965, Applicant was issued a temporary certificate in this proceeding.

Due notice of the filing of the application to amend and opportunity for hearing thereon has been given by publication in the Federal Register on April 24, 1965 (30 F.R. 5805). No protest or petition to intervene has been filed in this proceeding.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's orders issued October 5, 1953, and June 30, 1961, in Docket Nos. G–2138 and CP61–256, respectively, be amended as hereinafter ordered.

The Commission orders:

(A) The Commission's orders issued October 5, 1953, in Docket No. G–2138 is hereby amended to delete the volume limitation of 500,000 Mcf on the sale of gas to Kansas-Colorado authorized therein and, further, to delete the limitation restricting said sale to May, June, July, August, September and October of each year, all as hereinbefore described and as set forth in the application to amend.

(B) The Commission's order issued June 30, 1961, in Docket No. CP61–256 is hereby amended to delete the limitation restricting the sale of gas to Kansas-Colorado authorized therein to May, June, July, August, September and October of each year, all as hereinbefore described and as set forth in the application to amend.

(C) Applicant shall sell and deliver up to 5,000 Mcf per day of combined firm and interruptible volumes under its FPC Gas Rate Schedules P–1 and IS–2 to Kansas-Colorado at either or both the McClave and Springfield delivery points, as set forth in a service agreement dated April 7, 1965, entered into by Applicant and Kansas-Colorado.

(D) In all other respects said orders shall remain in full force and effect.

OPINION NO. 465

RUMFORD FALLS POWER COMPANY, PROJECT NO. 2333

MEMORANDUM OPINION AND ORDER DENYING APPLICATION FOR REHEARING

(Issued July 12, 1965)*

Syllabus

1. It is well established that authority to condition licenses is based on principle that applicant is not entitled as matter of right to construct, operate and maintain project works affecting navigable waters of the United States or interstate commerce. P. 28.
2. Power to grant or deny privilege of project license includes power to impose such terms or conditions as may be required in public interest. P. 28.
3. Issuance of license can be justified only on theory of a resulting benefit to public. P. 29.
4. It is appropriate that Commission reserve authority to require joint use of project works or parts thereof for water supply purposes [as in other instances] to protect public interest. P. 29.
5. When and if authority reserved by Article 31 is invoked, burden if any would only be imposed after notice and opportunity for hearing and necessary factual determinations made at that time. P. 29.
6. It is not arbitrary, unreasonable or a deprivation of due process to refrain from making findings as to what conditions may be in the future, at least where no present burden is concerned. PP. 29, 30.

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*Remanded or clarification of Article 31, 355 F. 2d 683 (CA1–1966).

7. Commission *denies* applicant's request for rehearing with respect to inclusion of Article 31 in license.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

On June 11, 1965, Rumford Falls Power Company (Rumford Falls) of Rumford, Maine, filed an application for rehearing of our order of May 14, 1965, 33 FPC 1016, issuing a license for its constructed Project No. 2333 on the Androscoggin River. Applicant objects to Article 31[1] in the license order and requests that the Commission delete such article, ordering a hearing, and grant such other relief as may be just and proper.

By our order issued April 7, 1965 (30 F.R. 4769), 33 FPC 711, we terminated the rulemaking proceeding in Docket No. R–249 and provided that the substance of the proposed regulation, with certain modifications not pertinent here, would be inserted in licenses issued in the future as a specific license condition. The condition set out in Appendix A to that order is incorporated as Article 31 of the license order in Project No. 2333.

Rumford Falls urges that the inclusion of Article 31 in the license is contrary to law and beyond the jurisdiction of the Commission and that it is unreasonable and arbitrary and a denial of due process. We find no merit in these contentions.

It is well established that the authority to condition licenses is based upon the principle that an applicant is not entitled as a matter of right to construct, operate and maintain project works affecting navigable waters of the United States or interstate commerce. The power to grant or deny the privilege of a project license includes also the power to impose such terms and conditions as may be required in the public interest. *United States* v. *Appalachian Power Company*, 311 U.S. 377.

The inclusion of Article 31 of the license is entirely in accord with the provisions of the Federal Power Act. Section 10 of the Act provides that licenses issued under that Part shall be granted only on certain conditions, among which is that the project shall be in the judgment of the Commission best adapted to a comprehensive plan of development (Section 10(a))[2] and "such other conditions

[1] *Article 31.* On the application of any person, association, corporation, Federal agency, State or municipality, the Licensee shall, after notice and opportunity for hearing, permit such reasonable use of its reservoirs or other project works or parts thereof as may be ordered by the Commission in the interest of comprehensive development of the waterway or waterways involved and the conservation and utilization of water resources of the region for water supply for steam-electric, irrigation, industrial, municipal or similar purposes, consistent with the primary objective of the project. The Licensee shall receive such reasonable compensation as may be appropriate for use of its reservoirs or other project works or parts thereof for such purposes, any such compensation to be fixed either by Commission approval of an agreement between the Licensee and the party or parties benefiting or by the Commission in the event the parties are unable to agree. Applications shall contain information in sufficient detail to afford a full understanding of the proposed use, including satisfactory evidence that the applicant possesses necessary water rights pursuant to applicable State law, or a showing of cause why such evidence cannot be submitted, and a statement as to the relationship of the proposed use to any State or municipal plans or orders which may have been adopted with respect to the use of such waters.

[2] Section 10(a) provides in full as follows:

All licenses issued under this Part shall be on the following conditions:

(a) That the project adopted, including the maps, plans and specifications, shall be such as in the judgment of the Commission will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of waterpower development, and for other beneficial public uses, including recreational purposes; and if necessary in order to secure such plan the Commission shall have authority to require the modification of any project and of the plans and specifications of the project works before approval.

not inconsistent with the provisions of this Act as the Commission may require" (Section 10(g)).[3]

Section 7(a), for example, provides for preference for applicants whose plans are deemed to be best adapted to develop, conserve and utilize in the public interest the water resources of the region. See also Section 4(g) pertaining to conservation and utilization of navigation and water-power resources. Section 6 provides in part that each license shall be conditioned upon acceptance by the licensee of all the terms and conditions of the Act and such further conditions if any as the Commission shall prescribe in conformity with the Act.

Thus the view which Rumford Falls apparently takes as to our authority, and responsibility, under the Federal Power Act is entirely too narrow. See, *e.g.*, *Federal Power Commission* v. *Idaho Power Company*, 344 U.S. 17, 23. Issuance of a license can be justified only on the theory of a resulting benefit to the public. *Alabama Power Company* v. *Federal Power Commission*, 128 F. 2d 280, 288–89 (CADC), quoted with approval in *California* v. *Federal Power Commission*, 345 F. 2d 917, CA9 No. 19,394, decided May 18, 1965.[4]

Future multiple purpose use of Rumford Falls' project works is by no means an unreasonable expectation. The application for license for Project No. 2333 recites, at pp. 3–4:

> The Commission must be aware that on the Androscoggin River there exist many dams * * *. These dams have been constructed for various purposes, several of them and their predecessors for over 100 years. They have been operated for log driving, storage of water, merchanical and electric power. They have been utilized for the corporate purposes of utility companies, industry, and the public purposes of at least one municipality.

Moreover, the application for license as well as the application for rehearing shows that there is to some extent a present multiple purpose use of project works to supply water for industrial processing. We note there is reported considerable pollution of the Androscoggin River and, as set out in the comments of the Secretary of the Interior on Rumford Falls' application for license, this condition is expected to change, as will others in the future. It is generally anticipated that even greater demands than at present will be placed upon the nation's water resources in the future.

It is thus appropriate that we reserve authority to require joint use of project works or parts thereof for water supply purposes as we have reserved authority in other instances to protect the public interest. See, *e.g.*, *Pacific Power & Light Company* v. *Federal Power Commission*, 333 F. 2d 689, 691 (CA9), cert. denied, 33 U.S.L.W. 3245; *Idaho Power Company* v. *Federal Power Commission*, 346 F. 2d 956, CA9 No. 19,637, decided June 4, 1965. When and if the authority reserved by Article 31 is invoked in the future, the burden if any would be imposed only after notice and opportunity for hearing and necessary factual determinations made at that time. Rumford Falls requests a hearing but does not set out any relevant factual matters to be shown at such a hearing. In our view there is nothing to be heard at the present time. It is not arbitrary, unreasonable or a deprivation of due process to refrain from making findings as to

[3] Rumford Falls urges that Article 31 is violative of Section 10(g); we cannot agree to this narrow construction. See *Metropolitan Edison Company* v. *Federal Power Commission*, 169 F. 2d 719, 723 (CA 3).

[4] Rumford Falls also urges that imposition of Article 31 is contrary to Section 27 of the Federal Power Act. With respect to the protection of vested rights afforded by Section 27, we have provided that necessary water rights must be acquired pursuant to applicable state law and also that there be submitted a statement as to the relationship of the proposed use to any State or municipal plans which may have been adopted concerning the use of such waters.

what conditions may be in the future, at least where no present burden is imposed. *Portland General Electric Company* v. *Federal Power Commission*, 328 F. 2d 165, 175 (CA9).

The Commission finds:

The assignments of error or grounds for rehearing set forth in the application for rehearing filed on June 11, 1965, by Rumford Falls Power Company present no new facts or principles of law which were not considered by the Commission when it issued the Order Issuing License for Project No. 2333 on May 14, 1965, or which having now been considered warrant any change or modifications of said order.

The Commission orders:

The application for rehearing referred to above is hereby denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

SOCONY MOBIL OIL COMPANY, INC., DOCKET NOS. G–12201 AND G–17526; TRANSCONTINENTAL GAS PIPE LINE CORPORATION, DOCKET NO. RP65–31

ORDER ACCEPTING OFFER OF SETTLEMENT, SEVERING AND TERMINATING PROCEEDINGS, AND PRESCRIBING REFUNDS

(Issued July 12, 1965)

By order issued May 5, 1964, in Docket No. G–12193, *et al.*, 31 FPC 1101, we approved a general rate settlement proposal of Socony Mobil Oil Company, Inc. (Socony) for most of its jurisdictional sales of natural gas, including a partial settlement of the issues in Docket Nos. G–12201 and G–17526 relating to Socony's FPC Gas Rate Schedule No. 16 for its sales to Transcontinental Gas Pipe Line Corporation (Transco) from the West Gueydan Field in South Louisiana. In the settlement order, we accepted a settlement rate of 17.0¢ per Mcf for this rate schedule effective as of April 1, 1964, in lieu of 23.55¢ per Mcf rate collected subject to refund in Docket No. G–17526, and provided for a moratorium on the filing for increased rates under said rate schedule; however, we noted that the matters relating to refund obligations and to the termination of the proceeding in Docket Nos. G–12201 and G–17526 were excluded from the settlement proposal.

On May 27, 1965, Socony submitted a settlement proposal seeking to resolve the remaining issues in Docket Nos. G–12201 and G–17526. Under the instant offer, Socony proposes to refund approximately $750,000, inclusive of interest, to Transco. This refund is the amount collected above the 17.0¢ per Mcf settlement rate from March 29, 1961 to April 1, 1964, the effective date of the settlement rate. Additionally, Socony proposes to amend its contract with Transco for this sale to (1) provide for a five calendar year make-up period for gas paid for but not taken; (2) extend the term of the subject contract to April 1, 1984; (3) delete the favored-nation provision from the contract, and (4) change the pricing provisions in the contract to provide for a 1.0¢ periodic increase on April 1, 1969, for a five year period and a similar increase for each of the two succeeding five year periods thereafter.

On January 14, 1965, Transco reported, in Docket No. RP65–31, that it will flow-through the monies it will receive from Socony in accordance with Transco's settlement agreement in Docket No. RP61–13, which was approved by Commission order February 2, 1962, 27 FPC 187. Studies reveal that Transco's jurisdic-

tional pipeline customers, with the exception of Manufacturers Light and Heat Company (Manufacturers) are presently obligated to flow-through to their customers all substantial jurisdictional amounts of refunds they might receive. Consequently, Transco shall retain that portion of the refunds it receives from Socony due and owing to Manufacturers pending further order of the Commission.

In accepting this settlement proposal we desire to make it clear that our action herein should not be construed as constituting approval of any future rate increases that may be filed under the subject rate schedule and is without prejudice to any findings or orders of the Commission in any future proceedings, including area rate or other similar proceedings, involving Socony's rate and rate schedule.

The Commission finds:

The proposed settlement of the above-captioned proceedings on the basis described herein, as more fully set forth in the settlement proposal filed with the Commission by Socony on May 27, 1965, is in the public interest and appropriate to carry out the provisions of the Natural Gas Act and should be approved and made effective as hereinafter ordered.

The Commission orders:

(A) The settlement of the proceedings in Docket Nos. G–12201 and G–17526 on the basis of the settlement proposal, filed by Socony on May 27, 1965, is hereby approved.

(B) Socony shall compute the difference between the rate collected subject to refund and the related settlement rate for the period from March 29, 1961 to April 2, 1964, together with interest as specified in Docket No. G–17526 to April 30, 1965. Socony shall within 45 days from the date of this order submit a report to the Commission, and serve a copy on Transco, setting out the amount of refunds related to its rate schedule (showing separately the principal and applicable interest), the basis used for such determination and the period covered.

(C) Within 90 days from the date of issuance of this order, Socony shall refund to Transco the refund monies it has computed, pursuant to paragraph (B) above for gas sold and delivered to Transco with applicable interest, and shall 10 days thereafter file a release from Transco for such monies.

(D) Transco shall make refunds to its jurisdictional customers in accordance with the settlement agreement which was approved in Docket No. RP61–13 on February 2, 1962; *provided, however:* Transco shall retain, until further order of the Commission, those sums due and owing to Manufacturers; Transco shall within 10 days thereafter file with the Commission a report setting out the amount of refunds it made (showing separately the principal and interest) and 30 days thereafter it shall file releases from its jurisdictional customers showing receipt of the refunds.

(E) If Manufacturers will voluntarily assume the obligation to flow-through the amount computed pursuant to paragraph (D) or is presently obligated to flow-through such amounts by prior order of the Commission, a report setting forth the details of such obligation or an agreement assuming obligation to flow-through the refund shall be filed by Manufacturers within 10 days from the issuance of this order.

(F) Where any pipeline subject to the jurisdiction of this Commission receives a refund pursuant to this order and contrary to our conclusion that the jurisdictional portion thereof will flow-through to its customers, claims the right to retain such amounts, that pipeline shall report to the Commission within 10 days of the date of this order the basis of such claim, and when the

amount is received, that pipeline shall retain the amount in dispute subject to our further order.

(G) The amounts ordered to be retained pursuant to Paragraph (D) shall be retained by Transco under one of the following methods. The choice of method is optional to Transco.

1. Commingled with its general assets but interest at 6 percent per annum shall be paid from the date the funds would flow-through, if not so retained, to the date on which they are paid to the person ultimately determined to be entitled thereto in a final order of the Commission,

2. Deposited in a special escrow account within 185 days of the date of issuance of this order, if not so retained. If the fund is deposited in such an escrow account, the following conditions must be met:

(a) Transco shall submit 65 days from the date of receipt of the refund from Socony, an executed escrow agreement conditioned as set out below with a certificate showing service on the party to whom the fund would otherwise be payable. Unless notified to the contrary by the Secretary within 30 days from the date of filing thereof, the Escrow Agreement shall be deemed to be satisfactory and to have been accepted for filing. The Escrow Agreement shall be entered into between Transco and any bank or trust company used as a depository for funds of the United States Government and the agreement shall be conditioned as follows:

(b) Transco, the bank or trust company, and the successors and assigns of each, shall be held and formally bound unto the Federal Power Commission for the use and benefit of those entitled thereto, with respect to all amounts and the interest thereon deposited in a special escrow account, subject to such Agreement, and such bank or trust company shall be bound to pay over to such person or persons as may be identified and designated by final order of the Commission and in such manner as may be therein specified, all or any portion of such deposits and the interest thereon.

(c) The bank or trust company may invest and reinvest such deposits in any short-term indebtedness of the United States or any agency thereof or in any form of obligation guaranteed by the United States which is, respectively, payable within 120 days as the said bank or trust company in the exercise of its sound discretion may select.

(d) Such bank or trust company shall be liable only for such interest as the invested funds described in subparagraph (c) above will earn and no other interest may be collected from it.

(e) Such bank or trust company shall be entitled to such compensation as is fair, reasonable and customary for its services as such, which compensation shall be paid out of the escrow account to such bank or trust company. Said bank or trust company shall likewise be entitled to reimbursement for its reasonable expenses necessarily incurred in the administration of this escrow account, which reimbursement shall be made out of the escrow account.

(f) Such bank or trust company shall report to the Secretary quarterly, certifying the amount deposited in the trust account for the quarterly period.

(H) Within 90 days from the date of issuance of this order, Socony shall make such rate schedule filings under its FPC Gas Rate Schedule No. 16 as are required to make effective the settlement proposal as approved herein.

(I) Upon full compliance by Socony with the terms and conditions of this order Docket Nos. G–12201 and G–17526 are severed from the consolidated proceedings in Docket No. AR61–2, *et al.*, and said proceedings are to be deemed terminated without further order of the Commission.

(J) This order is without prejudice to any findings or orders which have been or may be made hereafter by the Commission, and is without prejudice

to claims or contentions which may be made by Socony, the Commission staff, or any affected party hereto, in any proceedings now pending, including area rate or similar proceedings, or hereafter instituted by or against Socony or any other companies, persons or parties affected by this order.

OPINION NO. 466

VILLAGE OF GRESHAM, WISCONSIN, PROJECT NO. 2464

OPINION AND ORDER ADOPTING INITIAL DECISION OF PRESIDING EXAMINER

(Issued July 13, 1965)*

Syllabus

1. Proposed Weed Dam project, as conditioned, found best adapted to comprehensive plan for development of river as required by Section 10(a) of Federal Power Act. PP. 35, 36.
2. All other factors being equal, Commission will continue to accord an applicant the right to finance and build if proper showing of market feasibility can be made. P. 36.
3. Interests of regulatory process are best served by a flexible posture with respect to specific applications and individual problems presented. P. 36.
4. Assuming operation of the Village projects to obtain maximum benefits, project, while marginal, is economically feasible and net benefits will exceed costs. P. 49.
5. *Distinguishing Namekagon*, Commission *notes* that in instant proposal recreational values themselves outweigh any potential damage to fish and any adverse impact upon aesthetic values involved in inundation of small falls. PP. 36, 50.
6. Better stream regulation is possible with coordinated operation of the two projects and probability is that Red River flow will actually be improved. P. 37.
7. In view of extensive trout stocking in the vicinity, loss of limited spawning area will not inflict any substantial damage to fishing. P. 37.
8. Evidence showing logs were driven down Red River past proposed site, becoming large mass of logs processed into lumber products which in turn moved into streams of interstate commerce, is sufficient to establish navigability within scope of Section 3(8) of Federal Power Act. P. 50.
9. Red River has been used and is suitable for use for transportation of persons or property in interstate or foreign commerce and consequently is "navigable" within meaning of Section 23(b) of the Act. P. 51.
10. Commission *issues* 50-year license to applicant under Sections 4(e) and 10(i) of the Act.

Chairman Swidler and Commissioner Ross *dissenting*.

E. L. Aschenbrener and *Adolph P. Lehner* for Village of Gresham, Wisconsin.

Orville S. Luchenbach for Jack Brown, Charles Brown, Harry Schmidt, and Ed Branson.

James F. Bakken for State Conservation Commission of Wisconsin.

Donald A. Sander for Staff of the Federal Power Commission.

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*Initial decision appears on p. 46. Rehearing denied by order issued August 18, 1965, 34 FPC 534. Pet. for review dismissed November 19, 1965 [CA7 No. 15383].

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

O'CONNOR, *Commissioner:*

This proceeding involves an application filed by the Village of Gresham, Wisconsin, a municipal corporation under Wisconsin law (Applicant or Gresham) for a license to construct a hydro-electric project to be known as the Weed Dam, on the Red River, a tributary of the Wolf River, in Shawano County, Wisconsin. Applicant presently operates an existing hydro-electric project known as the Gresham Dam, located in the Village of Gresham, approximately one and one-half miles upstream from the proposed Weed Dam. The application for license was opposed by the Isaac Walton League, the State Conservation Commission of Wisconsin, and several local property owners.[1]

Pursuant to our order of July 20, 1964, a hearing was held in Shawano, Wisconsin, on August 18, 19 and 20, 1964. Presiding Examiner William C. Levy, in his decision issued on December 7, 1964, recommended granting a 50-year license to the applicant subject to certain conditions. The proceeding is before us upon exceptions to the Examiner's decision filed by Harry Schmidt, Charles Brown, Jack Brown and Ed Branson (Intervenors). Other than these few landowners, no party has filed exceptions to the Examiner's decision. A brief opposing exceptions and urging adoption of the Examiner's decision was filed by the Commission Staff.[2]

The Weed Dam Project, a run of the river plant, would consist of a concrete center section approximately 105 feet long with a 64-foot spillway section, flanked on either side by two earth dikes, each approximately 700 feet long. The reservoir created by the dam would have a surface area of approximately 235 acres and would provide a gross head of 25 feet for power generation. The reservoir would extend upstream approximately one and one-half miles to the existing Gresham hydro-electric and diesel plant which is presently operated by the Applicant. Two units having a total of 800 horsepower will be installed; one having a capability of 120 kilowatts, and the other 350 kilowatts. The design and location of the powerhouse and spillway is such that water passing through the powerhouse by-passes approximately 700 feet of the original stream bed below the spillway section.

Applicant estimates its cost between $250,000.00 and $260,000.00. Staff derived a figure of $269,000.00 by using Applicant's cost figures and adding the cost of engineering. By giving a first lien on its existing project, Applicant has obtained a bond issue in the amount of $250,000.00 at an interest rate varying from three to four and one-quarter percent. The bonds are for a term of 20 years. The first payment of interest is due in 1965, and the first payment of principal and interest will be due in 1966. Applicant has already expended approximately $74,880.00 for equipment, land, flowage rights, clearance of land, and engineering expenses.

The Gresham electrical system includes service to the Village itself and approximately 87 miles of lines serving the town of Red Springs and parts of the towns of Herman, Seneca and Richmond. The existing powerhouse, built in 1929, has an installed capacity of 275 kilowatts comprised of two units; one rated 100 kilowatts and the other at 175 kilowatts. The present reservoir covers 240 acres with a gross head of 38 feet. In view of the anticipated growth of the Village and the cost of purchasing power from Wisconsin Power & Light Company or diesel

[1] Intervention was granted these petitioners by the Commission's orders of July 20, 1964 and August 14, 1964.

[2] Exceptions to the Examiner's decision on behalf of the Intervenors were mailed by counsel on the date they should have been filed in the Commission offices, and were consequently received several days late. However, under the delegation of authority contained in Section 3.5 of the Commission's Rules of Practice and Procedure the exceptions were properly accepted by the Secretary for filing.

generation, Gresham seeks to obtain additional hydro-generation to supply its needs at a lower cost than its other two sources of power can presently provide.

Generation of the Gresham hydro-plant in 1961, 1962 and 1963 was 2,158,100 kilowatt hours, 2,178,900 kilowatt hours, 1,858,000 kilowatt hours, respectively, at an estimated cost per kilowatt hour of 6.0 mills. In 1963 its diesel installation, having an aggregate capacity of 657 kilowatts generated 309,620 kilowatt hours at a cost of approximately 2 cents per kilowatt hour and Gresham purchased 2,093,280 kilowatt hours from Wisconsin Power & Light Company at a cost of approximately 1.61 cents per kilowatt hour. During 1963, the demand furnished by the Wisconsin Power & Light Company was 672 kilowatts. A new 69-kv line is presently being constructed by Wisconsin Power & Light to serve the Village and there is a provision for the sale of dump power from Gresham's hydro-installation at 4 mills per kilowatt hour.

Staff estimated the average annual flow in the Red River at the proposed site to be 150 cfs, and computed a figure of 2,230,000 kilowatt hours as the average annual energy output. The annual cost of operating the project would be $23,600. Based on these figures the annual cost of power would be 1.058 cents per kilowatt hour. From computations of Gresham's predicted load for 1970, Staff estimated that the annual cost of purchasing power from Wisconsin Power & Light in lieu of the Weed Project would be 1.44 cents per kilowatt hour. Even if the national average reduction predicted by the National Power Survey Report were realized, the annual costs of power would, at best, equal the cost of power from the project. In any event, based on the cost of producing power at the project, plus the cost of additional purchases to the year 1970, the total cost per kilowatt hour would be 1.315 cents, or an immediate 8.7 percent decrease in total power costs to the Village to be realized over the entire period. Gresham also proposes to install a third small 10 kilowatt unit for the purpose of generating power from water to be released to the bypassed section of the river, thus a slightly higher average annual energy output would be derived, particularly at low flows. Gresham intends to operate the proposed project by remote control from its existing powerhouse and to coordinate the operation of both projects so as to absorb peak loads and reduce the demand charges for purchased power. Such operation could provide more uniform flows below the Weed Dam. Combined available capacity of the existing Gresham plant and the proposed Weed Project is estimated at a monthly range of 513 to 770 kilowatts; 300 kilowatts from the existing plant and 470 kilowatts from the proposed Weed Project.

The Examiner, noting that the proposed project had been approved by the Wisconsin Public Service Commission as well as the Village of Gresham, concluded that adequate financing had been arranged. Further, he determined that the project expands the existing Gresham system and that its economic feasibility depends upon coordinated use of the two plants for peaking operations. The Examiner, assuming operating of the Gresham projects to obtain maximum benefits, found that the project, while marginal, is economically feasible and that net benefits will exceed costs. The benefit/cost ratio, based on Staff estimates, is 1.17 which compares favorably with many other licensed projects. While trout fishing in a limited area may be adversely affected, he found overall fishing and recreational facilities would probably be improved by the proposed project. Accordingly, the Examiner recommended issuance of a license subject to certain conditions designed to assure comprehensive development pursuant to Section 10(a) of the Federal Power Act.

Upon review of the record presented at the hearing, the parties' briefs, the Examiner's decision, and the exceptions thereto, it is our judgment that a license should be issued to the Applicant upon the conditions recommended by the Examiner. Subject to these conditions, we find the Applicant's proposed Weed Dam project to be best adapted to a comprehensive plan for the development of

the river as required by Section 10(a) of the Act.[3] We adopt the Examiner's decision.

The dissenting opinion, while agreeing that the present project will be of immediate benefit to Gresham, apparently would deny it on the grounds that Gresham's power supplier, Wisconsin Power & Light, whose present rates are admittedly higher than those of Gresham, could over a period of time put in a more efficient generating plant than that contemplated by Gresham and that, extrapolating costs to about 1980 the contemplated dam at that period might be a relatively high cost component in the Village's overall power supply. However, we are not passing upon whether a project of this size and degree of efficiency would make economic sense for Wisconsin Power in the light of its much greater service responsibilities and financial resources. The applicant is Gresham. It is proposing an expansion of its system which would admittedly be of immediate benefit to it and of continuing benefit for at least the next fifteen or twenty years. Certainly the National Power Survey does not suggest that a small distributor, owning a generating plant which makes a significant contribution to its total power supply, should nevertheless be required to refrain from improving its own generating capacity in the hope that the major supplier will take the necessary steps which in the distant future might make the immediate gains less significant. For Gresham's purposes the power from Weed Project is not "relatively high cost." Furthermore, all other factors being equal, we shall continue to accord an applicant the right to finance and build if it can make a proper showing of market feasibility. Clearly, the interests of the regulatory process are best served by a flexible posture with respect to specific applications and the individual problems each may present.

The Intervenors in their exceptions essentially argue that the facts in the instant proceeding are parallel to the facts in *Namekagon Hydro Company* v. *Federal Power Commission*, 216 F. 2d 509 (CA7–1954) and that the Examiner's decision is contrary to the findings in the *Namekagon* case.

The Intervenors' basic argument is not persuasive. In *Namekagon*, construction of the Namekagon project with a reservoir some six miles in length would have caused considerable loss within the project area of compelling features having unique recreational values, particularly scenery and canoeing activity. The *Namekagon* case held that, where such unique and special types of recreation are present, even though of only local or regional interest, the Commission will preserve those recreational values in the public interest at the cost of loss of power pursuant to Section 10(a) of the Federal Power Act. Consequently, a license was denied. Here the one and one-half mile reservoir to be formed by the Weed Dam would inundate approximately 230 acres of land, most of which are low and marshy and where fishing is meager. A small falls just above the project site would be inundated. Until recently, when it was purchased by the Applicant, this land was privately owned. In our opinion the recreational values afforded by the proposal themselves outweigh any potential damage to fish and any adverse impact upon the aesthetic values involved in the inundation of such small falls. The record in this proceeding indicates that the project will provide an ideal site for a reservoir which will furnish sites for an estimated 300 privately owned shoreline cottages. More importantly, however, we are impressed with the fact that the city itself has already acquired sites at the reser-

[3] Section 10(a) of the Federal Power Act provides in pertinent part that all licenses issued shall be subject to the following conditions: That the project adopted * * * shall be such that in the judgment of the Commission will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, and for other beneficial uses, including recreational purposes; * * *

voir for such public recreational facilities as boating, swimming, wading, parking area, and camping sites. These are concrete public values which must be given recognition in evaluating this proposal. On the whole public recreational facilities will be improved and enlarged by the project.

Intervenors contend that the Examiner's decision does not take the objections of downstream property owners into consideration. These objections are primarily based on fluctuations in flow and increase in water temperature attributed to the existing hydro-electric development. The record reveals that witnesses offered no basis for their assumptions that fluctuations in flow and increases in water temperature would be amplified with the building of another hydro-electric project. We agree with the Examiner that, in fact, better stream regulation is possible with the coordinated operation of the two projects, and the probability is that the stream flow will actually be improved.

The Intervenors argue that trout sprawning grounds would be ruined by the proposed project. This argument must be rejected. The only evidence of trout spawning in the project area is in the short stretch of the stream from the dam site to the small falls, a distance of approximately 300 to 400 yards. Most trout fishing in Mill Creek takes place in the rapids area above the proposed project reservoir. This is one of the areas stocked by the State Conservation Commission of Wisconsin. In 1964, the following legal size trout were planted; 3,000 Brook, 3,000 Brown and 3,000 Rainbow. In view of the extensive trout stocking operations in this vicinity we conclude that loss of this limited spawning area will not inflict any substantial damage to fishing activities in this area.

The Intervenors maintain that deleterious effects will take place as a result of the effluent which is discharged from the Gresham sewage system. The Examiner had adequately answered this contention. In Article 31 of the license, the Examiner would require the licensee to take corrective measures any time the discharge from the sewage system has a harmful effect on the use of the reservoir for recreational purposes and the license issued herein will so provide.

After examining all uses of the resources involved and recognizing the various benefits to the region to be derived from the project, we conclude that it will be consistent with the public interest to grant a 50-year license to the Applicant. Gresham has shown that it can finance its proposed project. The power to be generated is to be used on system loads. Economic feasibility depends upon coordinating use of the existing Gresham plant and the proposed Weed Project for peaking operations. The method of operation proposed by the Applicant can be achieved while, concurrently, sound planning can improve stream flow conditions below the dam site over those presently existing with the operation of a single dam and reservoir. Development of the water resource involved will provide public benefits, including benefits for recreation, consistent with the requirements for its comprehensive development under Section 10(a) of the Federal Power Act.

The Commission finds:

(1) The Red River in Wisconsin is navigable from its confluence with the Wolf River upstream through the project site to a point beyond the Village of Gresham, Wisconsin.

(2) The Red River has historically been used to transport logs, some of which passed into interstate commerce, and is still used for canoeing.

(3) The Red River is suitable and capable of continuous and uninterrupted use for transportation of products in interstate commerce through the Wolf River, through Lake Poygan, Lake Winnoconne, Lake Winnebago, and then to points in other states through the Fox River into Lake Michigan, and is a navigable waterway of the United States within the meaning of Section 3(8) of the Federal Power Act.

(4) Under the provisions of Section 23(b) of the Federal Power Act the Applicant, the Village of Gresham may not construct, operate or maintain a project at the proposed site until a license shall be obtained therefor pursuant to this Act.

(5) Public notice of these proceedings has been given as required by the Act.

(6) The Applicant is a Municipality organized under the laws of the State of Wisconsin, and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effectuate the purposes of a license for the proposed project.

(7) The proposed project does not affect a Government dam, nor will the issuance of a license therefor affect the development of any water resources for public purposes which should be undertaken by the United States.

(8) The proposed Project No. 2464, also known as the Weed Dam would be located just West of a point where a town road crosses the Red River about a mile and a half East of the Village of Gresham.

(9) The proposed project would consist of a dam consisting of a concrete center section flanked by two earth dikes, and would form a reservoir of approximately 230 acres with a gross power head of about 25 feet developing a total capacity of 470 kilowatts from two turbines having a total rating of 800 horsepower.

(10) The project structures proposed by the Applicant would be safe and stable if constructed pursuant to usual engineering methods and practices.

(11) Subject to the terms and conditions set forth below, the plans of the Applicant to develop the Weed site are best adapted to conserve and utilize in the public interest the water resources involved for the use or benefit of interstate commerce, for the improvement and utilization of water-power development, and for other beneficial public uses, including recreational purposes under Section 10(a) of the Federal Power Act.

(12) The amount of annual charges to be paid under the license for the purpose of reimbursing the United States for the costs of administration of Part I of the Act is reasonable as hereinafter fixed and specified.

(13) The Applicant shall make provision for release of fresh water into the section of the Red River by-passed by the tailrace for the benefit of fish life.

(14) The Applicant shall take any measures necessary to prevent the discharge of its sewage treatment plant from having a harmful effect on the use of the reservoir for recreational purposes.

(15) The Applicant shall devise a method of operation to prevent fluctuations in flow below the Weed Dam from endangering life and property.

(16) It will be in the public interest to waive pursuant to Section 10(i) of the Act the terms and conditions contained in the following sections of Part I of the Act:

> Section 4(b), except the second sentence thereof; 4(e) insofar as it relates to approval of plans by the Chief of Engineers and the Secretary of the Army and to public notice; 6, insofar as it relates to public notice and to the acceptance and expression in the license of terms and conditions of the Act which are hereinafter waived; 10(c), insofar as it relates to depreciation reserves; 10(d); 10(f); 14, except insofar as the power of condemnation is reserved; 15; 19; 20; 22; and 23(a), insofar as it relates to the determination of fair value.

(17) The exhibits designated and described in paragraph (B) below, which were included as part of Exhibit 2 of the hearing record, substantially conform to the Commission's rules and regulations and should be approved as part of the license for the project.

The Commission orders:

(A) This license is hereby issued to the Village of Gresham, Wisconsin under Sections 4(e) and 10(i) of the Act, for a period of 50 years effective as of the first day of the month in which the Commission acts on the application for license for the continued operation and maintenance of Project No. 2464, located on the Red River, a navigable water of the United States, subject to the terms and conditions of the Act insofar as not expressly waived herein, which Act is incorporated herein by reference as a part of this license, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) Project No. 2464 consists of:

(i) all lands constituting the project area and enclosed by the project boundary or the limits of which are otherwise defined.

(ii) a combination concrete gravity and earth dam about 1,505 feet long; two penstocks extending from the intake at the dam to a powerhouse containing two units, one rated 120 kw and one rated 350 kw, operating under a normal head of about 25 feet; and all other structures, fixtures, equipment or facilities used or useful in the operation and maintenance of the project and located on the project area; and all rights and interests therein, the possession of which is necessary in the maintenance and operation of the project. The location, nature, and character of the project structures are more specifically shown and described by the exhibits which formed part of Exhibit 2 of the hearing record and which are designated and described as follows:

Exhibit	FPC No. 2464	Applicant's dwg. No.	Showing
L-1	3	W106-C4.1	Project Layout.
L-2	4	W106-C5.1	General Plan.
L-3	5	W106-C6.1	Spillway & Walls.

(C) The Licensee is also subject to the terms and conditions of the following articles, which terms and conditions, designated as Articles 1 through 31 are made a part hereof:

Article 1. The entire project, as described in the order of the Commission, shall be subject to all the provisions, terms, and conditions of the license.

Article 2. No substantial change shall be made in the maps, plans, specifications, and statements described and designated as exhibits and approved by the Commission in its order as a part of the license until such change shall have been approved by the Commission: Provided, however, that if the Licensee or the Commission deems it necessary or desirable that said approved exhibits, or any of them, be changed, there shall be submitted to the Commission for approval amended, supplemental, or additional exhibit or exhibits covering the proposed changes which, upon approval by the Commission, shall become a part of the license and shall supersede, in whole or in part, such exhibit or exhibits theretofore made a part of the license as may be specified by the Commission.

Article 3. Said project works shall be constructed in substantial conformity with the approved exhibits referred to in Article 2 herein or as changed in accordance with the provisions of said article. Except when emergency shall require for the protection of navigation, life, health, or property, no substantial alteration or addition not in conformity with the approved plans shall be made to any dam or other project works under the license without the prior approval of the Commission; and any emergency alteration or addition so made so all thereafter be

subject to such modification and change as the Commission may direct. Minor changes in the project works or divergence from such approved exhibits may be made if such changes will not result in decrease in efficiency, in material increase in cost, or in impairment of the general scheme of development; but any of such minor changes made without the prior approval of the Commission, which in its judgment have produced or will produce any of such results, shall be subject to such alteration as the Commission may direct. The Licensee shall comply with such rules and regulations of general or special applicability as the Commission may from time to time prescribe for the protection of life, health, or property.

Article 4. The construction, operation, and maintenance of the project and any work incident to additions or alterations, whether or not conducted upon lands of the United States, shall be subject to the inspection and supervision of the Regional Engineer, Federal Power Commission, in the region wherein the project is located, or of such other officer or agent as the Commission may designate, who shall be the authorized representative of the Commission for such purposes. The Licensee shall furnish to said representative such information as he may require concerning the construction, operation, and maintenance of the project, and of any alteration thereof, and shall notify him of the date upon which work will begin, and as far in advance thereof as said representative may reasonably specify, and shall notify him promptly in writing of any suspension of work for a period of more than one week, and of its resumption and completion. The Licensee shall allow him and other officers or employees of the United States, showing proper credentials free and unrestricted access to, through, and across the project lands and project works in the performance of their official duties.

Article 5. So far as is consistent with proper operation of the project, the Licensee shall allow the public free access, to a reasonable extent, to project waters and adjacent project lands owned by the Licensee for the purpose of full public utilization of such lands and waters for navigation and recreational purposes, including fishing and hunting, and shall allow to a reasonable extent for such purposes the construction of access roads, wharves, landings, and other facilities on its lands the occupancy of which may in appropriate circumstances be subject to payment of rent to the Licensee in a reasonable amount: Provided that the Licensee may reserve from public access, such portions of the project waters, adjacent lands, and project facilities as may be necessary for the protection of life, health, and property and provided further, that the Licensee's consent to the construction of access roads, wharves, landings, and other facilities shall not, without its express agreement, place upon the Licensee any obligation to construct or maintain such facilities. These facilities are in addition to the facilities that the Licensee may construct and maintain as required by the license.

Article 6. Insofar as any material is dredged or excavated in the prosecution of any work authorized under the license, or in the maintenance of the project, such material shall be removed and deposited so it will not interfere with navigation, and will be to the satisfaction of the District Engineer, Department of the Army, in charge of the locality.

Article 7. The United States specifically retains and safeguards the right to use water in such amount, to be determined by the Secretary of the Army, as may be necessary for the purpose of navigation on the navigable waterway affected; and the operations of the Licensee, so far as they affect the use, storage and discharge from storage of waters affected by the license, shall at all times be controlled by such reasonable rules and regulations as the Secretary of the Army may prescribe in the interest of navigation, and as the Commission may prescribe for the protection of life, health, and property, and in the interest of the fullest

practicable conservation and utilization of such waters for power purposes and for other beneficial public uses, including recreational purposes; and the Licensee shall release water from the project reservoir at such rate in cubic feet per second, or such volume in acre-feet per specified period of time, as the Secretary of the Army may prescribe in the interest of navigation, or as the Commission may prescribe for the other purposes hereinbefore mentioned.

Article 8. Whenever the United States shall desire, in connection with the project, to construct fish and wildlife facilities or to improve the existing fish and wildlife facilities at its own expense, the Licensee shall permit the United States or its designated agency to use, free of cost, such of Licensee's lands and interest in lands, reservoirs, waterways and project works as may be reasonably required to complete such facilities or such improvements thereof. In addition, after notice and opportunity for hearing the Licensee shall modify the project operation as may be prescribed by the Commission, reasonably consistent with the primary purpose of the project, in order to permit the maintenance and operation of the fish and wildlife facilities constructed or improved by the United States under the provision of this article. This article shall not be interpreted to place any obligation on the United States to construct or improve fish and wildlife facilities or to relieve the Licensee of any obligation under this license.

Article 9. If the Licensee shall cause or suffer essential project property to be removed or destroyed or to become unfit for use, without replacement, or shall abandon or discontinue good faith operation of the project for a period of three years, or refuse or neglect to comply with the terms of the license and the lawful orders of the Commission mailed to the record address to the Licensee or its agent, the Commission will deem it to be the intent of the Licensee to surrender the license, and not less than 90 days after public notice may in its discretion terminate the license.

Article 10. Upon abandonment of the project the Licensee shall remove all buildings, equipment and power lines to a condition satisfactory to the Commission's authorized representative and shall fulfill such other obligations under the license as the Commission may prescribe.

Article 11. Whenever the United States shall desire to construct, complete, or improve navigation facilities in connection with the project, the Licensee shall convey to the United States, free of cost, such of its lands and its rights-of-way and such right of passage through its dams or other structures, and permit such control of pools as may be required to complete and maintain such navigation facilities.

Article 12. The Licensee shall furnish free of cost to the United States power for the operation and maintenance of navigation facilities at the voltage and frequency required by such facilities and at a point adjacent thereto whether said facilities are constructed by the Licensee or by the United States.

Article 13. The operation of any navigation facilities which may be constructed as a part of or in connection with any dam or diversion structure constituting a part of the project works shall at all times be controlled by such reasonable rules and regulations in the interest of navigation, including the control of the level of the pool caused by such dam or diversion structure, as may be made from time to time by the Secretary of the Army.

Article 14. The Licensee shall for the protection of navigation, construct, maintain and operate at its own expense such rights and other signals on fixed structures in or over navigable waters of the United States as may be directed by the Secretary of the Department in which the Coast Guard is operating.

Article 15. The Licensee shall, after notice and opportunity for hearing, coordinate the operation of the project, electrically and hydraulically, with such

other power systems and in such manner as the Commission may direct in the interest of power and other beneficial public uses of water resources, and on such conditions concerning the equitable sharing of benefits by the Licensee as the Commission may order.

Article 16. The Licensee shall, for the conservation, and development of fish and wildlife resources, construct, maintain, and operate, or arrange for the construction, maintenance and operation of such facilities and comply with such reasonable modifications of the project structures and operation as may be ordered by the Commission upon its own motion or upon the recommendation of the Secretary of the Interior or the fish and wildlife agency or agencies of any State in which the project or a part thereof is located, after notice and opportunity for hearing and upon findings based on substantial evidence that such facilities and modifications are necessary and desirable, reasonably consistent with the primary purpose of the project, and consistent with the provisions of the Act.

Article 17. The Licensee shall construct, maintain and operate or shall arrange for the construction, maintenance and operation of such recreational facilities including modifications thereto, such as access roads, wharves, launching ramps, beaches, picnic and camping areas, sanitary facilities and utilities, as may be prescribed hereafter by the Commission during the term of this license upon its own motion or upon the recommendation of the Secretary of the Interior or other interested Federal and State agencies, after notice and opportunity for hearing and upon findings based upon substantial evidence that such facilities are necessary and desirable, and reasonably consistent with the primary purpose of the project.

Article 18. The Licensee shall be responsible for and shall minimize soil erosion and siltation on lands adjacent to the stream resulting from the construction and operation of the project. The Commission upon request, or upon its own motion, may order the Licensee to construct and maintain such preventive works to accomplish this purpose and to revegetate exposed soil surface as the Commission may find to be necessary after notice and opportunity for hearing.

Article 19. No lease of the project or any part thereof whereby the lessee is granted the occupancy, possession, or use of the project, or any part thereof, shall be made without prior written approval of the Commission; and the Commission may, if in its judgment the situation warrants, require that all the conditions of the license, of the Act, and of the rules and regulations of the Commission shall be applicable to such property so leased to the same extent as if the lessee were the Licensee: Provided, that the provisions of this article shall not apply to leases of land or buildings or other property while not required to achieve the purposes of the license.

Article 20. Upon the completion of the project, or at such other time as the Commission may direct, the Licensee shall submit to the Commission for approval revised maps, plans, specifications, and statements insofar as necessary to show any divergence from or variation in the project area and project boundary as finally located or in the project works as actually constructed when compared with the area and boundary shown and the works described in the license or in the maps, plans, specifications, and statements approved by the Commission, together with a statement in writing setting forth the reasons which in the opinion of the Licensee necessitated or justified variations in or divergence from the approved maps, plans, specifications, and statements. Such revised maps, plans, specifications, and statement shall, and if and when approved by the Commission, be made a part of the license under the provisions of Article 2 hereof.

Article 21. The Licensee shall furnish to the Commission within 60 days from the effective date of this license, tracings of the Exhibit L drawings listed herein under paragraph (B) (ii).

Article 22. In the construction and maintenance of the project works, the Licensee shall place and maintain suitable structures and devices to reduce to a reasonable degree the liability of contact between its transmission lines, and telegraph, telephone, and other signal wires or power transmission lines constructed prior to its transmission lines and not owned by the Licensee, and shall also place and maintain suitable structures and devices to reduce to a reasonable degree the liability of any structures or wires falling and obstructing traffic and endangering life on highways, streets, or railroads. None of the provisions of this article is intended to relieve the Licensee from any responsibility or requirement which may be imposed by other lawful authority for avoiding or eliminating inductive interference.

Article 23. The Licensee shall do everything reasonably within its power and shall require its employees, contractors, and employees of contractors to do everything reasonably within their power, both independently and upon request of officers of the agency of the United States concerned, to prevent, make advanced preparations for suppression, and suppress fires on lands occupied under the license.

Article 24. For the purpose of determining the stage and flow of the stream or streams from which water is diverted for the operation of the project works, the amount of water held in and withdrawn from storage, and the effective head on the turbines, the Licensee shall install and thereafter maintain such gages and stream-gaging stations as the Commission may deem necessary and best adapted to the requirements; and shall provide for the required readings of such gages and for adequate rating of such stations. The Licensee shall also install and maintain standard meters adequate for the determination of the amount of electric energy generated by said project works. The number, character, and location of gages, meters, or other measuring devices, and the method of operation thereof, shall at all times be satisfactory to the Commission and may be altered from time to time if necessary to secure adequate determinations, but such alteration shall not be made except with the approval of the Commission or upon the specific direction of the Commission. The installation of gages, the ratings of said stream or streams, and the determinations of the flow thereof, shall be under the supervision of, or in cooperation with, the District Engineer of the United States Geological Survey having charge of stream-gaging operations in the region of said project, and the Licensee shall advance to the United States Geological Survey the amount of funds estimated to be necessary for such supervision or cooperation for such periods as may be mutually agreed upon. The Licensee shall keep accurate and sufficient record of the foregoing determinations to the satisfaction of the Commission, and shall make return of such records annually at such time and in such form as the Commission may prescribe.

Article 25. The right of the Licensee and of its transferees and successors to use or occupy navigable waters of the United States under the license for the purpose of maintaining the project works or otherwise, shall absolutely cease at the end of the license period, unless a new license is issued pursuant to the then existing laws and regulations.

Article 26. The terms and conditions expressly set forth in the license shall not be construed as impairing any terms and conditions of the Federal Power Act which are not expressly waived in the license.

Article 27. The Licensee shall pay to the United States the following annual charge:

(i) For the purpose of reimbursing the United States for the costs of Administration of Part I of the Act $31.30.

Article 28. Licensee shall make provision to supply initially, a continuous flow of not less than 7 cu. feet per second for the benefit in the bypassed 700-foot stretch of river located between the Weed Dam and the end of the tailrace and shall submit the plans to the Commission before construction of the project commences. Licensee shall, after construction of the project, undertake a study with the Wisconsin Conservation Department to determine whether greater flows are necessary to prevent fish kill in this stretch of river.

Article 29. Licensee shall submit a plan for the protection of life and property downstream of the project for those periods when operation of the powerhouse is expected to cause substantial streamflow fluctuations and shall submit such plan to the Commission for approval.

Article 30. The Licensee shall within one year from the date of issuance of the license, file with the Commission for approval its proposed recreational use plan for the project. The plan shall be prepared after consultation with appropriate Federal, State and Local agencies, and shall include recreational improvements which may be provided by others in addition to the improvements the Licensee plans to provide.

Article 31. Licensee shall take corrective measures at any time the discharge of effluent from its sewage treatment plant has a harmful effect on the use of the reservoir for recreational purposes.

(D) The exhibits designated and described in paragraph (B) above are hereby approved as part of the license.

(E) The terms and conditions of the Act, which it has found above to be in the public interest to waive, are hereby excluded from this license.

(F) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgment of the acceptance of this license, it shall be signed for the Licensee and returned to the Commission within 60 days from the date of issuance of this order.

(G) All material exceptions, arguments and objections not discussed herein have been considered but are without substantial support in the record or a reasonable basis in law and are denied. The Presiding Examiner's initial decision issued December 7, 1964, will be adopted by the Commission as of the date of issuance of this order, to constitute with this order its decision in this proceeding.

Chairman Swidler and Commissioner Ross *dissenting.*

SWIDLER, *Chairman* and ROSS, *Commissioner, dissenting:*

We dissent because we do not believe this project will contribute to low-cost power supply for the people of the Village of Gresham and that no adequate justification has been demonstrated for impairing the recreational values which the site possesses in its natural state.

Applicant intends to operate the proposed Weed Project by remote control from the existing Gresham powerhouse and to coordinate the operation of both projects so as to absorb the Village's peak loads, reduce the demand charges for purchased power, and maintain more uniform flows below the Weed Dam. Assuming operation of the Village projects to obtain maximum benefits, the examiner concluded that the project, while marginal, is economically feasible and that net benefits will exceed costs.

Because the electric power industry is inherently capital intensive, small systems are at an economic disadvantage in the production of power. This does not mean that small systems should necessarily purchase all of their power requirements from larger entities, but it does require that they carefully scrutinize the long range economic effect of the addition of small increments, such as the 470 kw installation proposed here. Such small and inefficient projects are being abandoned throughout the country and, in fact, the record shows that Wisconsin Power & Light Company is abandoning similar projects in the same area. The record also indicates that the applicant intends to install used turbines which were abandoned elsewhere. Construction and operation of such a project with the resulting relatively high cost power is an anachronism.

The proposed Weed Dam is an incremental project which realizes substantial cost-saving benefits from the existing operation. Nevertheless, operation of the project will saddle the Village with relatively high-cost power for years to come. Even assuming the most favorable operation of the project and projecting the Village's load to 1970, project power will still cost about 1,058 cents per kwh to produce.

In order to test the economic feasibility of the proposed project the examiner compared the annual cost for the proposed project with the cost of purchasing the additional power to meet the Village's future loads from Wisconsin Power & Light, since this was the lowest cost alternative source of power. The examiner found that power purchased from the Company cost the Village 1.76 cents in 1962 and 1.61 cents per kwh in 1963. Projecting its load to 1970, it is estimated that purchased power will cost about 1.44 cents per kwh.

It is apparent that the economic feasibility of the proposed project is made possible by the present high cost of alternative sources of power. It is reasonable to expect that the cost of purchased power will drop in the future while the cost of project power will remain at about the same level or possibly increase. Our prediction in the National Power Survey of a reduction of 42 percent in the price of electricity in the North Central Region by 1980 would mean that purchased power would be available for about 0.84 cents. True, this is a prediction and not a promise, but the prediction is based on solid evidence of the trend toward lower cost power.

In issuing a license for a hydroelectric project, Section 10(a) of the Federal Power Act requires the Commission to consider, among other things, the effect of the facility upon the scenic and recreational values of the area. As we read the testimony this project will flood out a waterfall and will impair the use of the downstream area for canoeing and fishing. The record indicates that some trout spawning and fish life will be lost as a result of the inundation of the portion of the Red River and Mill Creek and the by-passing of a 700-foot section of the Red River. While the applicant proposes to divert 7 cfs of water to the by-passed section of the river, there was apparently no fish study made to determine the number of fish involved or whether 7 cfs of water would be sufficient to sustain fish life. Furthermore, while the Department of the Interior and the Wisconsin Conservation Commission expressed concern over the warming effect of the water in the proposed reservoir on downstream fish and game, no complete temperature studies were available and the examiner was unable to make a finding as to whether the net effect on fish life would be adverse or beneficial. While the examiner concluded that the project would enhance the recreational values of the area, we believe the record is inadequate to support this finding.

The project is strongly opposed by the Wisconsin Conservation Commission and by many residents of the area who regard the fishing and boating opportunities as among their principal pleasures in life. If it made a clear-cut contribution to the power economy of the area, perhaps the benefits would outweigh the impairment of these local recreational opportunities. In the circumstances of this case there is little to show by way of advantage to the public interest.

There is testimony in the record that the lake which would be formed by the project would provide attractive homesites and indeed it is inferable from the record that enhancement of real estate values at the expense of power consumers may be the real motivation for the project. We find the record in this matter too spare to draw any conclusions, even assuming that the provision of homesites and enhancement of land values are objectives which the Commission may consider in exercising its licensing jurisdiction.

INITIAL DECISION
OF THE PRESIDING EXAMINER UPON APPLICATION FOR A HYDROELECTRIC LICENSE UNDER THE FEDERAL POWER ACT

(Issued December 7, 1964)

LEVY, *Presiding Examiner:* This proceeding is before the Federal Power Commission by reason of an application filed on April 20, 1964, by the Village of Gresham, Wisconsin, a municipal corporation under Wisconsin law, seeking a license to construct a proposed hydroelectric project on the Red River, Shawano County, Wisconsin, to be known as the Weed Dam. The Village of Gresham presently operates an existing hydroelectric project known as the Gresham Dam, located in the Village of Gresham about two miles upstream from the proposed Weed Dam.

Following public notice, petitions to intervene were filed and granted by Commission orders dated July 20 and August 14, 1964, to Harry Schmidt, Charles Brown, and Jack Brown, adjacent property owners, the Isaac Walton League of Wisconsin, and the Wisconsin State Conservation Commission. Pursuant to the Commission's order of July 20, 1964, a hearing was held in Shawano, Wisconsin on August 18, 19, and 20, 1964, at which all witnesses were presented and cross-examined. On September 9, 1964, Staff moved to reopen the record and admit as Exhibit 36, a letter from the Department of Health, Education, and Welfare dated August 25, 1964. Briefs were filed by the applicant, interveners, State Conservation Commission of Wisconsin and Staff, the last on October 14, 1964.

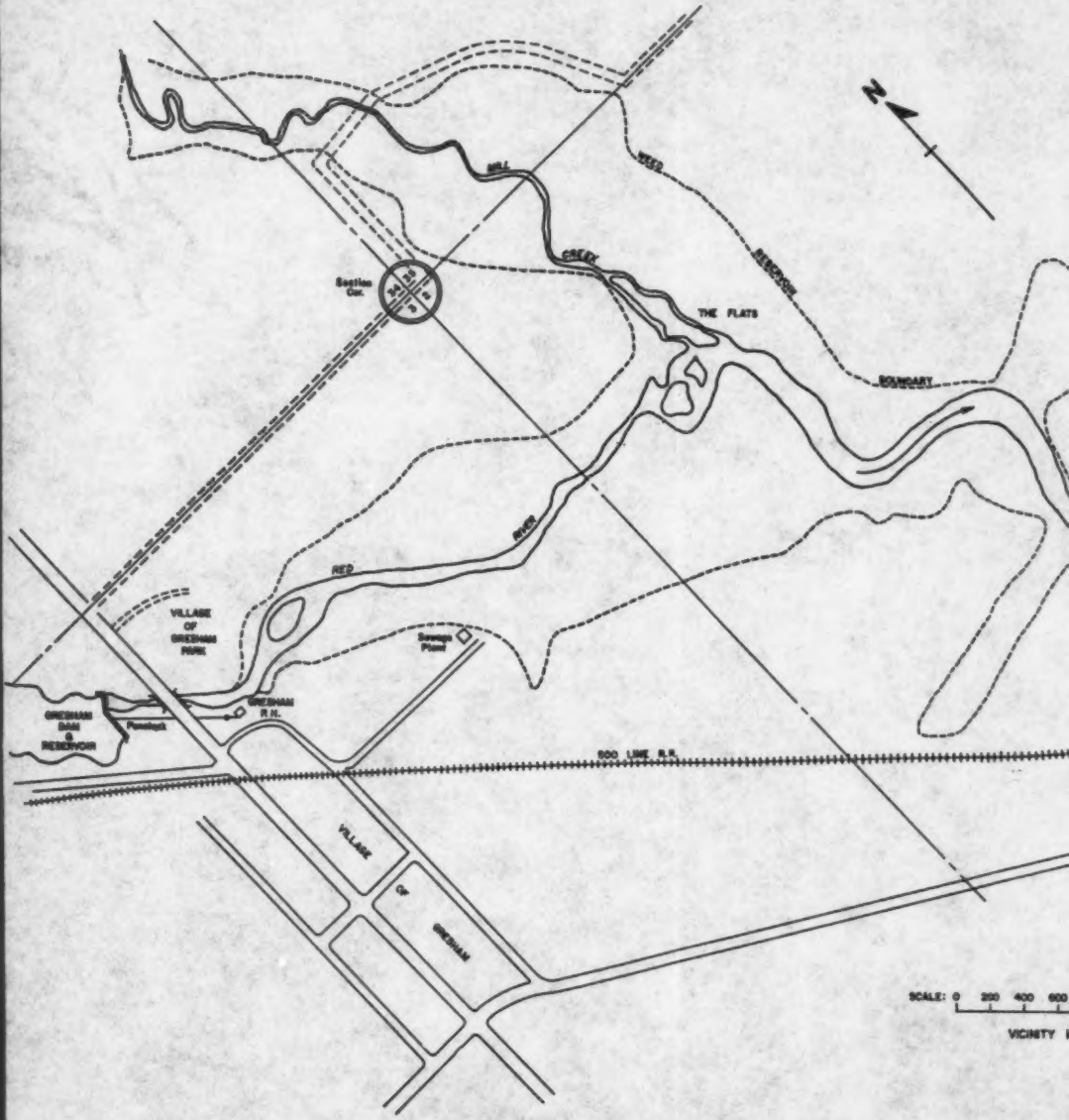
Background of Proceeding

On December 8, 1960, the Village of Gresham, Shawano County, as an electric public utility under Wisconsin law, filed an application with the Public Service Commission of Wisconsin for a permit to construct and maintain the proposed Weed Dam and hydroelectric project at an estimated cost of $277,500, about two miles downstream from applicant's existing hydroelectric plant in the Village of Gresham.

After hearing, the Public Service Commission of Wisconsin issued a decision dated July 9, 1963, granting the permit requested under the provisions of Section 31.06(3) of the Wisconsin Statutes (Exh. 1).

The Proposed Weed Project (Project No. 2464)

The proposed Weed Dam and hydroelectric plant would be located on the Red River in Shawano County, Wisconsin, about a mile and a half east of the Village of Gresham at a point immediately west of where the town road crosses the river (Exh. 5). The proposed dam consists of a concrete center structure about 105 feet long, containing two intake gates for the powerhouse penstocks, a spillway section about 64 feet long with four tainter gates five feet high and fourteen feet wide located perpendicular to the southern end of the intake gates, flanked on both sides by earth dikes, each about 700 feet long, one extending in a northerly direction parallel to the town road, and the other extending in a southwesterly direction. (See general location map.) The reservoir created by the dam would have a surface area of about 235 acres, a normal water surface elevation of 68 feet, a gross head for power of about 25 feet, and would extend upstream to the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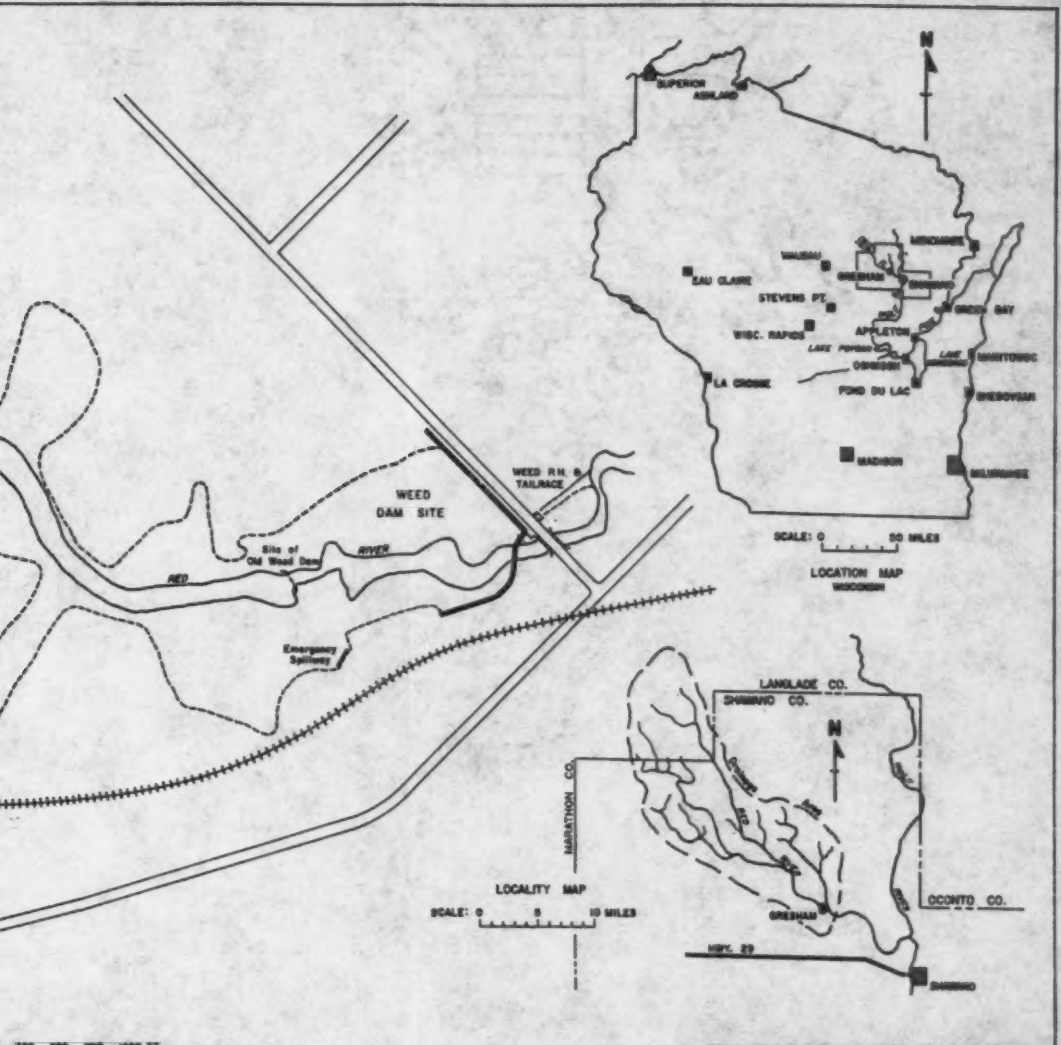

WEED PROJECT NO. 2464

GENERAL LOCATION MAP

existing hydro and diesel plant now operated by the Village. Two short penstocks, one having a diameter of 6.5 and the other 4 feet, would lead from the intake to the powerhouse about 50 feet to the east across the road where two units having a total of 800 horsepower will be installed. One unit will have a capability of 120 kilowatts, and the other 350 kilowatts, or a total of 470 kilowatts. The tailrace will extend eastward for about 200 feet where it will intersect the river. The distance from the proposed dam site to the discharge point of the tailrace is about 700 feet, so that water passing through the powerhouse will enter the original stream bed about 700 feet below the spillway section. (See Exhs. 5 and 6.) The proposed spillway would pass a design flood of 6,200 cfs without endangering the project structures. Additional protection is provided by a fuse plug spillway having a capacity of 2,000 cfs which is located about 520 feet west of the main dam. (See Exh. 5.)

In the proceeding before the Public Service Commission of Wisconsin, the cost of the project was estimated at $277,500. Applicant now hopes to build the project for between $250,000 and $260,000 (Tr. 67, 85). Staff derived a figure of $269,000 as its estimated cost by using applicant's cost figures and adding the cost of engineering. The State Conservation Commission of Wisconsin argues that the cost of a secondary sewage treatment plant for the Village of Gresham ($25,000 to $50,000) and a Hoppes generator and turbine ($4,000) will increase the total cost of the project from approximately $260,000 to $300,000.

The Village has borrowed the sum of $250,000 at a rate of interest varying from 3 to 4¼ percent by giving a first lien on its existing Gresham project. The bonds have a term of 20 years with the first payment of principal and interest due in 1966. The Village has already expended about $74,880 for equipment, land, flowage rights, clearance of land, and engineering expenses.

Gresham Electrical System Resources and Requirements

The Gresham electrical system includes the Village of Gresham and about 87 miles of lines serving the Town of Red Springs and parts of the Towns of Herman, Seneca, and Richmond. The existing Gresham powerhouse was built by 1929, and has an installed capacity of 275 kilowatts, comprised of two units, one rated 100 kilowatts and the other 175 kilowatts. The Gresham reservoir covers about 240 acres with a gross head of 38 feet.

In 1963, the Gresham hydro plant generated 1,858,000 kilowatt hours[1] at a cost of approximately six mills per kilowatt hour per year. Its diesel installation generated 309,620 kilowatt hours at a cost of about two cents per kilowatt hour, and the Village purchased 2,093,280 kilowatt hours of energy from the Wisconsin Power & Light Company at a cost of about 1.61 cents per kilowatt hour. The demand furnished by the Wisconsin Power & Light Company was 672 kilowatts during 1963. A new 69 kilovolt line is currently being constructed by the company to serve the Village and there is provision for sale of dump power from the Village's hydro installation at four mills per kilowatt hour.

Intervener witness Frederick, an official of Wisconsin Power & Light, and Staff witness Ahlstedt, testified in respect of the continued growth of the Gresham electrical system in both energy requirements and peak demand.[2]

[1] The generation in 1961 and 1962 was 2,158,100 and 2,178,900 kilowatt hours, respectively.

[2] See Exhs. 7, 13, and 24.

	1970		1980	
	Peak demand in kw	Energy in kwh	Peak demand in kw	Energy in kwh
Witness Ahlstedt	1275	6,150,000	2020	9,400,000
Witness Frederick	1230	5,900,000		

Staff witness Corso estimated the average annual flow in the Red River at the site of the proposed Weed project to be 150 cfs. (Tr. 323), and derived a figure of 2,230,000 kilowatt hours as the average annual energy output. This included an allowance for the release of approximately 7.5 cfs of the stream flow to provide for a constant minimum flow in the 700 foot stretch of the river to be by-passed by the project. Applicant's witness Calvert estimated the average annual energy output of the proposed project to be 2,200,000 kilowatt hours (Tr. 27). Applicant now proposes to install a third small ten kilowatt unit for the purpose of generating power from the water to be released to the by-passed section of the river. This will add to the average annual energy output, particularly at low flow. (See Applicant's br., p. 7.) Applicant intends to operate the proposed Weed project by remote control from the existing Gresham powerhouse and to coordinate the operation of both projects so as to absorb the Village's peak loads, reduce the demand charges for purchased power, and maintain more uniform flows below the Weed Dam. The combined available capacity of the existing Gresham plant and the proposed Weed project is estimated at a monthly range of 513 to 770 kilowatts, 300 kilowatts from the existing plant, and 470 kilowatts from the proposed Weed project (Exhs. 30, 35).

Economic Feasibility

The economic feasibility of the proposed project is determined by comparing the cost to the Village of Gresham of meeting its predicted load increase with and without the proposed Weed project. This in turn involves comparing the annual cost for the proposed hydro project with the cost of purchasing the needed power from the Wisconsin Power & Light Company—the lowest cost alternate source of power. Diesel generation costs about two cents per kilowatt hour. The record shows that the cost to the Village of Gresham of power purchased from Wisconsin Power & Light Company during 1962 and 1963 was 1.76 and 1.61 cents per kilowatt hour, respectively.

Applicant estimates the annual cost for the proposed project at $18,802 per year. However, this does not include the cost of amortizing the 20-year bond issue. Staff derives a maximum annual cost estimate of $26,504 based on amortization of $250,000 in 20 years at 4¼ percent[8] and an annual value of power from the proposed Weed project of $27,682 (Exh. 35). This yields a net annual benefit of $1,178. If, however, the cost of the proposed project is amortized over the conventional 50-year project life, the annual cost for an assumed investment of $250,000 would decline to $22,700. If capital costs are assumed to be $269,000, the annual cost figure would be $23,600; if $300,000, the maximum figure proposed by the Wisconsin State Conservation Commission, the annual cost

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[8] See the following table:

Interest	$10,625
Amortization 20 yrs. (3.27%)	8,175
Operation & Maintenance	1,100
Taxes	5,480
Insurance	624
Interim Replacements (0.2%)	500
Total	26,504

would be $25,180. Net benefits on a 50-year project life basis at four percent for the various cost estimates in the record may be compared as follows:

Investment	*Net benefit*
$250,000 at 4%	$4,982
$269,000 at 4%	4,082
$277,000 at 4%	3,642
$300,000 at 4%	2,502

Witness Frederick values generation from the Weed project at $21,146, rather than Staff's estimate of $27,682. Substitution of this value would, of course, show a net loss. However, this figure is a minimum estimate and does not assume coordinated operation of the Village projects for peaking purposes (Tr. 246, 251).

Assuming operation of the Village projects to obtain maximum benefits, it is concluded that the project, while marginal, is economically feasible and that net benefits will exceed costs.

Non-Power Aspects of Proposed Project

Section 10(a) of the Federal Power Act[4] requires that the proposed project must be considered not only from the point of view of power costs and benefits but also "other beneficial public uses" including fish and wildlife and recreation. The State Conservation Commission of Wisconsin, interveners, and the Interior Department express concern that the 700-foot stretch of the original stream bed to be by-passed by the powerhouse spillway will become a stretch of dead water deficient in oxygen and harmful to fish life.

Applicant now states (Br. p. 7) that it will provide a flow of 7 cfs of water for this by-passed section of the river. This proposal is criticized by the State Conservation Commission as inadequate to protect fish habitat. Staff notes that provision can be made to provide fresh water for fish in this section of the river, and recommends an appropriate condition in the license for this purpose.

Similarly, State Conservation Commission witness Posekany and the Department of the Interior are concerned over the warming effect of water in the proposed reservoir on downstream fish and game. The area to be inundated by the proposed reservoir is a swampy marsh land covered with tall grass and weeds known as "the flats." The water temperature at the site of the proposed project was measured by Posekany at 79 degrees, a rise from 68–71 degrees, the temperature of the stream above the reservoir area. It is impossible to determine now whether a deeper reservoir over "the flats" would cause a further or lesser warming of the water, or whether the net effect on fish life would be adverse or beneficial.

The proposed project would replace approximately one mile of the Red River and Mill Creek,[5] which presently supports some brook, brown and rainbow trout, with a 235 acre reservoir suitable for bass, panfish and northern pike. Staff concludes that while some trout spawning and fishing area will be lost, "the overall opportunity for fish in the vicinity of Gresham will not be reduced and could be enhanced above the proposed project." (Br. p. 21) No estimate is available as to the number of fish involved.

[4] Section 10(a) of the Federal Power Act provides in pertinent part that all licenses issued shall be subject to the following conditions:

> That the project adopted * * * shall be such that in the judgment of the Commission will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, and for other beneficial uses, including recreational purposes; * * *

[5] The chief trout fishing apparently takes place in the fast water above the portion of Mill Creek that will be inundated (Tr. 100, 101, 221, 222).

Since the proposed project is a run of the river plant, the total volume of flow downstream will not be reduced. Swimming and boating should be improved. The Village will provide boat landings, a wading area for children, parking areas on both sides of the dam and powerhouse, picnic and camping facilities (Tr. 71–73, 101–102). The shore line of the proposed reservoir will provide frontage for about 300 cottages.[6] The proposed reservoir will inundate a small falls just upstream of the proposed site. This represents a scenic loss. On the whole, however, public recreational facilities will be improved and enlarged by the proposed project.

The Village of Gresham operates a sewage treatment plant which drains into the upper end of the proposed reservoir (see map). Although there is no evidence of record that this discharge will be harmful, it may be necessary to provide secondary sewage treatment or extend the outfall line to a point below the dam Tr. 103, Exh. 36),[7] and the license will so provide.

Jurisdiction

Applicant concedes Federal jurisdiction. However, the State Conservation Commission of Wisconsin takes the position that such jurisdiction is absent because "the record is devoid of any indication that the Red River * * * has ever been used in interstate commerce." (Br. p. 6) The existence of an uninterrupted waterway through the site of the project to interstate and foreign points is not disputed. In addition, the record shows (Exhs. 25, 26, 28, 29, 32) that many millions of logs have been driven down the Red, into the Wolf River of which it is a tributary, to sawmills in the Lake Winnebago[8] and Fox River area. The Conservation Commission contends there is nothing to show that these logs or lumber were carried beyond the borders of Wisconsin since the sawmills were all within the State. Obviously, local consumption of the forest products processed at these sawmills was negligible. The sawmills shipped their products to all parts of the United States. Actual proof of subsequent shipment in interstate or foreign commerce is not necessary. There is a presumption of interstate commerce. In similar circumstances, the Commission noted:

> We are satisfied that where forest products comprising a large fungible mass are shown to have moved annually along well-defined paths in a stream or flow of commerce to wholesale markets serving several States, as shown here, there is a presumption of interstate commerce raised which attaches to all of the substantial components of the mass. The only outlet for the bulk of the forest products processed at the Glens Falls area mills was along the established channels of commerce, which, in the areas of which we are speaking, led inevitably to interstate trade. (*New York Power and Light Corporation* 8 FPC 231, pp. 238, 239.)

The evidence shows that logs were driven down the Red River past the proposed site and became part of a large mass of logs processed into lumber products which in turn moved into the stream of interstate commerce. This is sufficient to establish navigability within the scope of Section 3(8) of the Federal Power Act. *Wisconsin Public Service Corp.*[9] v. *F.P.C.*, 147 F. 2d 743, cert. den. 325 U.S. 880.

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[6] Witness Traeger, a former Village President, testified this could result in additional tax revenue of $22,000 per year when fully developed (Tr. 82).

[7] Pursuant to Staff's motion of September 9, 1964, Exhibit 36 is received in evidence.

[8] Lake Winnebago is connected to Lake Michigan by the Fox River. (See map.)

[9] After applying the tests enumerated in the cases cited we believe that the evidence as shown by this record establishes a long, regular, and commercially successful use of the stream for the transportation of logs and rafts and forms a reasonable basis in law for the conclusion that the Wisconsin River was and is a navigable water of the United States (*Wisconsin Public Service Corp.* v. *Federal Power Commission*, 147 F. 2d 743, 748, cert. den. 325 U.S. 880). See also *Wisconsin Michigan Power Co.* 3 FPC 449.

Conversely, the record shows evidence of interstate traffic up the Wolf River to Shawano. *The Wisconsin Lumberman* stated (p. 290) in February 1874:

> Shawano is the head of navigation of the Wolf River, and is and must of necessity, remain the terminus of the river carrying trade. All heavy freight is now brought by steamboat and barge from the lakes or Mississippi river to our village without breaking bulk, and goods purchased in New York and shipped by way of the lakes reach us by water and are landed within the village, thus enabling our merchants to sell heavy freights at a low price as compared with the markets of other inland towns where such goods are caraied [sic] over rough roads. (Exh. 25)

In addition, numerous witnesses testified that the Red River has been and is used extensively for canoeing.

As defined in Section 3(8) of the Federal Power Act:

> "navigable waters" means those parts of streams or other bodies of water over which Congress has jurisdiction under its authority to regulate commerce with foreign nations and among the several States, and which either in their natural or improved condition, notwithstanding interruptions between the navigable parts of such streams or waters by falls, shallows, or rapids compelling land carriage, are used or suitable for use of the transportation of persons or property in interstate or foreign commerce, including therein all such interrupting falls, shallows, or rapids, together with such other parts of streams as shall have been authorized by Congress for improvement by the United States or shall have been recommended to Congress for such improvement after investigation under its authority.

The Red River has been used and is suitable for use for the transportation of persons or property in interstate or foreign commerce, and consequently is "navigable" within the meaning of Section 23(b) of the Federal Power Act which bars construction of the proposed project absent a license granted pursuant to the Act.

CONCLUSION

The proposed project has been approved by the Wisconsin Public Service Commission, as well as the Village of Gresham. Adequate financing has been arranged and $74,880, of the total Staff estimated cost of $269,000, already expended. The project expands the existing Gresham plant and its economic feasibility depends upon coordinated use of the two plants for peaking operations. While trout fishing may be adversely affected, overall fishing and recreational facilities in the area probably will be improved with the proposed project. Accordingly, a license is recommended, subject to specific conditions designed to assure comprehensive development in the public interest pursuant to Section 10(a) of the Federal Power Act.

ADDITIONAL FINDINGS AND CONCLUSIONS

Upon consideration of the entire record in this proceeding, including the pleadings, the evidence adduced, and the briefs filed, it is found and concluded, in addition to the findings and conclusions heretofore stated, that:

(1) The Red River in Wisconsin is navigable from its confluence with the Wolf River upstream through the project site to a point beyond the Village of Gresham, Wisconsin.

(2) The Red River has historically been used to transport logs, some of which passed into interstate commerce, and is still used for canoeing.

(3) The Red River is suitable and capable of continuous and uninterrupted use for transportation of products in interstate commerce through the Wolf River, through Lake Poygan, Lake Winnoconne, Lake Winnebago, and then to

points in other states through the Fox River into Lake Michigan, and is a navigable waterway of the United States within the meaning of Section 3(8) of the Federal Power Act.

(4) Under the provisions of Section 23(b) of the Federal Power Act the Applicant, the Village of Gresham may not construct, operate or maintain a project at the proposed site until a license shall be obtained therefor pursuant to this Act.

(5) Public notice of these proceedings has been given as required by the Act.

(6) The Applicant is a municipality organized under the laws of the State of Wisconsin, and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effectuate the purposes of a license for the proposed project.

(7) The proposed project does not affect a Government dam, nor will the issuance of a license affect the development of any water resources for public purposes which should be undertaken by the United States.

(8) The proposed Project No. 2464, also known as the Weed Dam would be located just west of a point where a town road crosses the Red River about a mile and a half east of the Village of Gresham.

(9) The proposed project would consist of a dam consisting of a concrete center section flanked by two earth dikes, and would form a reservoir of approximately 235 acres with a gross power head of about 25 feet developing a total capacity of 470 kilowatts from two turbines having a total rating of 800 horsepower.

(10) The project structures proposed by the Applicant would be safe and stable if constructed pursuant to usual engineering methods and practices.

(11) Subject to the terms and conditions set forth below, the plans of the Applicant to develop the Weed site are best adapted to conserve and utilize in the public interest the water resources involved for the use or benefit of interstate commerce, for the improvement and utilization of water power development, and for other beneficial public uses, including recreational purposes under Section 10(a) of the Federal Power Act.

(12) The amount of annual charges to be paid under the license for the purpose of reimbursing the United States for the costs of administration of Part I of the Act is reasonable as hereinafter fixed and specified.

(13) The Applicant shall make provision for release of fresh water into the section of the Red River bypassed by the tailrace for the benefit of fish life.

(14) The Applicant shall take any measures necessary to prevent the discharge of its sewage treatment plant from having a harmful effect on the use of the reservoir for recreational purposes.

(15) The Applicant shall devise a method of operation to prevent fluctuations in flow below the Weed Dam from endangering life and property.

(16) It will be in the public interest to waive pursuant to Section 10(i) of the Act the terms and conditions contained in the following sections of Part I of the Act:

Section 4(b), except the second sentence thereof; 4(e) insofar as it relates to approval of plans by the Chief of Engineers and the Secretary of the Army and to public notice; 6, insofar as it relates to public notice and to the acceptance and expression in the license of terms and conditions of the Act which are hereinafter waived; 10(c), insofar as it relates to depreciation reserves; 10(d); 10(f); 14, except insofar as the power of condemnation is reserved; 15; 19; 20; 22; and 23(a), insofar as it relates to the determination of fair value.

(17) The exhibits designated and described in paragraph (B) below, which were included as part of Exhibit 2 of the hearing record, substantially conform

to the Commission's Rules and Regulations and should be approved as part of the license for the project.

ORDER

WHEREFORE, *it is ordered*, subject to review by the Commission on appeal, or upon its own motion, as provided in the Commission's Rules of Practice and Procedure that:

(A) This license is hereby issued to the Village of Gresham, Wisconsin under Sections 4(e) and 10(i) of the Act, for a period of 50 years effective as of the first day of the month in which the Commission acts on the application for license for the continued operation and maintenance of Project No. 2464, located on the Red River, a navigable water of the United States, subject to the terms and conditions of the Act insofar as not expressly waived herein, which Act is incorporated herein by reference as a part of this license, and subject to such Rules and Regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) Project No. 2464 consists of:

(i) all lands constituting the project area and enclosed by the project boundary or the limits of which are otherwise defined.

(ii) a combination concrete gravity and earth dam about 1,505 feet long; two penstocks extending from the intake at the dam to a powerhouse containing two units, one rated 120 kilowatts and one rated 350 kilowatts, operating under a normal head of about 25 feet; and all other structures, fixtures, equipment or facilities used or useful in the operation and maintenance of the project and located on the project area; and all right and interests therein, the possession of which is necessary in the maintenance and operation of the project. The location, nature, and character of the project structures are more specifically shown and described by the exhibits which formed part of Exhibit 2 of the hearing record and which are designated and described as follows:

Exhibit	FPC No. 2464	Applicant's dwg. No.	Showing
L–1	3	WI06–C4.1	Project layout.
L–2	4	WI06–C5.1	General plan.
L–3	5	WI06–C6.1	Spillway and walls.

(C) The Licensee is also subject to the terms and conditions of the following articles, which terms and conditions, designated as Articles 1 through 31 are made a part hereof:

Article 1. The entire project, as described in the order of the Commission, shall be subject to all the provisions, terms, and conditions of the license.

Article 2. No substantial change shall be made in the maps, plans, specifications, and statements described and designated as exhibits and approved by the Commission in its order as a part of the license until such change shall have been approved by the Commission: Provided, however, that if the Licensee or the Commission deems it necessary or desirable that said approved exhibits, or any of them, be changed, there shall be submitted to the Commission for approval amended, supplemental, or additional exhibit or exhibits covering the proposed changes which, upon approval by the Commission, shall become a part of the license and shall supersede, in whole or in part, such exhibit or exhibits theretofore made a part of the license as may be specified by the Commission.

Article 3. Said project works shall be constructed in substantial conformity with the approved exhibits referred to in Article 2 herein or as changed in ac-

cordance with the provisions of said article. Except when emergency shall require for the protection of navigation, life, health, or property, no substantial alteration or addition not in conformity with the approved plans shall be made to any dam or other project works under the license without the prior approval of the Commission; and any emergency alteration or addition so made shall thereafter be subject to such modification and change as the Commission may direct. Minor changes in the project works or divergence from such approved exhibits may be made if such changes will not result in decrease in efficiency, in material increase in cost, or in impairment of the general scheme of development; but any of such minor changes made without the prior approval of the Commission, which in its judgment have produced or will produce any of such results, shall be subject to such alteration as the Commission may direct. The Licensee shall comply with such rules and regulations of general or special applicability as the Commission may from time to time prescribe for the protection of life, health, or property.

Article 4. The construction, operation, and maintenance of the project and any work incident to additions or alterations, whether or not conducted upon lands of the United States, shall be subject to the inspection and supervision of the Regional Engineer, Federal Power Commission, in the region wherein the project is located, or of such other officer or agent as the Commission may designate, who shall be the authorized representative of the Commission for such purposes. The Licensee shall furnish to said representative such information as he may require concerning the construction, operation, and maintenance of the project, and of any alteration thereof, and shall notify him of the date upon which work will begin, and as far in advance thereof as said representative may reasonably specify, and shall notify him promptly in writing of any suspension of work for a period of more than one week, and of its resumption and completion. The Licensee shall allow him and other officers or employees of the United States, showing proper credentials, free and unrestricted access to, through, and across the project lands and project works in the performance of their official duties.

Article 5. So far as is consistent with proper operation of the project, the Licensee shall allow the public free access, to a reasonable extent, to project waters and adjacent project lands owned by the Licensee for the purpose of full public utilization of such lands and waters for navigation and recreational purposes, including fishing and hunting, and shall allow to a reasonable extent for such purposes the construction of access roads, wharves, landings, and other facilities on its lands the occupancy of which may in appropriate circumstances be subject to payment of rent to the Licensee in a reasonable amount: Provided that the Licensee may reserve from public access, such portions of the project waters, adjacent lands, and project facilities as may be necessary for the protection of life, health, and property and provided further, that the Licensee's consent to the construction of access roads, wharves, landings, and other facilities shall not, without its express agreement, place upon the Licensee any obligation to construct or maintain such facilities. These facilities are in addition to the facilities that the Licensee may construct and maintain as required by the license.

Article 6. Insofar as any material is dredged or excavated in the prosecution of any work authorized under the license, or in the maintenance of the project, such material shall be removed and deposited so it will not interfere with navigation, and will be to the satisfaction of the District Engineer, Department of the Army, in charge of the locality.

Article 7. The United States specifically retains and safeguards the right to use water in such amount, to be determined by the Secretary of the Army, as

may be necessary for the purposes of navigation on the navigable waterway affected; and the operations of the Licensee, so far as they affect the use, storage and discharge from storage of waters affected by the license, shall at all times be controlled by such reasonable rules and regulations as the Secretary of the Army may prescribe in the interest of navigation, and as the Commission may prescribe for the protection of life, health, and property, and in the interest of the fullest practicable conservation and utilization of such waters for power purposes and for other beneficial public uses, including recreational purposes; and the Licensee shall release water from the project reservoir at such rate in cubic feet per second, or such volume in acre-feet per specified period of time, as the Secretary of the Army may prescribe in the interest of navigation, or as the Commission may prescribe for the other purposes hereinbefore mentioned.

Article 8. Whenever the United States shall desire, in connection with the project, to construct fish and wildlife facilities or to improve the existing fish and wildlife facilities at its own expense, the Licensee shall permit the United States or its designated agency to use, free of cost, such of Licensee's lands and interest in lands, reservoirs, waterways and project works as may be reasonably required to complete such facilities or such improvements thereof. In addition, after notice and opportunity for hearing the Licensee shall modify the project operation as may be prescribed by the Commission, reasonably consistent with the primary purpose of the project, in order to permit the maintenance and operation of the fish and wildlife facilities constructed or improved by the United States under the provision of this article. This article shall not be interpreted to place any obligation on the United States to construct or improve fish and wildlife facilities or to relieve the Licensee of any obligation under the license.

Article 9. If the Licensee shall cause or suffer essential project property to be removed or destroyed or to become unfit for use, without replacement, or shall abandon or discontinue good faith operation of the project for a period of three years, or refuse or neglect to comply with the terms of the license and the lawful orders of the Commission mailed to the record address to the Licensee or its agent, the Commission will deem it to be the intent of the Licensee to surrender the license, and not less than 90 days after public notice may in its discretion terminate the license.

Article 10. Upon abandonment of the project the Licensee shall remove all buildings, equipment and power lines to a condition satisfactory to the Commission's authorized representative and shall fulfill such other obligations under the license as the Commission may prescribe.

Article 11. Whenever the United States shall desire to construct, complete, or improve navigation facilities in connection with the project, the Licensee shall convey to the United States, free of cost, such of its lands and its rights-of-way and such right of passage through its dams or other structures, and permit such control of pools as may be required to complete and maintain such navigation facilities.

Article 12. The Licensee shall furnish free of cost to the United States power for the operation and maintenance of navigation facilities at the voltage and frequency required by such facilities and at a point adjacent thereto whether said facilities are constructed by the Licensee or by the United States.

Article 13. The operation of any navigation facilities which may be constructed as a part of or in connection with any dam or diversion structure constituting a part of the project works shall at all times be controlled by such reasonable rules and regulations in the interest of navigation, including the control of the level of the pool caused by such dam or diversion structure, as may be made from time to time by the Secretary of the Army.

Article 14. The Licensee shall for the protection of navigation, construct, maintain and operate at its own expense such lights and other signals on fixed structures in or over navigable waters of the United States as may be directed by the Secretary of the Department in which the Coast Guard is operating.

Article 15. The Licensee shall, after notice and opportunity for hearing, coordinate the operation of the project, electrically and hydraulically, with such other power systems and in such manner as the Commission may direct in the interest of power and other beneficial public uses of water resources, and on such conditions concerning the equitable sharing of benefits by the Licensee as the Commission may order.

Article 16. The Licensee shall, for the conservation, and development of fish and wildlife resources, construct, maintain, and operate, or arrange for the construction, maintenance and operation of such facilities and comply with such reasonable modifications of the project structures and operation as may be ordered by the Commission upon its own motion or upon the recommendation of the Secretary of the Interior or the fish and wildlife agency or agencies of any State in which the project or a part thereof is located, after notice and opportunity for hearing and upon findings based on substantial evidence that such facilities and modifications are necessary and desirable, reasonably consistent with the primary purpose of the project, and consistent with the provisions of the Act.

Article 17. The Licensee shall construct, maintain and operate or shall arrange for the construction, maintenance and operation of such recreational facilities including modifications thereto, such as access roads, wharves, launching ramps, beaches, picnic and camping areas, sanitary facilities and utilities, as may be prescribed hereafter by the Commission during the term of this license upon its own motion or upon the recommendation of the Secretary of the Interior or other interested Federal and State agencies, after notice and opportunity for hearing and upon findings based upon substantial evidence that such facilities are necessary and desirable, and reasonably consistent with the primary purpose of the project.

Article 18. The Licensee shall be responsible for and shall minimize soil erosion and siltation on lands adjacent to the stream resulting from the construction and operation of the project. The Commission upon request, or upon its own motion, may order the Licensee to construct and maintain such preventive works to accomplish this purpose and to revegetate exposed soil surface as the Commission may find to be necessary after notice and opportunity for hearing.

Article 19. No lease of the project or any part thereof whereby the Lessee is granted the occupancy, possession, or use of the project, or any part thereof, shall be made without prior written approval of the Commission; and the Commission may, if in its judgment the situation warrants, require that all the conditions of the license, of the Act, and of the Rules and Regulations of the Commission shall be applicable to such property so leased to the same extent as if the Lessee were the Licensee: Provided, that the provisions of this article shall not apply to leases of land or buildings or other property while not required to achieve the purposes of the license.

Article 20. Upon the completion of the project, or at such other time as the Commission may direct, the Licensee shall submit to the Commission for approval revised maps, plans, specifications, and statements insofar as necessary to show any divergence from or variations in the project area and project boundary as finally located or in the project works as actually constructed when compared with the area and boundary shown and the works described in the license or in the maps, plans, specifications, and statements approved by the Commission, together with a statement in writing setting forth the reasons which in the

opinion of the Licensee necessitated or justified variations in or divergence from the approved maps, plans, specifications, and statements. Such revised maps, plans, specifications, and statements shall, if and when approved by the Commission, be made a part of the license under the provisions of Article 2 hereof.

Article 21. The Licensee shall furnish to the Commission within 60 days from the effective date of this license, tracings of the Exhibit L drawings listed herein under paragraph (B)(ii).

Article 22. In the construction and maintenance of the project works, the Licensee shall place and maintain suitable structures and devices to reduce to a reasonable degree the liability of contact between its transmission lines, and telegraph, telephone, and other signal wires or power transmission lines constructed prior to its transmission lines and not owned by the Licensee, and shall also place and maintain suitable structures and devices to reduce to a reasonable degree the liability of any structures or wires falling and obstructing traffic and endangering life on highways, streets, or railroads. None of the provisions of this article is intended to relieve the Licensee from any responsibility or requirement which may be imposed by other lawful authority for avoiding or eliminating inductive interference.

Article 23. The Licensee shall do everything reasonably within its power and shall require its employees, contractors, and employees of contractors to do everything reasonably within their power, both independently and upon request of officers of the agency of the United States concerned, to prevent, make advanced preparations for suppression, and suppress fires on lands occupied under the license.

Article 24. For the purpose of determining the stage and flow of the stream or streams from which water is diverted for the operation of the project works, the amount of water held in and withdrawn from storage, and the effective head on the turbines, the Licensee shall install and thereafter maintain such gages and stream-gaging stations as the Commission may deem necessary and best adapted to the requirements; and shall provide for the required readings of such gages and for adequate rating of such stations. The Licensee shall also install and maintain standard meters adequate for the determination of the amount of electric energy generated by said project works. The number, character, and location of gages, meters, or other measuring devices, and the method of operation thereof, shall at all times be satisfactory to the Commission and may be altered from time to time if necessary to secure adequate determinations, but such alteration shall not be made except with the approval of the Commission or upon the specific direction of the Commission. The installation of gages, the ratings of said stream or streams, and the determination of the flow thereof, shall be under the supervision of, or in cooperation with, the District Engineer of the United States Geological Survey having charge of stream-gaging operations in the region of said project, and the Licensee shall advance to the United States Geological Survey the amount of funds estimated to be necessary for such supervision or cooperation for such periods as may be mutually agreed upon. The Licensee shall keep accurate and sufficient record of the foregoing determinations to the satisfaction of the Commission, and shall make return of such records annually at such time and in such form as the Commission may prescribe.

Article 25. The right of the Licensee and of its transferees and successors to use or occupy navigable waters of the United States under the license for the purpose of maintaining the project works or otherwise, shall absolutely cease at the end of the license period, unless a new license is issued pursuant to the then existing laws and regulations.

Article 26. The terms and conditions expressly set forth in the license shall not be construed as impairing any terms and conditions of the Federal Power Act which are not expressly waived in the license.

Article 27. The Licensee shall pay to the United States the following annual charge:

(i) For the purpose of reimbursing the United States for the costs of Administration of Part I of the Act $31.30.

Article 28. Licensee shall make provision to supply initially, a continuous flow of not less than 7 cubic feet per second for the benefit of fish in the bypassed 700-foot stretch of river located between the Weed Dam and the end of the tailrace and shall submit the plans to the Commission before construction of the project commences. Licensee shall, after construction of the project, undertake a study with the Wisconsin Conservation Department to determine whether greater flows are necessary to prevent fish kill in this stretch of river.

Article 29. Licensee shall submit a plan for the protection of life and property downstream of the project for those periods when operation of the powerhouse is expected to cause substantial streamflow fluctuations and shall submit such plan to the Commission for approval.

Article 30. The Licensee shall within one year from the date of issuance of the license, file with the Commission for approval its proposed recreational use plan for the project. The plan shall be prepared after consultation with appropriate Federal, State and local agencies, and shall include recreational improvements which may be provided by others in addition to the improvements the Licensee plans to provide.

Article 31. Licensee shall take corrective measures at any time the discharge of effluent from its sewage treatment plant has a harmful effect on the use of the reservoir for recreational purposes.

(D) The exhibits designated and described in paragraph (B) above are hereby approved as part of the license.

(E) The terms and conditions of the Act, which it is found above to be in the public interest to waive, are hereby excluded from this license.

(F) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgment of the acceptance of this license, it shall be signed for the Licensee and returned to the Commission within 60 days from the date of issuance of this order.

WILLIAM C. LEVY,
Presiding Examiner.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

ILLINOIS POWER COMPANY AND MISSISSIPPI RIVER TRANSMISSION CORPORATION, DOCKET NO. CP65-343

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued July 13, 1965)

On April 27, 1965, Illinois Power Company (Applicant) filed in Docket No. CP65-343 an application pursuant to Section 7(a) of the Natural Gas Act for

an order of the Commission directing Mississippi River Transmission Corporation (Respondent) to establish physical connection of its transmission facilities with the proposed facilities of and to sell and deliver natural gas at such connection to Applicant for resale and distribution in the Village of Valmeyer, and environs, Monroe County, Illinois, all as more fully set forth in the application.

Applicant proposes to construct and operate 8.5 miles of 3-inch lateral line, as well as the necessary distribution facilities, in order to render service to Valmeyer and environs.

The total estimated third year peak day and annual natural gas requirements for Valmeyer and environs is 225 Mcf and 17,814 Mcf, respectively.

The total estimated cost of the proposed project is $233,845, which cost will be financed from funds available for construction.

Applicant does not request an additional allocation of gas from Respondent; gas delivered at the proposed interconnection will be part of Applicant's presently effective contract demand with Mississippi.

Applicant states that it has received a certificate of public convenience and necessity from the Illinois Commerce Commission and a franchise from Valmeyer.

On June 2, 1965, Respondent filed an answer to the subject application stating that it does not object to rendering the requested service.

Due notice of the filing of the application and opportunity for hearing thereon has been given by publication in the Federal Register on May 12, 1965 (30 F.R. 6555). No protest or petition to intervene has been filed in this proceeding.

The Commission finds:

(1) Respondent, Mississippi River Transmission Corporation, a Delaware corporation having its principal place of business in St. Louis, Missouri, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of November 29, 1960, in Docket No. CP60-95 (24 FPC 1020).

(2) Applicant, Illinois Power Company, is a public utility duly organized and existing under the laws of the State of Illinois and is authorized to engage in the business of distributing and selling natural gas within said State.

(3) It is necessary and desirable in the public interest that Respondent be directed to establish physical connection of its natural gas transmission system with the proposed facilities of Applicant and to sell and deliver at such connection up to 225 Mcf of natural gas per day to Applicant, as set forth in the application and as hereinafter ordered and conditioned.

(4) Applicant should be prepared to receive natural gas from Respondent within one year from the date of issuance of this order.

(5) The requirement that Respondent serve Applicant, as proposed, will not place any undue burden upon Respondent nor impair its ability to render adequate service to its existing customers.

The Commission orders:

(A) Respondent, Mississippi River Transmission Corporation is hereby directed to establish physical connection of its natural gas transmission system with the proposed facilities of Applicant and to sell and deliver at such connection up to 225 Mcf of natural gas per day to Applicant, all as hereinbefore described and as more fully set forth in the application in this proceeding.

(B) Applicant shall be prepared to receive natural gas from Respondent within one year from the date of issuance of this order.

(C) Respondent shall report to the Commission in writing the date of commencement of service to Applicant within ten days thereof.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

INDIANA NATURAL GAS CORPORATION AND TEXAS EASTERN TRANSMISSION CORPORATION, DOCKET NO. CP63-292

ORDER AMENDING ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued July 13, 1965)

By Commission order issued July 29, 1964, 32 FPC 440, in Docket No. CP63-292, Texas Eastern Transmission Corporation (Respondent) was directed to establish physical connection of its transmission system with the facilities of Indiana Natural Gas Corporation (Applicant) and to sell and deliver a maximum of 2,173 Mcf of natural gas per day to Applicant for resale and distribution in the towns of French Lick and West Baden Springs, Indiana and their environs. The order was conditioned upon Applicant's filing with the Commission a contract between it and French Lick Sheraton Hotel (Sheraton), one of Applicant's prospective customers.

On December 23, 1964, Applicant filed herein a petition, as supplemented April 2, 1965, to amend said order by deleting therefrom the requirement that it file a contract between it and Sheraton and by reducing the volume of gas authorized to be delivered to it from Texas Eastern from a maximum of 2,173 Mcf per day to a maximum of 737 Mcf per day. This reduction in volume is requested due to Applicant's inability to reach agreement with Sheraton, and due to the closing of West Baden College, another prospective customer of Applicant.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the petition has been filed.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the order of the Commission issued July 29, 1964, in Docket No. CP63-292 be amended as hereinafter ordered.

The Commission orders:

(A) The order of the Commission issued July 29, 1964, in Docket No. CP63-292 is hereby amended by reducing the volume of natural gas to be delivered by Respondent, Texas Eastern Transmission Corporation to Applicant from a maximum of 2,173 Mcf per day to a maximum of 737 Mcf per day, and by deleting from said order the requirement that Applicant file with the Commission a contract between it and French Lick Sheraton Hotel.

(B) In all other respects said order shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

PACIFIC GAS & ELECTRIC COMPANY, PROJECT NO. 2106

ORDER APPROVING REVISED PROJECT EXHIBITS, ADJUSTING AUTHORIZED INSTALLED CAPACITY AND ANNUAL CHARGES, AND REDESCRIBING PROJECT DEVELOPMENTS

(Issued July 13, 1965)

On August 19, 1963, Pacific Gas & Electric Company, licensee for Project No. 2106, filed an application for Commission approval of Revised Exhibits L and M

showing design modifications and changes relating to the proposed McCloud-Pit development of the project. On July 23, 1964, the licensee filed for Commission approval a revised Exhibit L drawing relating to the Iron Canyon Dam and Reservoir. Project No. 2106 includes the proposed McCloud-Pit development on the McCloud and Pit Rivers and proposed Pit No. 6 and 7 developments on the Pit River.

The proposed changes shown on the revised exhibits were found necessary and desirable as a result of further engineering studies and exploratory drillings made subsequent to issuance of the license for the project and which will facilitate construction and reduce construction costs. The principal changes involve: (1) change in the McCloud Diversion Dam from a concrete arch type to an earth and rockfill type with a change in the spillway radial gates and a spillway discharge channel providing spillway capacity comparable to that presently authorized, and the addition of facilities for releasing fish water from McCloud Reservoir from different elevations for temperature control as required by Article 45 of the license; (2) modifications relating to the Iron Canyon development consisting of a widening of the dam crest with provision for a roadway over the dam, a change in the spillway design from an ungated side-channel type to a lined tunnel-type discharging into another creek away from the dam to provide for comparable spillway capacity at a more favorable foundation site and to afford more protection to the dam, and a change in the design of the Iron Canyon tunnel surge chamber from a two barrel differential type to a single barrel differential type which utilizes an overflow basin with a savings in cost; and (3) modifications to the McCloud-Pit development consisting of changes in the diameters and plate thicknesses of the powerhouse penstock made necessary by the relocation of the powerhouse approved by Commission order issued January 31, 1964, a change in the powerhouse installation from 155.7 mw. (2 units of 77.85 mw. each) to 154.8 mw. (2 units of 77.4 mw. each), a change in the main transformers from single phase to three phase type with a savings in cost, and a change from two single circuit transmission lines to one single circuit line about one-half mile long. The proposed modifications are appropriate, subject to the inclusion in the license of additional articles as hereinafter provided.

The Chief of Engineers and the Secretary of the Army have reported that the plans of the project structures affecting navigation have been approved pursuant to Section 4(e) of the Federal Power Act insofar as the interests of navigation are concerned.

The Department of the Interior, in letter dated November 10, 1964, reported that the proposed structural change of the McCloud diversion dam, from a concrete arch dam to an earth and rock-fill dam, could result in significant losses to the downstream fish resources and related recreational values through excessive siltation and debris deposition induced by construction activities, particularly if hydraulic rock-washing techniques were employed, and the Department requested that a condition be added to the license to take care of these matters. The license for Project No. 2106 was further amended by Commission order issued April 1, 1965, to include, among other things, Article 50 which satisfies the request of the Department.

The California Department of Fish and Game has offered no objection to the aforementioned change in plans for controlling the water temperature below the McCloud diversion dam in the interest of fish life.

By its order issued August 15, 1963, 30 FPC 493, the Commission provided for future adjustment of the authorized installed capacity of Project No. 2106 for annual charge purposes and revision of the description of the several developments comprising the project. By its order issued August 15, 1963, the authorized installed capacity of the Pit No. 6 development was increased from

73.8 mw. (2 units of 36.9 mw. each) to 79.2 mw. (2 units of 39.6 mw. each), and the authorized installed capacity of the Pit No. 7 development was increased from 99.9 mw. (2 units of 49.95 mw. each) to 104.4 mw. (2 units of 52.2 mw. each).

The Commission finds:

(1) The following described revised exhibits conform to the Commission's rules and regulations and should be approved as part of the license for the project:

Exhibit	F.P.C. No.	Title—McCloud-Pit Development—Proj. No. 2106
L–1A	2106–55	McCloud Diversion Dam.
L–2A	2106–56	McCloud Tunnel Intake and Hawkins Creek Crossing.
L–3B	2106–60	Iron Canyon Dam, Intake and Tunnel and Spillway.
L–4A	2106–58	Profile of Iron Canyon Pipe Crossing, McCloud-Pit Penstock and Surge Chamber.
L–5A	2106–59	McCloud-Pit Power House.
M–2		Entitled "General Descriptions and General Specifications of Mechanical, Electrical and Transmission Equipment, McCloud-Pit Development."

(2) The following described exhibits which are now part of the license and which have been superseded should be eliminated from the license to the extent herein indicated:

Exhibits L–1, L–2, L–3, L–4, and L–5 (FPC Nos. 2106–27 through –31), and Exhibit M filed with the Commission on April 1, 1957, insofar as it relates to the McCloud-Pit Development.

(3) The presently authorized installed capacity of the project for the purpose of computing the capacity component of the administrative annual charge is by this order increased from 439,000 horsepower to 451,000 horsepower, and the amount of annual charges, based upon such increased capacity, to be paid under the license for the project, for the costs of administration of Part I of the Act is reasonable.

The Commission orders:

(A) The revised exhibits described in finding (1) above are hereby approved as part of the license for the project, and the exhibits described in finding (2) above are hereby eliminated from the license to the extent therein indicated.

(B) The project works comprising the McCloud-Pit and Pit Nos. 6 and 7 developments consist of:

McCloud-Pit Development

McCloud Diversion Dam and Reservoir, an earth and rock-fill dam in McCloud River about 500 feet upstream from Lizzard Creek, a seven-foot diameter sluice through the right abutment, a spillway with five radial gates, and a reservoir with an area of 520 acres at maximum water surface elevation of 2680 feet and a gross capacity of 35,300 acre-feet of storage; *McCloud Tunnel*, a horseshoe and/or circular tunnel about 37,800 feet long and 17 feet in diameter when unlined and 13 feet in diameter when lined extending from an intake in McCloud Reservoir to Iron Canyon Reservoir; *Iron Canyon Dam and Reservoir*, an earth-fill dam on Iron Canyon Creek four miles north of Pit No. 5 plant on Pit River, a four-foot diameter sluice pipe through the dam, a lined tunnel-type spillway, and a reservoir with an area of 500 acres at maximum water surface elevation 2665 feet and a gross capacity of 24,400 acre-feet of storage; *Iron Canyon Tunnel*, a horseshoe and/or circular tunnel about 15,300 feet long and 18 feet in diameter when unlined and 14 feet in diameter when lined extending from an intake in Iron Canyon Reservoir to the head of the penstock; a steel penstock varying from 11.5 feet to 10 feet in diameter about 5100 feet long branching at a wye to two

seven-foot diameter penstocks extending about 100 feet to the powerhouse; a surge chamber located near the downstream end of Iron Canyon Tunnel; the *McCloud-Pit Powerhouse*, located about one-half mile upstream from Pit No. 5 power plant, containing two 104,000-horsepower turbines connected to two 77,400-kilowatt generators (86,000 kva. @ 0.9 P.F.); a substation and switchyard; one single circuit 220 kv. transmission line extending about one-half mile from the switchyard to the existing transmission line leading from the Pit No. 5 power plant; and appurtenant mechanical and electrical facilities;

Pit No. 6 Development

A concrete gravity dam located in Pit River about 2½ miles upstream from Marble Creek with an overflow gated spillway; two gated sluice conduits through the dam; a reservoir with normal water surface elevation at 1425 feet (U.S.G.S. datum), an area of about 265 acres and a gross capacity of about 15,700 acre-feet of storage; a tunnel; steel penstocks; a powerhouse located 300 feet downstream from the dam containing two 53,000 horsepower turbines connected to two 39,600-kilowatt generators (44,000 kva. @ 0.9 P.F.) installed therein; a substation and switchyard; two single circuit 220 kv. transmission lines extending about 3.3 miles from the switchyard to the Applicant's interconnected transmission system; and appurtenant mechanical and electrical facilities;

Pit No. 7 Development

A concrete gravity dam, located in Pit River about 2½ miles downstream from Montgomery Creek, with an overflow gated spillway; two gated sluice conduits through the dam; a reservoir with normal water surface at elevation 1270 feet (U.S.G.S. datum) and a total capacity of 34,000 acre-feet of storage; a tunnel about 560 feet long; steel penstocks; a powerhouse located 500 feet downstream from the dam containing two 70,000-horsepower turbines connected to two 52,200-kilowatt generators (58,000 kva. @ 0.9 P.F.); a substation and switchyard; two single circuit 220 kv. transmission lines extending 3½ miles from the switchyard to the Applicant's interconnected transmission system; a low rockfill over-pour afterbay dam including a variable width concrete gravity weir section, located about two miles downstream from the main dam; and appurtenant mechanical and electrical facilities:

(C) Subparagraph (i) of Article 28 of the license is hereby modified, effective as of January 1, 1965, by substituting "451,000 horsepower" for "439,000 horsepower" as the authorized installed capacity of the project for annual charge purposes.

(D) The following articles are hereby included in the license for the project:

Article 49. The Licensee shall install at least two rows of piezometer wells with at least two wells per row in the downstream portion of the Iron Canyon dam in order to check on the functioning of the drainage system and shall submit to the Commission monthly readings of the water surface elevations in the wells;

Article 50. The Licensee shall install small weirs below the McCloud diversion and the Iron Canyon dams and shall measure the seepage and turbidity of the water draining from the dams. Measurements shall be made monthly for the first year of operation and any unusual change shall be reported immediately to the Commission;

Article 51. The Licensee shall install several monuments on the crest of the Iron Canyon dam and shall measure each month vertical and horizontal movements for the first two years of operation, and shall submit such measurements to the Commission semiannually; and

Article 52. The Licensee shall submit stability analyses for the McCloud diversion and Iron Canyon dams using material and foundation strengths found during construction, and shall modify the designs of the dams, if found necessary,

in order to provide a factor of safety against sliding of at least 1.5 for conditions of maximum normal water surface elevations and without effects of earthquake, and at least 1.2 for similar conditions including effects of earthquake.

(E) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this order. In acknowledgment of the acceptance of this order, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

SOUTHEASTERN KANSAS GAS COMPANY, INC., DOCKET NO. CP65-368

DECLARATION OF EXEMPTION

(Issued July 13, 1965)

Southeastern Kansas Gas Company, Inc. (Applicant) filed an application on May 20, 1965, for exemption from the provisions of the Natural Gas Act, pursuant to Section 1(c) thereof.

Applicant is a Kansas corporation engaged in the transportation and distribution of natural gas in the State of Kansas. Pursuant to certificate authorization granted by the Federal Power Commission, Cities Service Gas Company sells and delivers to applicant natural gas for resale in Kansas.

Applicant serves its market by means of a transmission system extending from a point of connection with Cities Service Gas Company in the NE corner of Section 26, Bourbon County, Kansas, to points of distribution in the cities of Bronson in Bourbon County, Moran in Allen County, Blue Mound in Linn County, Walnut in Crawford County, and St. Paul in Neosho County, all in the State of Kansas.

All natural gas received by Applicant for transportation and distribution through its said system is consumed ultimately within the State of Kansas, and all of its said facilities are located within said state.

The Kansas State Corporation Commission has certified to the Federal Power Commission that it has and will be exercising regulatory jurisdiction over the rates, service and facilities of Applicant.

Wherefore, the Commission declares, by reason of the foregoing:

Southeastern Kansas Gas Company, Inc. is exempt from the provisions of the Natural Gas Act, and the orders, rules and regulations of this Commission issued thereunder.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

SOUTHERN CALIFORNIA EDISON COMPANY, PROJECT NOS. 174 AND 2290

ORDER ACCEPTING SURRENDER OF LICENSE (TRANSMISSION LINE) AND PRESCRIBING ANNUAL TRANSMISSION LINE CHARGES IN LICENSE (MAJOR)

(Issued July 13, 1965)

Application was filed on May 21, 1965, by Southern California Edison Company for surrender of its license for transmission line Project No. 174 since all of the

transmission facilities under the license for Project No. 174 were, by Commission order issued August 7, 1964, 32 FPC 553, included as part of the project works covered under Southern California's license for major Project No. 2290.

Annual charges under the license for Project No. 174 for the occupancy by the transmission facilities of National Forest lands (Sequoia National Forest) have been paid by the licensee for that project through December 31, 1964. The licensee's copy of the license instrument for Project No. 174 and the three amendments thereto were returned with the application for surrender.

The transmission facilities included under the license for Project No. 2290 by the aforementioned August 7, 1964, Commission order occupy an equivalent 100-foot wide right-of-way 9.64 miles long on National Forest lands.

Subparagraph (iii) of Article 44 of the license for Project No. 2290 reserves to the Commission the right to determine at a later date the amount of annual charges to be paid for recompensing the United States for the use, occupancy and enjoyment of its lands for transmission line right-of-way purposes. We are herein prescribing the amount of annual charges to be paid under the license for Project No. 2290 for transmission line occupancy.

The Commission finds:

Acceptance of surrender of the license for transmission line Project No. 174 is appropriate.

The Commission orders:

(A) Surrender of the license for Project No. 174 is hereby accepted, effective as of December 31, 1964.

(B) Subparagraph (iii) of Article 44 of the license for Project No. 2290 is hereby amended to read as follows:

> (iii) For the purpose of recompensing the United States for the use, occupancy and enjoyment of its lands for transmission line right-of-way purposes only, $77.12, effective January 1, 1965.

(C) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this order. In acknowledgement of the acceptance of this order, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

PACIFIC POWER & LIGHT COMPANY, PROJECT NO. 2082

ORDER APPROVING REVISED EXHIBIT L DRAWINGS

(Issued July 14, 1965)

Pacific Power & Light Company, licensee for the Klamath Basin Project No. 2082, located on the Klamath River in California and Oregon, filed on May 24, 1965, revised Exhibit L drawings for the dam and spillway sections of the Iron Gate development.

In December 1964, a flood estimated by licensee to be about 20,000 cfs and exceeding a previous flood level record of approximately 11,000 cfs eroded the lower end of the spillway channel at the Iron Gate development on the Klamath River. To prevent further erosion, repairs to this facility required the design and installation of a terminal structure to dissipate the energy of a peak flood flow. The spillway capacity at Iron Gate was designed to pass some 32,000 cfs. After experiencing the flood of December 1964, the licensee now proposes to raise the

dam itself some 5 feet to increase this capacity to 65,000 cfs, leaving a freeboard of 2.8 feet. The addition of five feet to the height of the dam is to prevent overtopping of the structures during maximum peak flood flows, and will not change the operating level of the pool.

The design of the spillway channel and stilling basin is considered adequate, and the spillway capacity is satisfactory.

The revised drawings reflect these necessary changes and seek to supplement, not supersede the Exhibit L drawings now part of the license.

The Office of the Chief of Engineers, U.S. Army has reported that the plans of the structures affecting navigation shown on the revised Exhibit L drawings are satisfactory.

The following described Exhibit L drawings conform to the Commission's rules and regulations and should be approved as part of the license for the project:

Iron Gate Development

Exhibit L, Sheet No.	FPC No.	Title	Supplementing FPC No.
L-10A	2082-174	Dam Crest Modifications	2082-142
L-15A	2082-175	Spillway Modifications	2082-151

The Commission orders:

The above-described revised Exhibit L drawings are hereby approved as part of the license for Project No. 2082.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

PUBLIC UTILITY DISTRICT NO. 1 OF CHELAN COUNTY, WASHINGTON, PROJECT NOS. 2324 AND 2369

ORDER PERMITTING WITHDRAWAL OF APPLICATIONS FOR LICENSE

(Issued July 14, 1965)

Public Utility District No. 1 of Chelan County, Washington (District) was issued a preliminary permit for a period of three years effective July 1, 1954, for proposed Project No. 2151, which was to consist of hydroelectric developments on the Wenatchee River and its tributaries in the State of Washington.

The District filed applications for license for Project Nos. 2151, 2324 and 2369 on June 27, 1957, October 9, 1962, and May 17, 1963, respectively, all of which propose developments within the Wenatchee River basin covered by the preliminary permit.

By the letter of February 16, 1965, the District requested permission to withdraw its applications for Project Nos. 2324 and 2369, and to amend the application for Project No. 2151 so as to include under that one application all the developments, with revisions, which are presently covered by the three applications for license.

By letter of March 16, 1965, the District was advised that its request for permission to withdraw the applications for license for Project Nos. 2324 and 2369 would be considered as a notice of withdrawal and request for permission pursuant to Section 1.11(d) of the Commission's Rules of Practice and Procedure.

An amendment to the application for license for Project No. 2151 was filed by the District on May 10, 1965, to include in the application as amended the following proposed developments on the Wenatchee River and its tributaries:

1. A relocated Chiwaukum Dam and Leavenworth Powerhouse.
2. A reconstruction of Dryden Dam and Powerhouse.
3. Beaver Creek Dam and Powerhouse.
4. Chiwawa Dam and Dirtyface Mountain Powerhouse.

The Commission finds:

It is not inconsistent with the public interest that the applications for license for proposed Project Nos. 2324 and 2369 be withdrawn.

The Commission orders:

Public Utility District No. 1. of Chelan County, Washington is hereby permitted to withdraw applications for license for Project Nos. 2324 and 2369, and the proceedings on those applications are terminated.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

C. W. ALEXANDER, ET AL. AND GULF OIL CORPORATION, DOCKET NOS. G–6932, G–10565 AND G–19931

ORDER AMENDING ORDER ISSUING CERTIFICATE, APPROVING RATE SETTLEMENT PROPOSAL, TERMINATING PROCEEDINGS AND APPROVING SUCCESSION FILINGS

(Issued July 15, 1965)

These proceedings involve the succession by Gulf Oil Corporation (Gulf) to certain acreage from C. W. Alexander, *et al.* (Alexander) in the Pistol Ridge Field, Pearl River County, Mississippi, and two increased rate filings made by Alexander prior to Gulf's succession. A sale of natural gas was made from such acreage under Gulf's FPC Gas Rate Schedule No. 77 at a rate of 24.0¢ per Mcf of natural gas, and Alexander's FPC Gas Rate Schedule No. 1 at a rate of 20.0¢ per Mcf, to United Gas Pipe Line Company prior to November 18, 1960, the date of assignment of the acreage to Gulf. Inadvertently, following the assignment United was billed by Gulf and paid for all gas delivered under both Gulf's and Alexander's interests at the rate of 24.0¢ per Mcf.

On April 25, 1963, we approved by order issued in *Gulf Oil Corporation, et al.*, Docket No. G–9520, *et al.* (29 FPC 837) a company-wide settlement proposal filed by Gulf, whereby a settlement rate of 20.0¢ was fixed for the subject sale, and Gulf made appropriate refunds of monies collected subject to refund thereunder. Subsequently, Gulf determined that it had been charging and collecting its effective rate of 24.0¢ per Mcf of gas for Alexander's interest, instead of Alexander's effective rate of 20.0¢ per Mcf, and it made appropriate reimbursement to United.

On March 31, 1965, Gulf submitted succession filings in Docket No. G–6932, wherein Alexander had been granted a certificate of public convenience and necessity, and an offer of settlement in Docket Nos. G–10565 and G–19931 pursuant to Section 1.18(e) of the Commission's Rules of Practice and Procedure. In Docket No. G–10565 there is involved a proposed increased rate of 20.0¢ per Mcf filed by Alexander which was suspended by order of the Commission for the statutory period and made effective subject to refund. Docket No. G–19931

involves a proposed increased rate of 24.0¢ which was suspended by order of the Commission for the statutory period, but never placed in effect subject to refund. Gulf proposes a settlement rate of 20.0¢ per Mcf of gas for the sale from the acquired acreage. On June 14, 1965, Alexander filed a letter concurring in Gulf's proposal.

The circumstances surrounding this sale are identical to those which we considered in our order of April 25, 1963 (*supra*) and which led us to find that the proposed settlement rate of 20.0¢ per Mcf for other sales by Gulf in the same field to United was to be regarded as an initial rate. Consequently, we find the settlement rate here of 20.0¢ per Mcf to be proper and approve the same.

As to Gulf's succession filings, after due notice no petitions to intervene, notices of intervention or protest to the granting of the application have been filed.

We desire to make it clear that acceptance of Gulf's offer of settlement, as concurred in by Alexander, shall not be construed as approval of any future increased rate under the subject rate schedule, and is without prejudice to any findings or order of the Commission in any future proceedings, including area rate or other similar proceedings, involving Gulf's rates and rate schedules.

The Commission finds:

(1) The proposed settlement of the proceedings in Docket Nos. G–10565 and G–19931, on the basis described herein, as more fully set forth in the offer of settlement filed with the Commission by Gulf on March 31, 1965, and concurred in by Alexander on June 14, 1965, is consistent with the public interest and approval thereof is appropriate to carry out the provisions of the Natural Gas Act.

(2) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act, and the public convenience and necessity require that the order issuing a certificate in Docket No. G–6932 to C. W. Alexander, *et al.*, should be amended by substituting Gulf Oil Corporation as the certificate holder.

The Commission orders:

(A) The offer of settlement filed with the Commission by Gulf on March 31, 1965, and concurred in by Alexander on June 14, 1965, is approved in accordance with the provisions of this order.

(B) The order issued March 8, 1957, granting a certificate of public convenience and necessity to C. W. Alexander, *et al.*, is amended to substitute Gulf Oil Corporation as certificate holder, and in all other respects said order shall remain in full force and effect.

(C) C. W. Alexander's FPC Gas Rate Schedule No. 1 is redesignated as Gulf Oil Corporation's FPC Gas Rate Schedule No. 294.

(D) Docket Nos. G–10565 and G–19931 are terminated, and Alexander and Gulf are relieved of any refund obligation thereunder.

(E) The acceptance by the Commission of Gulf's offer of settlement, concurred in by Alexander, is without prejudice to any findings or determinations that may be made in any proceeding now pending, or hereafter instituted by or against Gulf, and is without prejudice to claims or contentions which may be made by Gulf, the Commission staff, or any affected party hereto in any proceeding, including area rate or similar proceedings.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

CHARLES F. DEBARDELEBEN, JR. (OPERATOR), ET AL., DOCKET NO. RI65–222; BARNWELL PRODUCTION COMPANY, RI65–223 AND RI65–229; BARNWELL PRODUCTION COMPANY (AGENT FOR J. PAUL RATLIFF, JR.), RI65–230

ORDER ACCEPTING OFFERS OF SETTLEMENT, PERMITTING WITHDRAWAL OF NOTICES OF CHANGE, REQUIRING FILING OF CHANGES, CONTRACT AMENDMENTS AND TERMINATING PROCEEDINGS

(Issued July 15, 1965)

On May 24, 1965, the above-named Respondents each filed an offer of settlement in its respective above-docketed proceedings pursuant to Section 1.18(e) of the Commission's Rules of Practice and Procedure. The offers involve sales of natural gas to Tennessee Gas Transmission Company (TGT) from acreage located in Texas Railroad Commission District No. 6. Respondents propose to execute contract amendments with TGT which will eliminate all price escalation provisions, except those providing for future tax reimbursement, and provide for a single total rate of 15.0¢ per Mcf of natural gas for the remaining terms of the respective contracts, each of which extend to November 1, 1979.

On September 4, 1964, Respondents each filed proposed rate increases which were suspended for the statutory period by orders of the Commission in the above-entitled proceedings. Respondents have not filed appropriate motions under the Natural Gas Act to make the proposed increased rates effective. Therefore, we shall permit Respondents to withdraw their respective proposed increases, and shall terminate the proceedings thereon.

The proposed settlements are consistent with the provisions of the Second and Ninth Amendments to the Commission's Statement of General Policy No. 61–1, 18 CFR 2.56, and their acceptance would serve the public interest.

However, we desire to make it clear that acceptance of Respondents' offers of settlement shall not be construed as approval of any future increased rate filed in accordance with their reservation of the right to file increases to cover future tax increases as provided for in the offers of settlement, and is without prejudice to any findings or orders of the Commission in any future proceedings, including area or other similar proceedings, involving Respondents' respective rates and rate schedules.

The Commission finds:

The proposed settlement of the above-designated proceedings, on the basis described herein, as more fully set forth in the offers of settlement filed with the Commission by Respondents on May 24, 1965, is in the public interest, and approval thereof is appropriate to carry out the provisions of the Natural Gas Act.

The Commission orders:

(A) The offers of settlement filed by each of the Respondents on May 24, 1965, are approved in accordance with the provisions of this order.

(B) The notices of change in the rate filed by each of the Respondents on September 4, 1964, under their respective FPC Gas Rate Schedules involved herein which were suspended in the above-entitled proceedings, are hereby deemed to be withdrawn.

(C) The proposed settlement rate of 15.0¢ per Mcf of natural gas at 14.65 psia, under each of the proposals approved hereby, shall be effective as of the

date of this order, provided that Respondents shall each file with the Commission within thirty days from such date an executed contract amendment with TGT in compliance with the terms of its proposal, and a notice of change in rate providing for the settlement rate.

(D) Upon notification by the Secretary of the Commission that each of the Respondents has complied with the terms and conditions of this order, each of the above-designated proceedings shall terminate without further order of the Commission.

(E) The acceptance by the Commission of Respondents' offers of settlement is without prejudice to any findings or determinations that may be made in any proceeding now pending, hereafter instituted by or against each of them, and is without prejudice to claims or contentions which may be made by each of them, the Commission staff, or any affected party hereto, in any proceeding, including area rate or similar proceeding.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

KANSAS–NEBRASKA NATURAL GAS COMPANY, INC., DOCKET NO. CP65–289; KANSAS–NEBRASKA NATURAL GAS COMPANY, INC., DOCKET NO. CP63–340

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY, PERMITTING AND APPROVING ABANDONMENT, AND AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued July 19, 1965)

On March 16, 1965, Kansas-Nebraska Natural Gas Company, Inc. (Applicant), Phillipsburg, Kansas, filed in Docket No. CP65–289 an application pursuant to Sections 7(b) and 7(c) of the Natural Gas Act for permission and approval to abandon certain natural gas facilities and for a certificate of public convenience and necessity authorizing Applicant to construct and operate certain natural gas facilities, to increase the volume of storage gas in its Huntsman, Nebraska underground reservoir, and to change the operation of certain existing facilities, all as more fully set forth in the application.

Specifically, Applicant seeks (1) certificate authorization to: (a) construct and operate approximately 24 miles of 12-inch pipeline between Northport and Sidney, Nebraska (Huntsman Plant north of Sidney), replacing an equal length of 8-inch pipeline between the same points; (b) increase the maximum volume of storage gas which may be maintained in the Huntsman, Nebraska storage facility to 6,000,000 Mcf in lieu of operation of said field at maximum pressure of 568 psia at the wellhead (shut-in), as authorized by Commission order issued July 19, 1963 in Docket No. CP63–340, 30 FPC 356. (c) operate certain existing facilities, consisting of 14.4 miles of 4-inch pipeline used to provide natural gas service to Kimball, Nebraska, for the transportation of natural gas in interstate rather than in intrastate commerce; and (2) permission and approval to abandon four compressor units totaling 345 horsepower, two of which are located at Applicant's Scottsbluff, Nebraska Compressor Station and the other two of which are located at Applicant's Northport, Nebraska station.

Total estimated cost of Applicant's proposed construction is $570,000 not including salvage credits, and will be financed with current working capital.

On April 2, 1965, Colorado Interstate Gas Company (Colorado) filed a petition to intervene in this proceeding, and subsequent thereto on June 16, 1965, filed a notice of withdrawal thereof. It appears the request of Colorado to withdraw its petition to intervene should be granted.

After due notice, no petition to intervene other than the one withdrawn by Colorado, notice of intervention or protest to the granting of the application, has been filed.

At a hearing held on July 16, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, submitted in support of the authorizations sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Kansas-Nebraska Natural Gas Company, Inc., a Kansas corporation having its principal place of business in Phillipsburg, Kansas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of April 6, 1943, in Docket No. G–259 (3 FPC 966).

(2) The facilities proposed to be abandoned by Applicant as hereinbefore described and as more fully described in the application filed in Docket No. CP65–289 are used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and such abandonment is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(3) The proposed abandonment of the aforesaid facilities by Applicant is permitted by the public convenience and necessity and permission and approval therefor should be granted as hereinafter ordered.

(4) The proposed construction and operation of facilities, and the transportation of natural gas in interstate commerce by applicant as hereinbefore described and as more fully described in the application are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(5) The aforesaid proposed construction and operation of facilities, and the transportation of natural gas in interstate commerce are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(6) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(7) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(8) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the request of Colorado Interstate Gas Company to withdraw its petition to intervene filed in the proceeding on April 2, 1965, be granted.

(9) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order in Docket No. CP63–340, issued July 19, 1963, be amended as hereinafter ordered.

The Commission orders:

(A) Permission for and approval of the abandonment by Applicant of the facilities hereinbefore described, as more fully described in the application are hereby granted.

(B) A certificate of public convenience and necessity is issued to Kansas-Nebraska Natural Gas Company, Inc., authorizing the construction and operation of facilities and the transportation of natural gas as hereinbefore described, all as more fully described in the application.

(C) The certificate issued by paragraph (B) above and the rights granted thereunder are hereby conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(D) Applicant shall advise the Commission of the date of abandonment of the facilities as authorized in paragraph (A) above within ten days of such abandonment.

(E) The facilities hereby authorized shall be completed and placed in actual operation, and the transportation of gas authorized in paragraph (B) above shall commence, as provided in paragraph (b) of Section 157.20 of the aforesaid Regulations within 12 months of the date on which this order issues.

(F) The request of Colorado Interstate Gas Company filed on June 16, 1965, to withdraw its petition to intervene filed in this proceeding on April 2, 1965, is hereby granted.

(G) The Commission's order issued July 19, 1963 in Docket No. CP63-340, be amended by authorizing the Applicant to increase the maximum volume of storage gas which may be maintained in the Huntsman, Nebraska storage facility to 6,000,000 Mcf in lieu of operation of said field at a maximum pressure of 568 psia at the wellhead (shut-in).

(H) In all other respects the order issued in Docket No. CP63-340, shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

NATURAL GAS PIPELINE COMPANY OF AMERICA, DOCKET NO. RP65-50

ORDER DENYING PETITION FOR EXTENSION OF TIME

(Issued July 19, 1965)

Natural Gas Pipeline Company of America (Natural) on July 12, 1965, filed a petition for an extension of time within which it is required to submit a Cost and Revenue Report. Natural, in its petition, requests that this requirement be suspended pending court review of our order, or in the alternative, during the course of negotiations with our staff looking toward a settlement of the issues raised by this rate proceeding and investigation.

The Commission, by order issued April 2, 1965,[1] instituted an investigation of Natural's rates and required that the company submit by April 30, 1965, a Cost and Revenue Report which we found necessary and appropriate to assist the Commission in the proper administration of the Act by expediting this investigation. Twice Natural has petitioned for reconsideration of our order instituting the investigation and requiring this Report. After full considera-

[1] "Order Instituting Investigation and Requiring Reporting of Cost and Revenue Data," *Natural Gas Pipeline Company of America*, Docket No. RP65-50, 33 FPC 666.

tion, we found Natural's objections to be without merit and reaffirmed the necessity and propriety of such a Cost and Revenue Report.

Twice at Natural's request, the time for filing the Cost and Revenue Report has been extended. By order issued April 30, 1965,[2] the time was extended to June 1, 1965. By Notice issued June 3, 1965,[3] the time was further extended to July 15, 1965. In total, Natural has already had three and one half months for the preparation and submission of this report.

Natural does not assert in its petition that it is making a good faith effort to comply with our order and that more time is necessary to complete the task. We have not been informed that the company has done any more than undertake the preliminary preparation for the performance of its task. The company states only that pending court review and continuance of settlement negotiations proper administrative procedure requires that the filing requirement be suspended. We do not agree.

That our orders are presumptively valid requires no citation; we will not lightly annul their effectiveness. Moreover, the initiation of a review proceeding does not *ipso facto* operate as a stay of our order, and, in the more than three weeks that have elapsed since Natural's petition for review of our order of April 2 was filed in the United States Court of Appeals for the Seventh Circuit (No. 15208), no motion for stay has been filed in that court of which we have had any notice.

To our knowledge there has been no indication to Natural by our orders or by our staff[4] that the filing requirement was, or should be, suspended during such negotiations. On the contrary, the data we have called for will aid the proper and efficient conduct of such negotiations.

Absent extenuating circumstances, we do not feel that it is proper to stay the effect of our orders in the absence of assurances that petitioner is making a good faith effort to comply therewith and needs additional time to complete the required task. It appears that this situation is one in which a party has deliberately embarked on a course of non-compliance with our order, with the intention of trying to avoid the consequences of such violation by last minute requests for further extension.

The company also suggests that the negotiations now in progress may soon result in a mutually satisfactory settlement and thus moot the entire issue. However, no formal offer has been submitted as yet and the negotiations are still in an inchoate stage with an uncertain outcome. In view of these considerations we must reject the conclusion that such a settlement is imminent.

There is an additional and independent reason for denial of Natural's petition. Our Regulations provide in Section 1.13(d) that petitions for extension of time must be made "within four-fifths of the period" prescribed. The notice of June 3, 1965 extended the time for filing to July 15, 1965; the petition filed July 12, 1965 was not within four-fifths of the time prescribed and is untimely. As we have stated, neither the pendency of review nor the continuance of negotiations were reasonable grounds for failure to request a further extension before this time.

The Commission orders:

The petition filed by Natural on July 12, 1965 is hereby denied.

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[2] "Order Denying Petition for Reconsideration and Withdrawal and/or Termination of Commission Order of April 2, 1965, and Granting Extension of Time," *Natural Gas Pipeline Company of America*, Docket No. RP65–50, 33 FPC 929.

[3] "Notice of Extension of Time," *Natural Gas Pipeline Company of America*, Docket No. RP65–50.

[4] Staff Counsel's answer to Natural's petition of April 14, 1965, at page 15, it was specifically pointed out that Staff did not view the settlement negotiations as obviating the necessity for a filing of a Cost and Revenue Report.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

NORTHERN STATES POWER COMPANY, DOCKET NO. E-7232

ORDER AUTHORIZING ISSUANCE OF COMMON STOCK

(Issued July 19, 1965)

Northern States Power Company (Applicant), incorporated under the laws of the State of Minnesota and qualified to do business in the States of North Dakota and South Dakota with its principal business office at Minneapolis, Minnesota, filed an application on June 18, 1965, with the Federal Power Commission pursuant to Section 204 of the Federal Power Act, seeking an order authorizing it to issue 772,008 additional shares of its Common Stock.

The 772,008 additional shares of Common Stock are to be issued and sold in the following manner; (1) the shares are to be offered to the Applicant's Common Stockholders at a subscription price to be set on July 26, 1965, on the basis of one new share for each twenty shares held by the stockholders; (2) new shares not subscribed for by the stockholders plus any outstanding shares acquired in market stabilization transactions are to be offered to present and retired employees of the Applicant at the subscription price; and (3) shares not subscribed for by holders of subscription warrants and shares not taken by employees will be sold at competitive bidding at the same price per share as the subscription price.

According to the application, an invitation for competitive proposals will be published in The Wall Street Journal on July 20, 1965. Each proposal, which may be made by a single bidder or by a group of bidders must be for the purchase of all the unsubscribed stock plus all outstanding stock acquired by the Applicant for the purpose of market price stabilization, at the same price per share as the subscription price. At least forty hours prior to the time for the presentation and opening of the proposals, prospective bidders will be informed of the subscription price by telegraphic notice. Proposals must be accompanied by deposits of $250,000, and be presented to the Applicant before 10:00 a.m. CDST on July 28, 1965. If the Applicant accepts any proposal, it will accept that proposal which specifies the lowest aggregate amount of compensation to be paid by the Applicant to the bidder or bidders as compensation for their commitments and obligations in connection with the unsubscribed shares plus any outstanding shares acquired for market stabilization.

According to the application, proceeds from the sale of the additional shares of Common Stock will be added to the general funds of the Applicant and will be used to retire all short-term bank loans outstanding at the time the proceeds are received and to provide funds for construction expenditures. The above mentioned bank loans, expected to aggregate $25,000,000, have been or will be incurred in connection with Applicant's 1965 construction program, expenditures for which are presently estimated at $51.6 million. This construction program was described in our order issued June 11, 1965 in the matter of *Northern States Power Company*, Docket No. E-7223, 33 FPC 1255.

Written notice of the application has been given to the North Dakota Public Service Commission and the South Dakota Public Utilities Commission and to the Governor of each of those States. Notice has also been published in the Federal Register on June 29, 1965 (30 F.R. 8289), stating that any person desiring to be heard or to make any protest with reference to the application shall file petitions or protests on or before July 12, 1965 with the Federal Power

Commission, Washington, D.C., 20426. No protest, petition or request to be heard in opposition to the granting of the application has been received. By order entered June 21, 1965, the Public Service Commission of the State of North Dakota approved this proposed transaction.

The Commission finds:

(1) Applicant, a corporation, is a public utility within the meaning of Section 204 of the Federal Power Act, subject to the jurisdiction of the Commission, as heretofore described and set forth in the Commission's order issued February 27, 1964, *Northern States Power Company*, Docket No. E–7145 (31 FPC 464).

(2) The proposed issuance and sale of Common Stock, as described above, will constitute an issuance of securities within the purview of Section 204 of the Federal Power Act.

(3) Applicant is not organized and operating in a State under the laws of which the security issue here involved is regulated by a State Commission within the meaning of Section 204(f) of the Act, and the proposed issuance of securities is, therefore, not exempt by virtue of that Section from the requirements of Section 204 of the Act.

(4) The proposed issuance and sale of Common Stock, as hereinafter authorized, will be for a lawful object, within the corporate purposes of Applicant and compatible with the public interest, which is appropriate for and consistent with the proper performance by Applicant of service as a public utility and which will not impair its ability to perform that service, and is reasonably appropriate for such purposes.

(5) The period of public notice given in this matter is reasonable.

The Commission orders:

(A) The proposed issuance and sale of Common Stock, upon the terms and conditions and for the purposes specified in the application, as described above, are authorized, subject to the provisions of this order.

(B) The proposed issuance and sale of Common Stock in the manner set forth in the application shall not be consummated until:

(i) Applicant shall have amended its application pursuant to the requirements of Section 34.2(g) of the Commission's Regulations under the Federal Power Act relating to compliance with competitive bidding requirements, and Section 34.2(h)(1) of those Regulations relating to affiliation, and shall have either filed such amendments or shall have mailed them and advised the Commission by telephone and telegraph, as contemplated in Section 34.9 of the Regulations.

(ii) The Commission, by further order, shall have approved the price per share to be received by Applicant for the Common Stock and the amount of any compensation for underwriters to be paid by Applicant in connection with the Common Stock.

(C) This authorization shall expire unless the transactions hereby authorized are consummated within 90 days from the date of issuance of this order.

(D) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations of cost, or any other matter whatsoever now pending or which may come before this Commission.

(E) Nothing in this order shall be construed to imply any guarantee or obligation on the part of the United States with respect to any securities to which this order relates.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

ANNUAL REPORT FORM NO. 2—NATURAL GAS COMPANIES—TAKE OR PAY GAS PURCHASE PREPAYMENTS AND DELIVERY OBLIGATIONS SCHEDULES, DOCKET NO. R-253

ORDER NO. 301

AMENDING ANNUAL REPORT FORM F.P.C. NO. 2

(Issued July 19, 1965)*

On December 24, 1963, the Commission issued a notice of proposed rulemaking in this proceeding (29 F.R. 21, January 1, 1964) wherein it proposed the addition of two new schedules, supplementing the information supplied in existing schedules, to the annual report, F.P.C. Form No. 2, required by § 260.1 of Regulations Under the Natural Gas Act. The information to be supplied is required to enable the Commission to make thorough analyses of the prepayments made by pipeline companies and their customers under take-or-pay sales agreements. Existing schedules are couched in general terms and do not provide a specific form for entering detailed information on prepaid gas purchases or sales. On the other hand, the detailed information to be required hereafter will enable the Commission to evaluate annually the growth or decline in the effect of the use of prepayment sales agreements and the dollars involved. Since prepayments received by the pipeline companies under field sales and other agreements have an offsetting effect on the prepayments paid out by such pipeline companies, it is necessary for the Commission, as well as other interested persons, to have the detail of such offsetting amounts in order to evaluate the net effect of prepayments on the pipeline companies—the basic purpose of the proceeding.

The notice of proposed rulemaking elicited responses from six pipeline companies, one distributor and two state commissions. The opposition was directed principally against instruction paragraphs Nos. 2 and 5 in both schedules.

Instruction No. 2 would require the companies to submit the dates of the latest gas reserve determinations, on which take-or-pay volumes are frequently based, together with related explanations. The respondents contend that unless this information is kept confidential their future negotiations with producers would be hampered and subsequent reserve determinations prejudiced. Further, they point out that this same matter is involved in the second phase of the proceeding in Docket No. R-239, wherein the Commission prescribed the annual report of gas supply, F.P.C. Form No. 15 (See Order No. 279, issued March 31, 1964, 31 FPC 750, 29 F.R. 4873). We agree that it would be more appropriate to consider this matter in the context of a different proceeding and accordingly have removed instruction paragraph 2, proposed in the notice, from both forms.

The objections to the 5th instruction in each form are of a similar nature. The instruction, as proposed, would require the companies to list the suppliers or customers with whom there is a controversy over take-or-pay provisions and to detail the nature of the controversy. The pipeline objectors state that to give a "concise explanation" of the controversy would be impossible and the explanation might jeopardize their positions in any litigation which might result from the controversy. The objection is well taken and we are revising instruction 5 in each schedule to eliminate the necessity for any explanation other than that which the company chooses to make; if further clarification is required we can communicate with the company directly.

*Published in the Federal Register on July 24, 1965 (30 F.R. 9263).

We are also adopting suggested changes in the wording of the titles of the schedules in the interest of clarity. Certain additions to the proposed schedules suggested by a distributing company which would add a reporting burden not warranted or contemplated by the notice have not been adopted.

The Commission finds:

(1) The amendments to the regulations and to the annual report F.P.C. Form No. 2 are necessary and appropriate for the administration of the Natural Gas Act.

(2) The revisions made in the form of the schedules originally proposed were prompted by various suggestions made in the comments received and since they do not amount to a significant departure from those proposed further notice thereof prior to adoption is unnecessary.

The Commission, acting pursuant to the provisions of the Natural Gas Act, particularly sections 10 and 16 thereof (52 Stat. 826, 830; 15 U.S.C. 717i, 717o), *orders:*

(A) Section 260.1, Subchapter G, Chapter I, Title 18 of the Code of Federal Regulations, and F.P.C. Form No. 2, prescribed thereby, are amended as follows:

1. Paragraph (c) of § 260.1 is amended by inserting in the list of schedules set out in that paragraph, to follow the line "Prepayments," the words "Prepaid gas purchases under purchase agreements,"

2. The said paragraph (c) is also amended by inserting, to follow the line "Other deferred credits," the words "Undelivered gas obligations under sales agreements."

3. Annual Report F.P.C. Form No. 2, prescribed by § 260.1(a) is amended by revising the instruction paragraph 2 in the schedule "Prepayments (Account 165)" to read as follows:

> 2. For any prepaid gas purchases under take-or-pay clauses of gas purchase agreements show the total amount and report particulars thereof as called for by the schedule. Prepaid Gas Purchases Under Purchase Agreements, page 210A. Show also in this schedule, but as a separate item, any prepaid gas purchases classified in Account 165, Prepayments, but not related to take-or-pay arrangements.

4. The said Annual Report F.P.C. Form No. 2 is further amended by adding the following new instruction paragraph 4. to the schedule "Other Deferred Credits (Account 253)" on page 225:

> 4. For any undelivered gas obligations to customers under take-or-pay clauses of sale agreements, show the total amount and report particulars thereof as called for by the schedule, Undelivered Gas Obligations Under Sales Agreements, page 225A. Show also in this schedule, but as a separate item, any advance billings or receipts for gas sales or service classified in Account 253 but not related to take-or-pay arrangements.

5. The said Annual Report F.P.C. Form No. 2 is further amended by adding two new schedules entitled "Prepaid Gas Purchases Under Purchase Agreements" (page 210A) and "Undelivered Gas Obligations Under Sales Agreements" (page 225A), as set out, respectively, in Appendix A* and Appendix B* hereto.

* * * * * * * * *

[Secs. 10, 16, 52 Stat. 826, 830; 15 U.S.C. 717i, 717o.]

*Omitted in printing.

(B) The amendments to § 260.1 shall be effective *August 24, 1965;* those to the Annual Report F.P.C. Form No. 2 shall be effective for the reporting year 1965 and thereafter.

(C) The Secretary shall cause prompt publication of this order to be made in the Federal Register.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

ARIZONA PUBLIC SERVICE COMPANY, DOCKET NO. E-7226

ORDER AUTHORIZING SALE OF FACILITIES

(Issued July 20, 1965)

Arizona Public Service Company (Public Service) filed an application on May 25, 1965, for an order, pursuant to Section 203 of the Federal Power Act, authorizing the sale to Salt River Project Agricultural Improvement and Power District (Salt River) of certain transmission facilities located in and near Public Service's switchyard of its Ocotillo Steam Generation Power Plant in the City of Tempe, Arizona.

Public Service was incorporated under the name of Central Arizona Light and Power Company under the laws of the State of Arizona on February 16, 1920 and is qualified to do business in Arizona and New Mexico. It is engaged principally in the generation, transmission, sale at wholesale, and distribution of electric energy in a service area encompassing approximately 40,000 square miles in 10 of Arizona's 14 counties. Public Service's facilities are operated as eight distinct systems which are in many cases physically separated from each other but connected electrically through the facilities of other systems. Public Service owns and operates the Four Corners steam-electric generating station in New Mexico and transmission facilities connecting that station with its system in Arizona. During 1964, electric energy was transmitted from Four Corners station to Public Service's Arizona system. Public Service also receives power from United States Bureau of Reclamation's Parker-Davis system, some of which is generated in California and Nevada.

Salt River was organized in 1937 pursuant to provisions of the Agricultural Improvement District Act of Arizona and is a political subdivision of the State of Arizona. Salt River is engaged principally in the electric utility business rendering electric service in parts of Maricopa, Gila, and Pinal Counties in Arizona. It also operates the Salt River project, a Federal Reclamation Project.

The facilities to be sold by Applicant are transmission facilities located in and near its switchyard of the so-called Ocotillo Steam Generation Power Plant in the City of Tempe, Arizona. Applicant proposes to sell facilities comprising of Bay No. 9 consisting of oil circuit breaker, related protective apparatus and 69 kv tie line between its switchyard and that of Salt River. According to the application, facilities to be transferred will be used for the rendition of power transmission by Salt River.

The facilities are to be sold for a cash consideration of $99,398. This amount is the same as the original cost of the facilities, that is, the original cost as recorded, before deduction of accumulated provision for depreciation.

Public Service will realize a gross profit of $15,614 (consideration of $99,398 — net plant of $83,784) on the sale. This profit, however, will mean the payment of additional taxes estimated at $8,469 by Public Service. On its books, Public Service proposes to record the liability for additional taxes by a credit of $8,469 to Taxes Accrued, and the net amount of the profit, $7,145, will be credited to Earned Surplus.

Written notice of the application has been given to the Arizona Corporation Commission and to the Governor of that State. Notice was also published in the Federal Register on June 8, 1965 (30 F.R. 7506), stating that any person desiring to be heard or to make any protest with reference to said application should on or before June 23, 1965, file with the Federal Power Commission, Washington, D.C., 20426, petitions or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). No protest or petition or request to be heard in opposition to the granting of the application has been received.

The Commission finds:

(1) Public Service, a corporation, is a public utility within the meaning of Section 203 of the Federal Power Act subject to the jurisdiction of the Commission as heretofore described and set forth in the Commission's order issued July 6, 1961, in *Arizona Public Service Company*, Docket No. E–6981 (26 FPC 36).

(2) By the proposed sale of facilities, Public Service will dispose of part of its facilities subject to the jurisdiction of the Commission within the meaning and subject to the requirements of Section 203 of the Federal Power Act.

(3) The proposed sale of facilities of Public Service, as described above, upon the terms and conditions set forth in the application, and subject to the provisions of this order will be consistent with the public interest as expressed in Section 203 of the Federal Power Act.

The Commission orders:

(A) The proposed sale by Public Service of the aforementioned electric facilities, all as described above, is authorized and approved upon the terms and conditions and for the purposes set forth in the application subject to the provisions of this order.

(B) Public Service shall record the proposed transaction herein authorized and the facilities and properties referred to above as provided in the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees.

(C) This authorization shall expire unless the transaction herein authorized and approved is consummated within 90 days from the date of issuance of this order.

(D) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuations, estimates or determinations of cost, or any matter whatsoever now pending or which may come before this Commission or any other regulatory body and nothing herein shall be construed as an acquiescence by this Commission in any estimate or determination of cost or any valuation of property claimed or asserted.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

THE DETROIT EDISON COMPANY AND CONSUMERS POWER COMPANY, DOCKET NO. E-7206; THE DETROIT EDISON COMPANY, DOCKET NO. E-7207

ORDER ON REQUESTS FOR PERMISSION TO WITHDRAW APPLICATIONS

(Issued July 20, 1965)

These proceedings arise out of a joint application filed by The Detroit Edison Company (Detroit) and Consumers Power Company (Consumers) on November 13, 1964 for authority under Section 202(e) of the Federal Power Act to export electric energy to Canada at a maximum rate of 750,000 kva, and an application by Detroit of the same date for a Presidential Permit pursuant to Executive Order No. 10485 to authorize the construction of additional facilities at the international boundary so as to provide an interconnection between Detroit's St. Clair Generating Station and the proposed Lambton Generating Station of The Hydro-Electric Power Commission of Ontario (Hydro) to be located near Courtright, Ontario. For the reasons discussed below Detroit and Consumers on May 17, 1965, have filed a "Notice of Withdrawal" of their applications, and this, after certification by the examiner, is now before us for disposition.

In 1953 Detroit was originally granted a Presidential Permit to maintain two interconnections with Hydro across the international boundary—one across the Detroit River at Windsor and one across the St. Clair River at Sarnia, Ontario. At the same time we granted permission to export electric energy over these interconnections.[1] The maximum amount to be exported was increased until by order of April 6, 1964, it became 1,000,000,000 kwh annually at 600,000 kva.[2]

The present applications would increase the maximum amount of energy to be transmitted by 150,000 kva up to 750,000 kva and provide for a third interconnection with Hydro across the St. Clair River. It would deliver energy at 230 kv but is designed for eventual operation at 345 kv.

The present export application includes an interconnection agreement between Consumers, Detroit and Hydro dated January 20, 1965. A "Supplement C" to the agreement states:

> It is the intent of the parties to this interconnection agreement to assure continuation of the operation of their systems within the scope of Section 202(f), of the Federal Power Act which provides that, "The ownership or operation of facilities for the transmission or sale at wholesale of electric energy which is (a) generated within a State and transmitted from that State across an international boundary and not thereafter transmitted into any other State, or (b) generated in a foreign country and transmitted across an international boundary into a State and not thereafter transmitted into any other State, shall not make a person a public utility subject to regulation as such under other provisions of this part." Therefore, as in the past, any energy which Michigan may export to Hydro is to be used only within Canada, and any energy which Michigan may import from Hydro is to be generated wholly within Canada.

[1] 12 FPC 1359.
[2] 16 FPC 1348; 31 FPC 781.

Specific provisions are included, which appear to prevent a flow of energy from New York through Canada to Michigan or from Michigan through Canada to New York.

By order of November 12, 1964, the Michigan Public Service Commission approved the proposed interconnection as benefiting the three parties and their respective service areas. The Canadian National Energy Board has approved Hydro's participation in the proposed transaction, but has voiced its opposition to the restrictive provisions of Supplement C, which it termed "repugnant."

Section 202(e) provides for our issuing an order authorizing the export of electric energy unless it would "impair the sufficiency of electric supply within the United States or would impede or tend to impede the coordination in the public interest of facilities subject to the jurisdiction of the Commission." Because we thought the Supplement C provisions raised questions under Section 202(e), in our order issued February 4, 1965, 33 FPC 177, we provided for a hearing.

Our staff made a field investigation of the applicants' facilities and energy transactions. Hearing sessions in the nature of prehearing conferences were held before Presiding Examiner William C. Levy on March 15, April 5 and May 5, 1965, and a schedule was prescribed for the presentation of evidence and the commencement of cross-examination.

On April 23, 1965, the staff filed a motion with the Commission for a subpoena duces tecum requesting the applicants to produce certain log sheets showing typical energy transactions between the two applicants and also between applicants and Hydro. The staff recited that the applicants had refused to produce these data, and that they were necessary to enable the staff to determine whether the Supplement C restrictions would impede or tend to impede the coordination of the Michigan companies and whether conditions should be attached to the grant of the Presidential Permit. The applicants answered that the data sought was irrelevant and that the staff was in reality attempting to inject into these proceedings the question of the Commission's jurisdiction over the applicants. Upon reference by the Commission the examiner issued subpoenas directed to Detroit and Consumers, and his action was affirmed by Commission order of May 13, 1965.

No useful purpose would be served in determining whether, in light of this order, we should reconsider our May 13, 1965 decision affirming the Presiding Examiner's order that a subpoena be issued, since the material covered by that subpoena must in any case be furnished for the purposes of the separate jurisdictional proceeding. We accordingly leave that subpoena order standing. Suffice it to say here that it will be up to the Examiner to decide whether any of the material covered by that subpoena is properly admissible in this proceeding.

In their "Notice of Withdrawal" the applicants again protest the jurisdictional issue being in these proceedings and point out that this issue would greatly complicate and protract the proceedings so as to render the applications moot. They contend that various discussions and conferences which have been held with the Commission staff and before the examiner have proved fruitless, and that they must proceed with the construction of alternative facilities. Therefore, they say, the applications will not be supported by testimony, or other evidence, and they state they are withdrawing their applications.

We cannot require the applicants to prosecute the applications or construct the proposed additional interconnection with Hydro if they do not choose to do so. However, on the basis of the applications it appears that the contemplated interchange of electric energy between the applicants and Hydro, in order to meet emergencies on the systems on either side of the Canadian

boundary, may be very desirable in the public interest. Therefore we are setting forth a procedure below which will divorce, to the extent possible, the time consuming and complicating jurisdictional questions from the present proceeding and enable the applicants to go forward with their applications promptly. To this end we shall deny their request to withdraw their applications in conformity with our Rules as discussed below.

By an order issued this day, *infra*, p. 83, we are initiating a separate proceeding to determine the jurisdictional status of the Michigan companies under the Federal Power Act. In that order we direct Detroit and Consumers to make their records available at the request of the staff. At the same time we are remanding the present proceedings to the examiner so that they may go forward to a determination of the propriety of the Supplement C restrictions including their impact on the coordination of the New York and Michigan facilities, but with no determination of the jurisdictional status of the Michigan facilities. We wish to emphasize that we are not now rendering any judgment as to the impact, if any, of Supplement C because any such determination can only be rendered after hearing in which the relevant evidence is presented. However, in view of Section 202(a) of the Act providing that it shall be our duty to promote and encourage interconnection and coordination and the limitation of Section 202(e) with respect to transmission of electric energy to a foreign country which would impede coordination, we cannot approve the instant application unless we are sure that it meets the statutory standards.

In remanding this case to the examiner in accordance with the procedure above with instructions to refrain from receiving any evidence that relates solely to the jurisdictional status of the applicants and to refrain from making any findings as to our jurisdiction over the facilities of the applicants or their public utility status, we should have met in large degree the objections of the applicants and have provided them with the necessary assurances that they may proceed with the prosecution of their applications.

Our authority to deny the withdrawal of the applications is found in Section 1.11(d)(1) of our Rules of Practice and Procedure, which provides that a participant desiring to withdraw a pleading may file a notice of withdrawal which shall effect the withdrawal 30 days after the filing unless otherwise ordered by the Commission for good cause. However, the section provides that this paragraph "shall not be construed as effecting, without express permission of the Commission withdrawal of: (1) any pleading in any proceeding in which a hearing has been held or convened; * * *." In our opinion our order of February 4, 1965, "convened" a hearing by prescribing that a public hearing be held on March 15, 1965. While this session and the following sessions on April 5, and May 5, 1965 turned out to be in the nature of prehearing conferences, the examiner called for cross-examination to begin on June 1, 1965. Although this session necessarily had to be postponed since the notice of withdrawal was pending before the Commission, a hearing had been "convened" not only by the Commission but by the examiner.

The basis of this rule is that once the hearing has been convened one who has invoked the Commission's processes should not be allowed to terminate them at will, particularly where he remains free to reapply at a more propitious time. In the present proceeding the staff's case is virtually completed, and it is possible to dispose of these applications without making a jurisdictional determination. Thus we might eventually find that the Supplement C restrictions do not prevent our granting the applications, or if conditions must be inserted in our order, they may not be of a nature that will cause the applicants to abandon an interconnection proposal which could be of benefit to the public both in the United States and Canada.

The Commission orders:

(A) The request of Detroit and Consumers to withdraw their applications in Docket Nos. E–7206 and E–7207 is denied.

(B) These proceedings are hereby remanded to the Presiding Examiner for further proceedings in accordance with this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

THE DETROIT EDISON COMPANY AND CONSUMERS POWER COMPANY, DOCKET NO. E–7234

ORDER INITIATING INVESTIGATION AND HEARING

(Issued July 20, 1965)

By this order we initiate an investigation of The Detroit Edison Company (Detroit) and the Consumers Power Company (Consumers) to determine whether each of those companies is a "public utility" within the meaning of and subject to the regulation under the Federal Power Act.

Detroit is a corporation engaged in the generation, transmission and sale of electric energy at wholesale and at retail. It is organized under the laws of the State of New York and maintains its principal business office in Detroit, Michigan. Consumers is a corporation also engaged in the generation, transmission and sale of electric energy at wholesale and retail. Consumers is organized under the laws of the State of Maine and maintains its principal business office in Jackson, Michigan. F.P.C. Form No. 1 filed by each company discloses that although each company makes sales at wholesale for resale, none of the rate schedules for these transactions is on file with this Commission, nor have these utilities complied with a number of other requirements of the Federal Power Act and the regulations thereunder which would be applicable to them if one or both are public utilities as defined in the Act.

From information on file with the Commission, it appears that Detroit and Consumers have attempted to fully coordinate the electric operation and planned expansion of the two systems. It further appears that each of the systems maintains a high voltage transmission network and these networks are interconnected at three points with each other and the resulting transmission network of the Michigan Pool is connected at two existing points with the transmission network of the Ontario Hydro System. (In its application for Presidential Permit presently under consideration under Docket No. E–7207, Detroit proposes to add another high voltage interconnection). It also appears that through Ontario Hydro's high voltage transmission network the Michigan Pool is connected to the high voltage transmission networks of 140 major electric systems in the United States organized in three groups commonly known as CANUSE, PJM and the Interconnected System Group, all operating in synchronism and that as a result of the operation of these interconnections, Detroit and Consumers may own or operate facilities for the interstate transmission and sale for resale of electric energy transmitted from New York and consumed in Michigan. The companies deny that they are public utilities within the meaning of the Federal Power Act and hence, that they are subject to the system of safeguards Congress provided in that Act to protect the public with respect to such matters as accounting procedures, mergers, wholesale rates and issuance of securities.

The Commission finds:

In view of the foregoing circumstances, it is necessary and appropriate for the purposes of carrying out the provisions of the Federal Power Act, and particularly, but not in limitation of the foregoing, Sections 201, 208, 301, 307, 308 and 309 (16 U.S.C. §§ 824g, 825, 825f–h) that an investigation and hearing be initiated to determine whether Detroit and Consumers are each a "public utility" within the meaning of, and subject to the requirements of the Federal Power Act.

The Commission orders:

(A) At a time and place and before a hearing examiner to be specified, a public hearing shall be held to find and determine:

(1) Whether Detroit and Consumers are each a "public utility" within the meaning of Section 201 of the Federal Power Act and required to comply with the Federal Power Act and the Commission's Regulations thereunder.

(2) Whether orders or other actions may be necessary and appropriate to bring about a compliance with the Federal Power Act and the Commission's Regulations thereunder.

(B) A prehearing conference shall be held before a presiding examiner commencing at 10 a.m., (EDST), August 10, 1965, in a hearing room of the Federal Power Commission, 441 G Street NW., Washington, D.C., 20426, for purposes as specified in the Commission's Rules of Practice and Procedure.

(C) In order that the foregoing issues may be properly determined, an investigation is hereby initiated and Detroit and Consumers are hereby directed pursuant to the provisions of Sections 201(b), 307 and 309 of the Federal Power Act to grant to authorized members of the staff of the Federal Power Commission, during regular business hours, free access to its property and the right upon their request to inspect and examine all of its accounts, records and memoranda including, but not limited to, the following: books, papers, correspondence, contracts, agreements, maps, reports of engineers, meter readings, and log sheets; and shall either furnish copies of such material at the request of the staff, or make such material available for reproduction by the staff or shall produce such material for use by the staff prior to and during said hearing at the Offices of the Commission, 441 G Street NW., Washington, D.C.

(D) Notices of intervention or petitions to intervene in this proceeding may be filed with the Federal Power Commission, 441 G Street NW., Washington, D.C., 20426, on or before August 5, 1965, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.37).

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

EASTERN SHORE NATURAL GAS COMPANY, DOCKET NO. CP65-345

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued July 20, 1965)

On April 28, 1965, Eastern Shore Natural Gas Company (Applicant), filed in Docket No. CP65-345 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of a lateral pipeline and metering and connecting

facilities, and the delivery of natural gas on an interruptible basis to Crothers Brothers for use in the processing of grain, all as more fully set forth in the application.

Applicant proposes to tap its present 6-inch transmission line and extend a 2-inch line approximately 200 feet to Crother's plant. The application states that the estimated annual delivery of 25,000 Mcf can be made from existing gas supplies.

The total estimated cost of the lateral, meter and regulating facilities proposed by the application is $2,995.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on July 16, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorization sought, and upon consideration of the record,

The Commission finds:

(1) Applicant, Eastern Shore Natural Gas Company, a Delaware corporation having its principal place of business in Salisbury, Maryland, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of November 29, 1957, in Docket No. G–12059, *et al.* (18 FPC 710).

(2) The proposed construction and operation of facilities and transportation of natural gas by Applicant as hereinbefore described, and as more fully described in the application and exhibits in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid construction and operation of facilities and transportation of natural gas are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is hereby issued to the Applicant in this proceeding, authorizing the construction and operation of facilities and the transportation of natural gas as more fully described in the application and exhibits in this proceeding, subject to the jurisdiction of the Commission, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be completed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the aforesaid Regulations within 6 months of the date on which this order issues.

(D) The certificate issued hereby is granted on the express condition that the interruptible service authorized herein shall be curtailed or interrupted to

the extent required to meet existing or future contracted maximum delivery obligations of Eastern Shore Natural Gas Company for firm service to its customers.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

NORTHERN NATURAL GAS COMPANY, CP65-1, CP65-91, CP65-338; NATURAL GAS PIPELINE COMPANY OF AMERICA, CP65-169, CP65-325; TRANSWESTERN PIPELINE COMPANY, CP65-208, C65-236, CP65-237, CP65-320

ORDER DENYING REQUEST FOR TEMPORARY CERTIFICATES AND MOTION FOR SEVERANCE

(Issued July 20, 1965)

On June 18, 1965, Northern Natural Gas Company (Northern) filed herein a request for temporary certificates authorizing it to construct and operate the facilities proposed in its applications in Docket Nos. CP65-1 and CP65-338. It also moved the Commission to sever from the above-consolidated proceeding the applications of Northern in Docket Nos. CP65-1, CP65-91 and CP65-338 and of Transwestern Pipeline Company (Transwestern) in Docket Nos. CP65-208 and CP65-236 and set said applications for a separate and immediate consolidated hearing.

Northern requests a temporary certificate to construct and operate 54 miles of 24-inch pipeline [1] at a cost of $4,408,200 to enable it to purchase and transport the initial contract volumes of gas from the Coyanosa and Gomez Fields into its Permian Basin system pipeline. As grounds for said request, Northern says that some of its contracts with producers in Coyanosa Field are already subject to cancellation by the producers due to the fact that Northern's proposed facilities in Docket No. CP65-1 were not certificated by April 1, 1965, and in the Gomez Field will be subject to cancellation in the latter part of January 1966, if no certificates have been granted to Northern by that time.

Northern alleges that the requested severance would expedite the determination of its applications.

On June 25, 1965, Natural Gas Pipeline Company of America (Natural) filed a response to Northern's request and motion, stating it did not object to Northern's request for temporary certificates, but objected to its motion for severance. Natural's objection is based upon the interdependence of Transwestern Pipeline Company's (Transwestern) competitive proposals to Northern and Natural in such common issues as facilities and rate design.

On July 12, 1965, Transwestern filed an answer opposing severance.

On June 28, 1965, The People of the State of California and the Public Utilities Commission of the State of California (California) filed an answer opposing the granting of Northern's request for temporary authorization on the ground that the possible expiration of contracts between Northern and its producers was an insufficient reason for the granting of temporary authorization and that denial of the temporary would not affect service to Northern's customers. It opposed severance on the ground that all of the applications in Phase II of this consolidated proceeding contain related issues and the requested severance would prolong the hearing to the detriment of all parties.

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[1] Consisting of 12 miles of pipeline from Gomez Field to Northern's Coyanosa to Kermit line, proposed in Docket No. CP65-338 and 42 miles of pipeline from Coyanosa Field to Kermit, Texas, as proposed in Docket No. CP65-1.

We agree with California on both counts. The request for temporary certificates does not meet the provisions of Section 7(c) of the Natural Gas Act in that it does not show such an emergency as requires temporary authority in order "to assure maintenance of adequate service or to serve particular customers." Furthermore, the contracts for the purchase of gas in the Gomez Field will not be subject to cancellation until January 1966. Thus the sole "emergency" alleged by Northern would be the possible cancellation of the Coyanosa contracts. Were the facilities constructed which Northern herein proposes, it may be prejudicial to the other interests in this competitive proceeding. We see no reason to risk a prejudgment of the issues in this competitive proceeding when it is clear that the gas from the Coyanosa Field is not immediately necessary to meet the needs of Northern's customers. The competitive applications of Transwestern, Northern and Natural involve the case of common facilities. The issues of allocation and rate design will be present in both cases. In our order of March 16, 1965 we deemed it necessary to consolidate these competitive applications for hearing. We see no reason to change the result of that order at this time.

The Commission orders:

(A) The request of Northern Natural Gas Company for temporary certificates, filed on June 18, 1965, is denied.

(B) The motion of Northern Natural Gas Company for severance, filed on June 18, 1965, is denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

RESPONSES BY NATURAL GAS PIPELINE COMPANIES TO APPLICATIONS FOR ORDERS UNDER SECTION 7(a) OF THE NATURAL GAS ACT, DOCKET NO. R-277

ORDER NO. 302

AMENDING PART 156 OF REGULATIONS UNDER THE NATURAL GAS ACT

(Issued July 20, 1965)*

Section 7(a) of the Natural Gas Act provides that whenever the Commission, after notice and opportunity for hearing, finds such action necessary or desirable in the public interest, it may by order direct a natural gas company, under certain conditions, to establish physical connection with and sell natural gas to a person or municipality engaged in the local distribution of natural gas.

Part 156 of the Regulations Under the Natural Gas Act sets out the procedures to be followed by a distributing company or municipality in making application for such an order pursuant to Section 7(a) of the Act. Section 156.7 thereof provides that the application shall be served by the Commission's Secretary on the company, denominated as "respondent," against which a Section 7(a) order has been requested; that the respondent company shall, within 30 days, file its answer in which it shall state whether it has any objection to the grant of the application; and, if it objects, it shall state the grounds and reasons for its objection.

The effect of the failure of respondents to comply strictly with the 30-day time limitation for the filing of an answer has not been clearly understood and the uncertainty has, in some instances, resulted in unnecessarily delaying the

*Published in the Federal Register on July 27, 1965 (30 F.R. 9302).

proceedings. In order to clarify the rule for the future, we are amending § 156.7 to provide that if the respondent fails to file a timely response to the application, it shall be deemed to have agreed to the grant thereof.

The Commission finds:

(1) Since the purpose and effect of the amendment herein adopted are interpretive and procedural, the prior notice provisions of Section 4 of the Administrative Procedure Act do not apply.

(2) Adoption of this amendment is necessary and appropriate to carry out the provisions of the Natural Gas Act.

The Commission, acting pursuant to the Natural Gas Act, particularly Sections 7(a) and 16 thereof (52 Stat. 824, 830; 15 U.S.C. 717f(a), 717o), *orders:*

(A) Part 156, Subchapter E, Regulations Under the Natural Gas Act, Chapter I, Title 18 of the Code of Federal Regulations, is amended by adding a sentence at the end of § 156.7. As so amended the section will read as follows:

Part 156—Applications for Orders Under Section 7(a) of the Natural Gas Act

* * * * * * *

§ 156.7 Service of application.

After an application has been accepted for filing, the Secretary will cause a copy thereof to be served upon the natural gas company (respondent) against which an order pursuant to Section 7(a) of the Natural Gas Act has been requested. The natural gas company shall, within thirty days after the date of service of such application file its answer (an original and 7 conformed copies) to such application in which it shall state whether it has any objection to the grant of the application. If the natural gas company objects to the grant of the relief sought by the application, it shall fully state the grounds and reasons for its objections. The answer shall be verified and shall be signed by an executive of the natural gas company. In all other respects, answers shall conform to the applicable requirements of the Commission's Rules of Practice and Procedure, particularly §§ 1.9, 1.15, and 1.16 of this chapter. In the event that the respondent natural gas company fails to file a timely response to the application it shall be deemed to have agreed to the grant thereof.

* * * * * * *

[Secs. 7(a), 16; 52 Stat. 824, 830; 15 U.S.C. 717f(a), 717o]

(B) This amendment shall become effective August 2, 1965.

(C) The Secretary shall cause prompt publication of this order to be made in the Federal Register.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

SOUTHERN NATURAL GAS COMPANY, DOCKET NO. RP63-7 v. UNITED GAS PIPE LINE COMPANY, DOCKET NO. RP66-1

ORDER SEVERALLY DENYING APPLICATION FOR REHEARING AND PETITION FOR MODIFICATION OF OPINION NO. 460 AND INSTITUTING NEW PROCEEDING ON FORMAL COMPLAINT, DESIGNATING PRESIDING EXAMINER AND FIXING DATES FOR INTERVENTIONS, FILING OF EVIDENCE AND PREHEARING CONFERENCE

(Issued July 20, 1965)

On June 24, 1965, Southern Natural Gas Company (Southern) filed an application for rehearing of our Opinion No. 460 and order issued May 25, 1965, 33 FPC 1077, in the above-entitled proceeding. At the same time Southern also filed

a "Petition for Modification of Opinion No. 460, or, in the alternative, Formal Complaint of Southern Natural Gas Company Requesting Reduction in Maximum Daily Quantity of Gas To Be Transported and Other Relief." An answer to the petition for modification or alternative complaint was filed on June 28, 1965, by United Gas Pipe Line Company (United).

In its application for rehearing Southern contends that we erred in failing to grant it the relief which would have been granted by the Presiding Examiner in his initial decision in this proceeding and in otherwise denying to Southern, as a matter of discretion, the full extent of the relief sought in the complaint. The various allegations of error are detailed in full in the present application and need not be restated extensively here. The application primarily alleges error in our refusal to hold the provisions of United's T–3 rate schedule void rather than voidable, our failure to enforce the terms of the contract as originally written between the parties, our requirement that Southern should pay for the right to utilize 55,460 Mcf per day in United's line so long as that right existed and in our holding that Southern's agreement to United's rate settlements constitutes cause for not granting the full relief requested.

We have considered the assignments of error and grounds for rehearing set forth in the application and have reconsidered our order. The arguments advanced here were, without exception, fully considered by us in the opinion. Our conclusions thereon remain unchanged. No new facts or arguments are called to our attention by the application which would be cause for granting rehearing or disturbing the original order.

In its separate petition for modification of Opinion No. 460 Southern requests that the billing demand provided in United's Rate Schedule No. T–3, which we ordered be based on a maximum daily quantity of 35,294 Mcf per day from and after the date of our order and until changed by further order of the Commission, be reduced to 30,869 Mcf per day. In support thereof Southern contends that whereas 35,294 Mcf was the maximum daily quantity tendered at the time the complaint was submitted, the maximum daily quantity which it could tender from and after the date of Opinion No. 460 "was shown by the record" to be 30,869 Mcf. However, a review of the references cited by Southern, namely Exhibit 1, item 29 and Exhibit D, page 4 does not support the reduction now claimed. The 30,869 Mcf figure is nothing more than a report of the "daily average quantity purchased" by Southern from Sinclair Oil & Gas Company in the twelve months ending with the last day of February 1964, and may or may not be identical with the *maximum* daily quantity of gas delivered to United for transportation during the period, which is the significant and determinative figure. Moreover, the quantity reported at Exhibit D, page 4, is merely a restatement, at a different pressure base, of figures appearing at page 1 of Exhibit D, and which, by Southern's own admission, are not stipulated to as necessarily correct. Although Southern presently asserts that it has not tendered for transportation a quantity greater than 30,000 Mcf on any day since April 2, 1964, the lowest most recent maximum daily quantity established by the record is 35,294 Mcf. Accordingly the petition for modification will be denied.

In Opinion No. 460 we stated:

> If Southern, at a time or times subsequent hereto, desires to have this amount [35,294 Mcf per day] still further reduced * * * it may make a further application to the Commission.

Southern's alternative complaint, wherein it seeks an immediate reduction in the maximum daily quantity applicable to the transportation service to 30,000 Mcf at 14.9 psia, constitutes such further application in accordance with the

opinion. United, in its answer, states that it is ready to participate in a hearing called thereon. The complaint affords adequate basis to order that a new proceeding be instituted for the submission of such relevant evidence as the parties may desire to present on the subject of the just and reasonable current billing demand to be required under Rate Schedule No. T–3. As in the earlier proceeding, we shall provide for the convening of a prehearing conference in order to afford the parties an opportunity to stipulate all relevant facts. Dates for the filing of evidence and petitions or notices of intervention are designated hereinafter. The Presiding Examiner will be empowered to issue such further procedural orders as may be appropriate to effectuate action on and disposition of the instant complaint.

The Commission finds:

(1) The assignments of error and grounds for rehearing set forth in the application for rehearing filed in this proceeding present no facts or legal principles which would warrant any change or modification in the Commission's Opinion No. 460 and accompanying order.

(2) The petition for modification of Opinion No. 460 should be denied.

(3) It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act and the Rules and Regulations thereunder:

(a) That a new proceeding be instituted as hereinafter ordered limited to the sole issue of the just and reasonable billing demand required to be paid by Southern to United for the transportation service provided under United's Rate Schedule No. T–3 from and after the date of the Commission's order in the said proceeding.

(b) That in order to effectuate the purpose of such proceeding an opportunity be provided for the submission of evidence addressed to the aforesaid issue; and

(c) That a prehearing conference be convened before a Presiding Examiner for the purpose of arriving at a stipulation of relevant and material facts and for such further action as may be appropriate to secure expeditious disposition of the complaint filed by Southern on June 24, 1965. The Presiding Examiner shall issue his decision on the matter in accordance with Section 1.30 of the Rules of Practice and Procedure.

The Commission orders:

(A) The application for rehearing filed by Southern on June 24, 1965, is hereby denied.

(B) The petition for modification of Opinion No. 460 is denied.

(C) Pursuant to the authority of the Natural Gas Act, particularly Sections 4, 5, 15 and 16 thereof, the Commission's Rules of Practice and Procedure and the Regulations Under the Natural Gas Act, a new proceeding is hereby instituted for the purpose of determination of the complaint filed by Southern on June 24, 1965, as set out in paragraph (3) above.

(D) Southern shall file its evidence in the proceeding on or before August 10, 1965; United and all other parties shall file their evidence on or before August 27, 1965.

(E) Pursuant to the provisions of Section 1.18 of the Rules of Practice and Procedure, a prehearing conference shall commence at 10:00 a.m. (EDST) on September 7, 1965, in a hearing room of the Federal Power Commission, 441 G Street NW., Washington, D.C., for the purpose of effectuating the intent of the Commission as set forth above.

(F) Presiding Examiner Ewing G. Simpson, or any other officer or officers of the Commission designated by the Chief Examiner for that purpose, shall preside at the prehearing conference in accordance with the provisions of Section

2.59 of the Rules and Regulations and shall have authority to take such action and to issue such further orders as may be appropriate to effectuate action on and disposition of the complaint.

(G) Petitions to intervene and notices of intervention in the proceeding may be filed with the Federal Power Commission, Washington, D.C., in accordance with the Commission's Rules of Practice and Procedure, Sections 1.8 and 1.37(f) [18 CFR 1.8, 1.37(f)], on or before August 3, 1965.

Commissioner Ross *dissenting* for reasons set forth in his separate statement accompanying Opinion No. 460.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

UNITED GAS PIPE LINE COMPANY, DOCKET NO. CP65-337

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued July 20, 1965)

On April 22, 1965, as supplemented June 11, 1965, United Gas Pipe Line Company (Applicant) filed an application in Docket No. CP65-337 pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities and the sale of natural gas to the Town of Walnut Grove, Mississippi, all as more fully set forth in the application.

Applicant seeks authority to construct and operate approximately 20 feet of 2-inch line and a positive meter and regulator station and appurtenant facilities on Applicant's 6-inch Jackson-Philadelphia lateral in Scott County, Mississippi, to be used for the sale and delivery of natural gas to the Town of Walnut Grove for resale and distribution through the proposed distribution system of said town and the rural customers located along Walnut Grove's line located in Scott and Leake Counties, Mississippi.

The estimated annual and peak day sales of natural gas by Applicant to Walnut Grove for the first three years are as follows:

	First year	Second year	Third year
Annual (Mcf)	96,000	99,032	123,736
Peak day (Mcf)	1,324	1,368	1,469

The estimated cost of Applicant's proposed facilities is $8,923, which will be financed from current working funds.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on July 16, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, supplement, and exhibits submitted in support of the authorizations sought, and upon consideration of the record,

The Commission finds:

(1) Applicant, United Gas Pipe Line Company, a Delaware corporation having its principal place of business in Shreveport, Louisiana, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the

Commission in its order of November 10, 1942, in Docket No. G–232 (3 FPC 863).

(2) The proposed construction and operation of facilities and sale of natural gas by Applicant as hereinbefore described, and as more fully described in the application, supplement thereto and exhibits in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid construction and operation of facilities and sale of natural gas are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to the Applicant in this proceeding, authorizing the construction and operation of facilities and the sale of natural gas as more fully described in the application, supplement and exhibits in this proceeding, subject to the jurisdiction of the Commission, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be completed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the aforesaid Regulations within 6 months of the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

COMMUNITY PUBLIC SERVICE COMPANY, DOCKET NO. E–7231

ORDER AUTHORIZING ISSUANCE OF FIRST MORTGAGE BONDS AND PREFERRED STOCK

(Issued July 21, 1965)

Community Public Service Company (Applicant), incorporated under the laws of the State of Texas and doing business as a qualified foreign corporation in the State of New Mexico, with its principal place of business at Fort Worth, Texas, filed an application on June 16, 1965, as amended June 25, June 30, and July 8, 1965, for an order, pursuant to Section 204 of the Federal Power Act, authorizing the issuance of $5,000,000 maximum principal amount of First Mortgage Bonds, Series H, due 1995, to be sold at competitive bidding, and the issuance and sale of a maximum of 30,000 shares of 4.75% Cumulative Preferred Stock, Series C, par value $100 per share or an aggregate par value of $3,000,000. Applicant requests that the proposed issuance and sale of Preferred Stock be exempted from the Commission's competitive bidding requirements.

Applicant proposes to issue the Bonds under an Indenture of Mortgage and Deed of Trust, dated as of November 1, 1944, from Applicant's predecessor,

Community Public Service Company, a Delaware corporation, to City National Bank and Trust Company of Chicago, Trustee, as heretofore supplemented and as to be further supplemented by a proposed Ninth Supplemental Indenture, to be dated as of August 1, 1965, from Applicant to Continental Illinois National Bank and Trust Company of Chicago, successor Trustee.

On or about July 27, 1965, Applicant proposes to invite sealed, written bids for the purchase of the Bonds by newspaper publication and by distribution of a Public Invitation for Bids, which will set forth the terms and conditions relating to bids, together with a Form of Bid and a form of Purchase Contract. Each bid, whether by a single bidder or by a group of bidders, must be on the Form of Bid furnished by Applicant and must be for the purchase of all the Bonds. Each bid shall specify, among other things, (1) the coupon rate of the Bonds, which shall be a multiple of one-eighth of 1%; (2) the price, exclusive of accrued interest, to be paid to Applicant for the Bonds, which shall not be less than 100% or more than 102¾% of the principal amount of the Bonds; and (3) that accrued interest on the Bonds from August 1, 1965, to the date of payment therefor and delivery thereof will be paid to Applicant.

Unless postponed, each bid for the purchase of the Bonds, whether by a single bidder or a group of bidders, must be presented to Applicant at 90 Broad Street, 19th Floor, New York, New York, before 11 a.m., New York Time, on August 3, 1965. Unless Applicant shall reject all bids, which it reserves the privilege to do, or shall exclude the bid of any bidder or any group of bidders for reasons specified in the statement of terms and conditions set forth in the Public Invitation for Bids, Applicant will accept the bid which shall result in the lowest annual cost of money to Applicant.

Each bid for the purchase of the Bonds must be accompanied by a certified or official bank check or checks in the aggregate amount of $150,000, payable in New York Clearing House funds.

By Commission letter dated May 11, 1965, Docket No. IN-972, Applicant was authorized to engage in negotiations for the underwriting and/or sale of the Preferred Stock. Pursuant to that authorization, Applicant employed Stone & Webster Securities Corporation (Stone & Webster) for the purpose of engaging in negotiations for the placement of the proposed Preferred Stock. The application states that Stone & Webster discussed the possible sale of the Preferred Stock with 25 prospective institutional purchasers. As a result of such discussions, informal commitments have been obtained from 11 institutions to purchase the 4.75% Preferred Stock at $100 per share. Applicant proposes to pay a finder's fee of 62½¢ per share or 0.625% of the sale price, which is $18,750, in the aggregate, in payment for Stone & Webster's services in finding buyers for the new Preferred Stock. Applicant proposes to issue the Preferred Stock on or about August 10, 1965.

In support of its request for an exemption from the Commission's competitive bidding requirements with respect to the proposed issuance and sale of its Preferred Stock, Applicant represents that the proposed terms of such sale are as satisfactory as may be expected for senior securities under current market conditions and compare very favorably with prices received by larger and better known electric utilities in recent preferred stock offerings.

Applicant will apply the proceeds, estimated to be in the net amount of $7,912,375, to be obtained from the proposed issuance and sale of Bonds and Preferred Stock to (1) retire its short-term bank loans now outstanding in the principal amount of $4,000,000*; and (2) reimburse its treasury for funds ex-

*The bank loans are evidenced by short-term unsecured promissory notes which Applicant was authorized to issue to provide funds for utility plant construction by Commission order issued April 12, 1965, Docket No. E-7209, 33 FPC 718.

pended on its 1965 construction program. That program is expected to require $12,292,000, of which amount $12,153,000 will be allocated to electric plant and $139,000 to gas plant. Since Applicant purchases most of its electric energy requirements, the major portion of its construction program will be devoted to electric transmission and distribution facilities.

Written notice of the application has been given to the Texas Railroad Commission and to the New Mexico Public Service Commission and to the Governor of each of those States. Notice of the application was also published in the Federal Register on July 10, 1965 (30 F.R. 8761), stating that any person desiring to be heard or to make any protest with reference to the application should on or before July 19, 1965, file with the Federal Power Commission, Washington, D.C., 20426, petitions or protests. No petition or protest or request to be heard in opposition to the granting of the application has been received.

The Commission finds:

(1) Applicant, a Texas corporation, is a public utility within the meaning of Section 204 of the Federal Power Act subject to the jurisdiction of the Commission as heretofore described and set forth in the Commission's order issued April 24, 1963, *Community Public Service Company*, 29 FPC 829.

(2) The proposed issuances of Bonds and Preferred Stock, as described above, will constitute issuances of securities within the purview of Section 204 of the Act.

(3) Applicant is not organized and operating in a State under the laws of which the security issues here involved are regulated by a State commission within the meaning of Section 204(f) of the Act, and the proposed issuances of securities, are, therefore, not exempt by virtue of that Section from the requirements of Section 204 of the Act.

(4) The price per share of the 4.75% Cumulative Preferred Stock, Series C, to be received by Applicant, the dividend rate, and the finder's fee to be paid Stone & Webster, all as described above, are not unreasonable.

(5) There is no affiliation, direct or indirect, through directors, officers or stockholders, or otherwise between Applicant and Stone & Webster.

(6) Under the circumstances set forth above, sufficient cause has been shown for exempting the proposed issuance and sale of 4.75% Cumulative Preferred Stock, Series C, from the competitive bidding requirements of Section 34.1a(b) and (c) of the Commission's Regulations under the Federal Power Act.

(7) The proposed issuances of securities, as hereinafter authorized, will be for a lawful object, within the corporate purposes of the Applicant and compatible with the public interest, which is appropriate for and consistent with the proper performance by the Applicant of service as a public utility and which will not impair its ability to perform that service, and is reasonably appropriate for such purposes.

(8) The period of public notice given in this matter is reasonable.

The Commission orders:

(A) The proposed issuances of Bonds and Preferred Stock upon the terms and conditions and for the purposes specified in the application, as described above, are hereby authorized, subject to the provisions of this order.

(B) The proposed issuance and sale of Bonds at competitive bidding shall not be consummated until:

(i) Applicant shall have amended its application pursuant to the requirements of Section 34.2(g) of the Commission's Regulations under the Federal Power Act relating to compliance with competitive bidding requirements, and Section 34.2(h) of these Regulations relating to affiliation,

and shall have either filed such amendments or shall have mailed them and advised the Commission by telephone and telegram as contemplated by Section 34.9 of the Regulations;

(ii) The Commission shall have approved the price to be received by Applicant for the Bonds and the coupon rate thereof by a further order.

(C) The proposed issuance and sale of 4.75% Cumulative Preferred Stock, Series C, as described above, are hereby exempted from the competitive bidding requirements of Sections 34.1a(b) and (c) of the Commission's Regulations under the Federal Power Act.

(D) This authorization shall expire unless the transactions hereby authorized are consummated within 90 days from the date of issuance of this order.

(E) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations of costs, or any other matter whatsoever which is now pending or which hereafter may come before this Commission or any other regulatory body.

(F) Nothing in this order shall be construed to imply any guarantee or obligation on the part of the United States in respect of any securities to which this order relates.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

NORTHERN VIRGINIA POWER COMPANY, PROJECT NO. 2425

ORDER ISSUING LICENSE (MAJOR)

(Issued July 21, 1965)

Application was filed on November 14, 1963, by Northern Virginia Power Company (Applicant) of Winchester, Virginia, for a license under Section 4(e) of the Federal Power Act (Act) for constructed Project No. 2425, consisting of the Luray Development and the Newport Development, located on the Shenandoah River, in Page County, Virginia, in the region of the Towns of Luray and Newport. No lands of the United States are affected by the project.

The Luray Development was constructed in 1927 and has remained essentially unchanged. The Newport Development was constructed in 1923 and, except for the addition of one turbine and one vertically driven generator in 1925, has remained essentially unchanged.

The Department of the Army and the Chief of Engineers have advised that the plans of the project structures affecting navigation are satisfactory insofar as the interests of navigation are concerned and such plans were approved pursuant to Section 4(e) of the Act.

The Department of the Interior, in reporting on the application, recommended for inclusion in any license for the project the terms and conditions in the interests of fish, wildlife and recreation usually included in licenses for projects of the type herein under consideration.

The Department of Health, Education, and Welfare has advised that there is no anticipated adverse effects by the project on water quality.

In our order issued March 2, 1965,[1] we found that the Shenandoah River and its South Fork to at least Port Republic at river mile 156 is a navigable water of the United States. Project No. 2425 is situated within this stretch of the river.

[1] Northern Virginia Power Company, Project No. 2391 (33 FPC 340).

Since the application included no transmission facilities, we are herein reserving the right to determine at a later date what transmission facilities, if any, should be included in the license as a part of the project works.

The Exhibit R, submitted as part of the application, is a statement reciting that no plan has been proposed to provide recreational facilities to the public at either of the two project developments, but subject to restrictions in those areas which present a safety hazard, both developments are open to the public for fishing and boating use. The Virginia Department of Conservation and Economic Development has reported to the Commission that the project has no particular potential for future recreational development and that the existing means of access appear adequate for present use. In the circumstances, we are not approving the Exhibit R which was filed. By Article 32 herein, we are requiring Applicant to cooperate with Federal, State and local agencies in the interest of recreation in connection with the use of project lands and waters by the public and to report to the Commission at stated intervals thereafter on recreational needs and development.

For the reasons set forth in our Opinion No. 357 (27 FPC 830) the license herein granted shall have an effective date of April 1, 1962, and a termination date of December 31, 1993.

The Commission finds:

(1) Project No. 2425 affects navigable waters of the United States.

(2) Applicant is a corporation organized under the laws of the Commonwealth of Virginia, and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effectuate the purposes of a license for the project.

(3) Public notice of the filing of the application has been given. No protests or petitions to intervene have been received. No conflicting application is before the Commission.

(4) The project does not affect a Government dam, nor will the issuance of a license therefor, as hereinafter provided, affect the development of any water resources for public purposes which should be undertaken by the United States.

(5) Subject to the terms and conditions hereinafter imposed, the project will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, and for other beneficial public uses, including recreational purposes.

(6) The installed horsepower capacity of the project hereinafter authorized for the purpose of computing the capacity component of the administrative annual charge is 4,000 horsepower, and the amount of annual charges, based on such capacity, to be paid under the license for the project, for the costs of administration of Part I of the Act is reasonable.

(7) The exhibits designated and described in paragraph (B) below conform to the Commission's rules and regulations and should be approved as part of the license for the project.

The Commission orders:

(A) This license is hereby issued to Northern Virginia Power Company (Licensee) under Section 4(e) of the Federal Power Act (Act) for a period effective as of April 1, 1962, and terminating December 31, 1993, for the continued operation and maintenance of Project No. 2425, located on the Shenandoah River, a navigable water of the United States, subject to the terms and conditions of the Act, which is incorporated herein by reference as a part of this license, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) Project No. 2425 consists of:

(i) all lands constituting the project area and enclosed by the project boundary or the limits of which are otherwise defined, and/or interest in such lands necessary or appropriate for the purposes of the project, whether such lands or interest therein are owned or held by the Licensee or by the United States; such project area and project boundary being more specifically shown and described by the following exhibits which formed a part of the application for license:

Exhibit J:

Sheet 1 (FPC No. 2425–1) General Map

Sheet 2 (FPC No. 2425–2) Map of Electrical Properties

Exhibit K:

Sheet 1 (FPC No. 2425–3) Map of Project Area—Newport

Sheet 2 (FPC No. 2425–4) Map of Project Area—Luray

(ii) project works consisting of: *Luray Development*—(1) a concrete buttress dam 525 feet long and 18½ feet high; (2) a reservoir with an area of 125 acres; (3) a powerhouse integral with the dam containing one 400 kw and two 600 kw generators; and (4) appurtenant electrical and mechanical facilities. *Newport Development*—(1) A concrete buttress dam 453 feet long and 24 feet high; (2) a reservoir with an area of 102 acres; (3) a powerhouse integral with the dam containing one 600 kw and two 400 kw generators; and (4) appurtenant electrical and mechanical facilities. Location and character of project works shown in above-cited exhibits and others designated as follows:

Exhibit L:

Sheet 1 (FPC No. 2425–5) Luray Dam and Power Plant—Plan, Elevation and Sections

Sheet 2 (FPC No. 2425–6) Newport Dam and Power Plant—Plan, Elevation and Sections; and

Exhibit M:

Two typewritten pages, "Luray Hydro Station" and "Newport Hydro Station", filed in the Commission November 14, 1963.

(iii) all other structures, fixtures, equipment or facilities used or useful in the maintenance and operation of the project and located on the project area, including such portable property as may be used or useful in connection with the project or any part thereof, whether located on or off the project area, if and to the extent that the inclusion of such property as part of the project is approved or acquiesced in by the Commission; also, all riparian or other rights, the use or possession of which is necessary or appropriate in the maintenance or operation of the project.

(C) This license is also subject to the terms and conditions set forth in Form L–3 (Revised August 1, 1964), 32 FPC 1114, entitled "Terms and Conditions of License for Constructed Project Affecting Navigable Waters of the United States", which terms and conditions, designated as Articles 1 through 29, are attached hereto and made a part hereof, except Article 25 thereof, and subject to the following special conditions set forth herein as additional articles:

Article 30. The Commission reserves the right to determine at a later date what additional transmission facilities, if any, shall be included in this license as part of the project works.

Article 31. The Licensee shall pay to the United States the following annual charge, effective April 1, 1962:

For the purpose of reimbursing the United States for the costs of administration of Part I of the Act, a reasonable annual charge as determined by the Commission in accordance with the provisions of its regulations, in effect

from time to time. The authorized installed capacity for such purposes is 4,000 horsepower.

Article 32. Licensee shall cooperate with State and local agencies in the development and maintenance of access areas and roads and such other facilities as may be necessary for full recreational utilization by the public of project lands and waters consistent with the terms of the license and the operation of the project. At the end of three (3) years of the date of issuance of this license and every fifth year thereafter, Licensee shall advise the Commission of the results of cooperation with State and local agencies and of further recreation development at the project.

Article 33. On the application of any person, association, corporation, Federal agency, State or municipality, the Licensee shall, after notice and opportunity for hearing, permit such reasonable use of its reservoirs or other project works or parts thereof as may be ordered by the Commission in the interest of comprehensive development of the waterway or waterways involved and the conservation and utilization of water resources of the region for water supply for steam-electric, irrigation, industrial, municipal or similar purposes consistent with the primary objective of the project. The Licensee shall receive such reasonable compensation as may be appropriate for use of its reservoirs or other project works or parts thereof for such purposes, any such compensation to be fixed either by Commission approval of an agreement between the Licensee and the party or parties benefiting or by the Commission in the event the parties are unable to agree. Applications shall contain information in sufficient detail to afford a full understanding of the proposed use, including satisfactory evidence that the applicant possesses necessary water rights pursuant to applicable State law, or a showing of cause why such evidence cannot be submitted, and a statement as to the relationship of the proposed use to any State or municipal plans or orders which may have been adopted with respect to the use of such waters.

(D) The exhibits designated and described in paragraph (B) above are hereby approved as part of this license.

(E) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgment of the acceptance of this license, it shall be signed for the Licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

TEXAS EASTERN TRANSMISSION CORPORATION, DOCKET NO. RP65-59 AND THE PHILADELPHIA GAS WORKS DIVISION OF THE UNITED GAS IMPROVEMENT COMPANY, DOCKET NO. RP65-52

ORDER CONDITIONALLY APPROVING RATE REDUCTION AND DISMISSING COMPLAINT PROCEEDING

(Issued July 21, 1965)

Texas Eastern Transmission Corporation (Texas Eastern), on June 1, 1965, submitted a letter of intent proposing to file a reduction of 0.42¢ per Mcf in its jurisdictional rates, to be effective as of June 1, 1965 and also undertaking certain obligations with respect to refunds and rate reductions received from its producer suppliers (including Rayne Field); reserving the rights of all parties

and the Commission with respect to Rayne Field gas costs and finally providing for flow-through of liberalized depreciation tax benefits, subject to certain specified conditions.

The proposal was conditioned upon termination of the informal excess earnings review initiated by a letter from the staff dated December 14, 1964; the entry of an order unconditionally approving Texas Eastern's offer in its entirety and dismissing the complaint filed by The Philadelphia Gas Works Division of the United Gas Improvement Company against Texas Eastern in Docket No. RP65–52; such order becoming final and non-appealable within 60 days from the date of submission of the proposal and non-suspension of the revised tariff sheets to be filed by Texas Eastern containing the reduced rates set forth therein.

The proposed change in rates would effectuate an immediate annual reduction in Texas Eastern's jurisdictional rates in the sum of approximately $3,500,000 annually, based upon adjusted test year volumes.

The level of the basic rate reduction reflects the impact of a full year's operation of newly certificated facilities costing over $90 million dollars which were placed in service in November, 1964. The reduction also reflects the recent reduction in federal corporate income tax rate to 48 percent; lower cost of gas purchased from United Gas Pipe Line Company pursuant to a recent rate settlement in Docket No. RP65–1, *et al.* and the allowance of a 6.25 percent rate of return. All known and measurable changes scheduled to occur by October 1, 1965 have been fully reflected.

Texas Eastern's rate reduction proposal has resulted from numerous conferences held over a period of four and one-half months with the Commission staff. These conferences were initiated by letter of the Chief, Bureau of Natural Gas, dated December 14, 1964, as a consequence of the Commission's continuing supervision of natural-gas companies and its periodic review of the annual reports filed with the Commission by such companies.

The proposal is summarized in part as follows:

(1) Effective June 1, 1965, Texas Eastern's jurisdictional rates will be reduced to the level set forth in Appendix "A" hereto.

(2) Texas Eastern has agreed that it will further reduce the rates set forth in Appendix "A" to reflect the principles specified in the Commission's Opinion No. 417, issued on February 3, 1964, in *Alabama-Tennessee Natural Gas Company*, Docket No. G–5471, *et al.*, 31 FPC 208, by filing revised tariff sheets reflecting the flow-through of the excess of the tax deduction for liberalized depreciation over straight-line depreciation, as booked, and the deduction of accumulated deferred tax balances in Account No. 282 from the agreed upon rate base if and to the extent that:

(a) The Commission's Opinion Nos. 417, *supra*, and 417–A, 31 FPC 928, are affirmed on their merits by the court of last resort, and

(b) The Commission continues to apply the rate-making principles of Opinion No. 417 to pipeline companies under the Natural Gas Act on October 1, 1966.

If, however, Texas Eastern notifies the Commission on October 1, 1965 or October 1, 1966 that it has elected to cease using liberalized tax depreciation and in fact discontinues such use in its tax return for 1964 or 1965, its obligation to flow-through such annual tax savings shall be terminated, but it must nevertheless reduce its rates and make refunds to reflect the deduction of deferred tax balances in Account No. 282 from its rate base.

Should Texas Eastern claim liberalized depreciation in its 1964 tax return, but not in its 1965 tax return, it is obligated to refund to its jurisdictional customers annual liberalized tax depreciation savings for the one year period between October 1, 1965 and October 1, 1966 (as measured by the excess of

liberalized depreciation over straight-line depreciation for the 12 months ending October 1, 1965).

Should Texas Eastern continue using liberalized tax depreciation in both 1964 and 1965, it is obligated to flow-through the annual liberalized depreciation tax savings by a rate reduction effective either 20 days after Opinion No. 417 becomes final and non-appealable or on October 1, 1966, which ever date is later, and to also make refunds to its jurisdictional customers for the period from October 1, 1965 to the date of such prospective rate reduction.

(3) Texas Eastern's existing obligation to pass on gas supplier refunds applicable to gas purchased prior to June 1, 1965 (the effective date of the proposed new agreement) pursuant to the provisions of the Rate Settlement Agreement in Docket Nos. G–12706 and G–18841 conditionally approved by Commission order issued January 25, 1961, as amended February 21, 1961, 25 FPC 172, 324, is continued during the life of the reduced rates set forth in the new agreement. Additionally, with respect to gas purchased on or after June 1, 1965, Texas Eastern assumes the obligation to pass on the jurisdictional portion of any gas supplier refunds received from independent producers as a result of Commission orders in the gas supplier proceedings specifically listed in Appendix "B" of the proposal or in any superseding Section 4(e) rate proceeding, or received from Petroleos Mexicanos (Pemex) under a gas purchase contract dated September 27, 1955, as amended April 26, 1962, to the extent that such refunds represent refunds of the rates set forth in said Appendix "B". In addition to increased rate proceedings, such listed proceedings include temporary certificate proceedings (irrespective of express refund conditions) and any such pending proceedings which have been inadvertently omitted from that Appendix.

(4) During the period in which the rates provided for in the proposal remain in effect, Texas Eastern is obligated to reduce its rates to reflect Commission ordered reductions in the rates of its producer suppliers, which have become final, in the proceedings listed in said Appendix "B" or in any superseding Section 4(e) rate proceedings, or received under its above identified gas purchase contract with Pemex, to the extent that any such gas cost reductions are below the rates set forth in said Appendix and are not offset by increases in Texas Eastern's cost of purchased gas from such suppliers, calculated in accordance with the netting provisions of Article IV of the proposal.

(5) If Texas Eastern receives any refunds or rate reductions as a result of Commission action under the Natural Gas Act or any similar payments for past periods or any future cost reductions pursuant to the judgment of a State or Federal Court, under other laws and statutes, which are applicable to gas delivered pursuant to the Rayne Field transaction involved in Docket Nos. G–12446 and G–12447 and purchased after June 1, 1965, it is obligated to flow-through any and all such benefits to its jurisdictional customers by way of further rate reductions or refunds. This obligation matures when such Commission orders or court decrees become final and nonappealable. The flow-through of such refunds or similar payments by Texas Eastern is governed by the provisions of Article III of the agreement. Likewise, the flow-through of any rate reduction or cost reduction Texas Eastern receives is governed by the provisions of Article IV of the agreement. The agreement further provides that Rayne Field gas costs shall only be reflected in the computation required to be made under the said Article from, or after the effective date of any such rate reduction or cost reduction. Thus, Rayne Field gas costs will not enter into the computations made for the purpose of determining whether a reduction in Texas Eastern's rates is required unless and until those costs have been reduced by final and nonappealable action of either the Commission or the courts. However, once Rayne Field costs are so reduced Texas Eastern must recalculate all elements entering

into the determination of the need for a jurisdictional rate reduction pursuant to Article IV and compare the results of such recalculation—reflecting Rayne Field costs *ab initio*—with the results obtained absent those costs in order to determine the differential unit cost to be used for the purpose of measuring the refunds and rate reductions to be passed on by Texas Eastern to jurisdictional customers by virtue of lower Rayne Field gas costs, in accordance with the provisions of Article V of the agreement.

The agreement contains an express reservation, running in favor of the Commission, its staff, Texas Eastern and all other parties, to the effect that the inclusion of Rayne Field costs in the cost-of-service used in fixing the reduced rates; the filing of such rates with the Commission; the assent of any party with respect thereto and any approval thereof by the Commission shall be without prejudice to, and shall not waive, limit or restrict in any manner or to any extent any and all rights the Commission has under the Natural Gas Act or any positions, contentions, or rights of all other parties in any presently pending or later proceedings, before the Commission or the Courts, with respect to any issue or issues directly or indirectly relating to Texas Eastern's Rayne Field transaction which is involved in Docket Nos. G–12446 and G–12447. This broad reservation, among other purposes, makes it manifest that the inclusion of any express provision in the instant agreement dealing with Rayne Field may not be relied upon by any party to support any argument or inferences based upon the absence of similar flow-through provisions or reservations in the prior rate settlement in Docket Nos. G–12706 and G–18841. The agreement further stipulates the constituent elements of cost making up the total cost of Rayne Field gas recognized in the settlement cost-of-service and the related gas volumes associated therewith (fn. 4, to Article V, at p. 7).

(6) The proposed reduced rates shall not become effective unless:

(a) The informal excess earnings review initiated by the aforesaid letter of December 14, 1964, shall be terminated;

(b) The Section 5(a) complaint requesting institution of a rate reduction proceeding against Texas Eastern, filed by the Philadelphia Gas Works Division of the United Gas Improvement Company in Docket No. RP65–52, is dismissed by order of the Commission;

(c) Texas Eastern's rate reduction proposal and all of the accompanying terms and provisions thereof are approved, without any modification or condition, by an appropriate order of the Commission;

(d) Such Commission order becomes final and nonappealable on or before September 1, 1965.

(7) The Commission is requested to waive compliance by Texas Eastern with the requirements of the Commission's general rules and regulations, including but not limited to, Section 154.22 thereof to the extent necessary to effectuate all of the provisions of the proposal.

(8) It is specifically understood and agreed that the rate level and terms and conditions embodied in the letter of intent represent a negotiated settlement with respect to Texas Eastern's rates and neither Texas Eastern, the Commission, its staff nor any other person shall be deemed to have approved, accepted, agreed or consented to any rate-making principle, or any method of cost-of-service determination, or any allocation underlying or supposed to underlie any of the rates or refunds provided for therein.

A total of four comments have been received from Texas Eastern's jurisdictional customers. One of these was submitted by Consolidated Edison Company of New York, Inc. which favors the proposal in its entirety and urges that the rate reduction be accepted for filing. A joint comment has been submitted on

behalf of Brooklyn Union Gas Company, Long Island Lighting Company and The Philadelphia Gas Works Division of the United Gas Improvement Company[1] (Eastern Customers). Public Service Electric and Gas Company of New Jersey also submitted comments. These customers do not object to approval of the proposal and have not requested the Commission to condition its approval thereof in any manner. The Commission has considered and appraised their comments, and except as otherwise noted herein, has determined them to be lacking in merit.

Philadephia Electric Company has filed a separate comment requesting that the Commission condition its approval of the rate reduction so as to specifically require that Texas Eastern flow-through all rate reductions received under Section 5(a) of the Act from producer or pipeline suppliers in pending Area Rate proceedings. We believe that it would be inappropriate to impose such a condition in the context of a voluntary rate reduction submitted as a "package proposal" and, also, note that no other jurisdictional customer has requested such relief.

The Eastern Customers, Public Service Electric and Gas Company and Philadelphia Electric Company have all commented upon the absence of any provision in the agreement requiring Texas Eastern to flow-through refunds and rate reductions received from its pipeline gas suppliers.

Texas Eastern buys gas from United, Texas Gas and Southern Natural. At the present time, none of these pipeline suppliers are collecting increased rates subject to refund pursuant to Section 4(e) of the Act. Nevertheless, their existing rates are *contingent*, rather than *firm*, to the extent that they are obligated by virtue of outstanding rate settlements or rate orders to flow-through refunds and rate reductions received from their own gas suppliers or to make other conditional rate reductions. In addition, Texas Eastern's recognized gas costs in the instant settlement cost-of-service include the presently effective rates of these pipeline suppliers which are subject to downward adjustment. Furthermore, these supplier refunds and rate reductions stem from our own processes and the exercise of our statutory duty to protect the public interest in "just and reasonable rates". In view of the foregoing considerations, we do not believe that it would be equitable or consistent with the aim of the Act to permit Texas Eastern to reap and retain the sole and exclusive benefit of regulatory action undertaken with the view to protecting the interests of ultimate consumers, rather than pipeline purchasers of gas. Accordingly, the Commission believes that it is in the public interest to condition our approval of the terms and conditions of this proposal to impose the same flow-through obligations on Texas Eastern with respect to pipelines as it has voluntarily assumed with respect to producers.

This change does not affect in any degree or in any manner the extent to which Texas Eastern would otherwise flow-through producer supplier rate reductions. For, Article IV requires Texas Eastern to reduce its rates when the current weighted average cost is less than the base cost but provides that "tne amount of the 'cost reduction' shall be determined by multiplying the difference in unit cost by the volumes of gas purchased from producer suppliers" (p. 6). Thus, while a greater amount of producer reductions are now required to produce an equivalent incremental change in unit cost, that change will be multiplied by the larger combined producer-pipeline volumes in order to yield the same absolute "cost reduction".

[1] Philadelphia Electric Company has joined in these comments to the extent that they are not inconsistent with its own separate comments.

With this single modification, the Commission finds that the acceptance of Texas Eastern's package proposal as tendered will be in the public interest because it will result in an immediate rate reduction, provides for contingent further rate reductions related to liberalized depreciation and Rayne Field and updates Texas Eastern's current obligations with respect to refunds and rate reductions relating to contingent gas prices which have become effective since October 27, 1959.

The Commission finds:

(1) Good cause exists for waiving the requirements of Section 154 of the Commission's Regulations under the Natural Gas Act in order that the rate reductions set forth in Appendix "A" hereto may become effective on June 1, 1965, as hereinafter ordered.

(2) The proposed reduced rates and Texas Eastern's agreement to further reduce its rates as provided in the proposal, are proper and in the public interest in carrying out the provisions of the Natural Gas Act, and should be accepted for filing and made effective as hereinafter provided and ordered.

(3) Good cause exists for dismissing the Section 5(a) complaint filed against Texas Eastern, in Docket No. RP65-52, and terminating the informal excess earnings review initiated by the letter of December 14, 1964, from the Chief of the Bureau of Natural Gas.

The Commission orders:

(A) The provisions of Section 154 of the Commission's Regulations under the Natural Gas Act are hereby waived subject to the terms and conditions of this order and of the rate reduction proposal.

(B) Articles III and IV of the agreement embodied in the letter of intent, are hereby modified to provide that Texas Eastern shall flow-through any and all refunds and rate reductions received from its pipeline gas suppliers to the same extent, and on the same terms and conditions, as it shall flow-through refunds and rate reductions received from its producer-suppliers; that the base cost of gas shall be 20.89¢ per Mcf (as shown in Appendix "B" hereto) instead of 16.17¢ per Mcf and, that Appendix "B" of the said agreement shall be modified by the incorporation (at the end of page 8 thereof) of the contingent rates of pipeline suppliers shown in Appendix "C" of this order.

(C) Texas Eastern shall, over the signature of a responsible officer, file with the Commission within 10 days of the date of issuance of this order, in writing and under oath, an original and one copy of its acceptance or rejection of the terms and conditions of this order.

(D) Texas Eastern's proposal to reduce its rates to the level set forth in Appendix "A" hereto; to further reduce its rates subject to specified contingencies and to flow-through supplier refunds and rate reductions, as herein modified, is approved and made effective as later specified herein subject to the terms and conditions of this order.

(E) Texas Eastern shall file within 15 days next following the date of issuance of this order revised tariff sheets conforming to the rates set forth in Appendix "A" hereto. Upon the filing by Texas Eastern of such sheets and acceptance thereof, evidenced by letter addressed to Texas Eastern by the Secretary of the Commission, such tariff sheets shall be effective as of June 1, 1965.

(F) The Section 5(a) complaint against Texas Eastern, filed by The Philadelphia Gas Works Division of the United Gas Improvement Company in Docket No. RP65-52, is hereby dismissed and the informal excess earnings review initiated by the aforesaid letter of December 14, 1965, is hereby terminated, subject to the terms and conditions of this order and of the rate reduction proposal.

(G) Texas Eastern shall faithfully discharge each of the obligations it has assumed in the agreement embodied in its letter of intent, as modified and summarized in the order, and shall comply with each of the provisions of this order.

(H) Within 20 days of making refunds in accordance with paragraph (C) herein, Texas Eastern shall report to the Commission, in writing and under oath, the amount of the refund made to each customer, showing separately the amount of principal and interest so paid together with a computation showing the manner in which such refund was determined, and shall serve a copy of such report upon each customer receiving a refund.

(I) This order is without prejudice to any findings or orders which have been made or may hereafter be made by the Commission and is without prejudice to any claims or contentions which may be made by the Commission, Texas Eastern, the Commission staff, or any other party affected by this order, in any proceedings now pending or hereafter instituted by or against Texas Eastern or any other persons or parties affected by this order.

APPENDIX A

TEXAS EASTERN TRANSMISSION CORPORATION
SCHEDULE OF PROPOSED RATES
15.025 PSIA

Rate Schedule

	DCQ & GS	SGS	ACQ	E	I	WS
Zone A:						
Demand	$1.60					$2.52
Commodity	14.82¢	25.35¢		20.08¢	25.36¢	39.57¢
Storage						3.32¢
Excess						75.20¢
Zone B:						
Demand	$2.45					$2.52
Commodity	23.96¢	40.08¢		32.02¢	25.36¢	39.57¢
Storage						3.32¢
Excess						75.20¢
Zone C:						
Demand	$3.44					$2.52
Commodity	25.36¢	47.99¢	33.01¢	36.68¢	25.36¢	39.57¢
Storage						3.32¢
Excess						75.20¢
Zone D:						
Demand	$3.82					$2.52
Commodity	26.96¢	52.09¢		39.53¢		39.57¢
Storage						3.32¢
Excess						75.20¢

Transportation Service: Rate Schedule X-43—3.82¢/Mcf.
Storage Service: Rate Schedule X—28—Demand Charge—$31.56 annual; Commodity—1.66¢/Mcf delivered; 1.66¢/Mcf returned.

APPENDIX B

TEXAS EASTERN TRANSMISSION CORPORATION
DEVELOPMENT OF BASE COST OF PURCHASED GAS
YEAR 1964, ADJUSTED

	Mcf	Amount
Producer Suppliers	444,856,641	$71,950,527
Pipeline Suppliers	320,881,258	87,994,461
Total—All Suppliers	765,737,899	159,944,988

Average cost of purchased gas per Mcf, 20.89¢.

APPENDIX C

TEXAS EASTERN TRANSMISSION CORPORATION
PIPELINE SUPPLIERS RATES REFLECTED
IN SETTLEMENT COST OF SERVICE

Company	Docket No.	FPC rate schedule	Rate	
Southern Natural Gas Co.	RP64-31	OCDL-1	Demand	$1.143
			Commodity:	
			1st Block	20.501¢
			2d Block	20.24¢
Texas Gas Transmission Corp.	RP61-15	CDL-4	Demand	$2.76
			Commodity	22.73¢
United Gas Pipe Line Co.	RP65-1	PL-C	Demand	$1.11
		PL-C & PL-J	Commodity	18.16¢
		PL-J	Demand	$1.11
			Commodity	21.66¢

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

ALABAMA POWER COMPANY, PROJECT NO. 2146

ORDER MODIFYING LICENSE ARTICLE

(Issued July 22, 1965)

Application was filed on October 8, 1964, by Alabama Power Company for modification of Article 32 of its license for Project No. 2146 situated in the Coosa River, Alabama.

Article 32 presently requires, among other things, unselective clearing by the licensee of the bottoms and margins of the project reservoirs. The modification sought would provide for the selective clearing of the reservoirs in the interest of attaining the full recreational potential of the reservoirs by providing fish and wildlife refuge and would provide for the preservation of such areas. Cleared areas will be devoted to other recreational uses such as boating, skiing and other water sports.

The Commission finds:

Modification of Article 32 of the license for Project No. 2146, as hereinafter provided, is in the public interest.

The Commission orders:

Article 32 of the license for Alabama Power Company's Project No. 2146 is hereby modified to read as follows:

Article 32. Licensee shall, prior to impounding water in the reservoirs, dispose of all temporary structures, unused timber, brush, refuse or flammable material resulting from the clearing of the land or from the construction and maintenance of the project works; and shall clear all lands in the reservoir areas up to the normal elevations of the power pools, except lands which are planned to be left uncleared—in the interest of attaining the full recreational potential and the full fish and wildlife conservation potential—in the Lock 3 and Jordan No. 2 developments and in the enlarged reservoir portion of the Lay redevelopment, as will be shown in a plan to be developed cooperatively by the Licensee and the State Department of Conservation and the State Department of Public Health of Alabama after consultation with the United States Fish and Wildlife Service and the District Engineer, U.S. Army Engineer District, Mobile, Alabama, provided that the plan agreed to

will be filed for Commission approval and, provided further, that in the event agreement cannot be reached in the formulation of such a plan for selection of areas to be left uncleared, the Commission reserves the right to make such determination after notice and opportunity for hearing. The clearing of the land and disposal of the material shall be done with due diligence and to the satisfaction of the authorized representative of the Commission.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

GEORGIA POWER COMPANY, PROJECT NO. 1218

ORDER APPROVING REVISED PROJECT EXHIBITS

(Issued July 22, 1965)

On October 19, 1964, Georgia Power Company, licensee for the Flint River Project No. 1218, filed for Commission approval revised Exhibit L drawings and a revised Exhibit M for the project located on the Flint River near Albany, Georgia.

The drawings show changes in the project structures of an emergency nature undertaken by the licensee during the 1964 construction season. These major repairs and modifications were initiated when erosion and undercutting of the limestone foundation supporting the main spillway piers and buttresses endangered the structure. Construction was commenced in July of 1964 and was completed in December of 1964. The licensee advised our Atlantic Regional Office of its plans and submitted construction drawings and specifications in July 1964.

The main Flint River spillway section was modified by extensive reconstruction of the foundation of the slab and buttress overflow structure. The Muckafoonee dam and spillway were modified by replacing the tilting flashboards with vertical lift gates and the construction of an emergency free-crest spillway over part of the earth embankment.

The modification of the Muckafoonee spillway has increased the total project spillway capacity from 99,000 cfs to about 109,000 cfs before overtopping. The 1925 flood peak of record, 92,000 cfs, resulted in an estimated reservoir elevation of 190.5 feet and an estimated tailwater elevation of 187.5 feet, a differential of only 3 feet. As modified, the differential between reservoir elevation and tailwater elevation would be about 2.0 feet at the time of any future overtopping of the earth embankments. Considering the small differential between headwater and tailwater at the time of overtopping, failure of the project earth embankment, if any, would be gradual and the peak flood flow would not be increased appreciably downstream. Under those circumstances, the spillway is considered adequate.

The U.S. Corps of Engineers have advised that the revised Exhibit L drawings were satisfactory and the tracings were approved pursuant to Section 4(e) of the Federal Power Act insofar as the interests of navigation are concerned.

The Commission finds:

The following described revised exhibits conform to the Commission's rules and regulations and should be approved as part of the license for the project, and the exhibits described herein as superseded should be eliminated from the license for the project:

EXHIBIT L: PLANS OF STRUCTURES

Sheet No.	Title	FPC No.	FPC No. Superseded
1	Plan of Development & Typical Sections of Dike & Channel..	1218-10	1218-4
3	Flint River Dam Plan, Elevation, & Spillway Section.....	1218-11	1218-6
4	Muckafoonee Spillway Plan, Upstream Elevation & Sections.	1218-12	1218-8

Exhibit M (Revised October 1, 1964) comprising three typewritten pages filed October 19, 1964, superseding Exhibit M filed September 7, 1932.

The Commission orders:

The revised exhibits described in the above finding are approved as part of the license for Project No. 1218, and the exhibits described in the same finding as being superseded are eliminated from the license for the project.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

ORANGE AND ROCKLAND UTILITIES, INC., DOCKET NO. E-7230

ORDER AUTHORIZING ACQUISITION OF COMMON STOCK

(Issued July 22, 1965)

Orange and Rockland Utilities, Inc. (Applicant), a corporation organized under the laws of the State of New York and qualified to do business in the States of New York and New Jersey with its principal business office at Nyack, New York, filed an application on June 14, 1965, for authority pursuant to Section 203 of the Federal Power Act to acquire 20,000 shares of Common Stock, $100 par value, of Rockland Electric Company (Rockland Electric) a wholly-owned subsidiary.

Applicant is engaged in furnishing electrical energy in all of Rockland County, most of Orange County and the easterly portion of Sullivan County, all in New York. Applicant also furnishes electrical energy to Rockland Electric a New Jersey corporation which operates in the northern parts of Bergen and Passaic Counties and a small portion of Sussex County in New Jersey, and to another subsidiary, Pike County Light & Power Company which operates in Pennsylvania.

Rockland Electric now has outstanding Common Stock of 42,000 shares, $100 par value, total par value $4,200,000, all owned by Applicant. Applicant now proposes to acquire from Rockland Electric, 20,000 additional shares of Common Stock, $100 par. The new shares are to be purchased for $2,000,000 in cash, this amount being the total par value of the new shares. Rockland Electric will use the $2,000,000 from the new stock, plus $2,000,000 from new bonds to be issued, to pay off short-term notes which are expected to total about $4,000,000. These notes heretofore authorized by Commission order issued December 11, 1961 in Docket No. E-7015, 26 FPC 823, have been issued to provide funds for construction of a new plant.

Applicant represents that the operations of Rockland Electric have been integrated with the operations of the Applicant to such an extent that the electric properties of the two companies constitute and are operated as one continuous electric system and that in order to maintain the integration of the systems and to enable Rockland Electric to secure favorable terms for debt financing, it is in the public interest that Applicant continue to own capital stock of Rockland Electric.

Written notice of the application has been given to the Public Service Commission of the State of New York, and the Board of Public Utility Commissioners of the State of New Jersey and the Governors of those States. Notice of the application was also published in the Federal Register on June 30, 1965 (30 F.R. 8353), stating that any person desiring to be heard or to make any protest with reference to the application should on or before July 7, 1965, file protests or petitions with the Federal Power Commission, Washington, D.C., 20426. No protest or petition or request to be heard in opposition to the granting of the application has been received.

The Commission finds:

(1) Applicant, a corporation, is a public utility within the meaning of Section 203 of the Federal Power Act subject to the jurisdiction of the Commission as heretofore determined and set forth in the Commission's order issued August 13, 1958 in the matters of *Orange and Rockland Utilities, Inc.* and *Rockland Electric Company*, in Docket No. E–6827 (20 FPC 205).

(2) Rockland Electric, a corporation is a public utility within the meaning of Section 203 of the Federal Power Act subject to the jurisdiction of the Commission as heretofore determined and set forth in the Commission's order issued August 13, 1958 in the matters of *Orange and Rockland Utilities, Inc.* and *Rockland Electric Company*, in Docket No. E–6827 (20 FPC 205).

(3) By the proposed transaction, as described above, Applicant will acquire securities of Rockland Electric, another public utility, within the meaning and subject to the requirements of Section 203 of the Federal Power Act.

(4) The proposed acquisition by Applicant of 20,000 shares of Common Stock of Rockland Electric, as recited above, upon the terms and conditions specified in the application and subject to the provisions of this order will be consistent with the public interest as expressed in Section 203 of the Federal Power Act for the reasons set forth above.

(5) Applicant is not subject to a requirement of the Public Utility Holding Company Act of 1935 or of a rule, regulation, or order thereunder, which would exempt it, pursuant to Section 318 of the Federal Power Act, from the requirements of Section 203 thereof with respect to the matter with which this order is concerned.

(6) Rockland Electric is organized and operating in the State of New Jersey under the laws of which its security issues with the exception of short-term notes are regulated by a State Commission within the meaning of Section 204(f) of the Act; and the proposed issuance of Common Stock is exempt by virtue of that Section from the requirements of Section 204 of the Act.

(7) The period of public notice given in this matter is reasonable.

The Commission orders:

(A) The proposed acquisition by Applicant of 20,000 shares of Common Stock of Rockland Electric, as described above, is hereby authorized and approved upon the terms and conditions and for the purposes set forth in the application, subject to the provisions of this order.

(B) This authorization shall expire unless the transaction herein authorized and approved is consummated within 90 days from the date of issuance of this order.

(C) The foregoing authorization and approval is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuations, estimates or determinations of costs, or any other matter whatsoever now pending or which may come before this Commission or any other regulatory body

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

SIERRA PACIFIC POWER COMPANY, PROJECT NOS. 938, 1191, 1262 AND 1446

ORDER ACCEPTING SURRENDER OF LICENSES (TRANSMISSION LINE)

(Issued July 22, 1965)

On June 1, 1965, Sierra Pacific Power Company, licensee for the above-designated transmission line projects, filed under Section 6 of the Federal Power Act for surrender of its licenses for the projects occupying lands of the United States within the State of Nevada.

The application was filed pursuant to the Commission's March 29, 1965, 33 FPC 652, order approving transfer of ten transmission line licenses, including the subject licenses, from Sierra Pacific Power Company to Pacific Nevada Power Company, the latter presently being known as Sierra Pacific Power Company. In its March 29, 1965 order, the Commission stated that according to a staff study all of the transmission lines designated in the order are distribution lines and not primary lines or parts of a "project" as defined in Section 3(11) of the Federal Power Act, and that its approval of transfer of the licenses was subject to the requirement that the transferee obtain authority from the appropriate Government agency having supervision of the Government lands involved and then apply for surrender of its licenses for the lines.

The Nevada Land Office, Bureau of Land Management, Department of the Interior, Reno, Nevada, which has supervision over the lands of the United States occupied by the lines, has advised that the permits for the continued occupancy of Government lands by the lines will be issued as of the date of surrender of the licenses.

The Commission finds:

Acceptance of surrender of the licenses for transmission line Project Nos. 938, 1191, 1262 and 1446 is appropriate, as hereinafter provided.

The Commission orders:

Surrender of the licenses for transmission line Project Nos. 938, 1191, 1262 and 1446 is accepted, effective as of May 31, 1965, subject to the payment of annual charges within 30 days from the date of issuance of this order in the amount of $133.57 for the period January 1, 1965, through May 31, 1965, as follows:

Project No. 938	Land charges only	Total	$21.39
Project No. 1191	Administrative charge		2.07
	land charges		50.13
		Total	52.20
Project No. 1262	Administrative charge		2.07
	land charges		10.87
		Total	12.94
Project No. 1446	Administrative charge		2.07
	land charges		44.97
		Total	47.04

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

NORTHERN NATURAL GAS COMPANY, CP65–1, CP65–91, CP65–338; NATURAL GAS PIPELINE COMPANY OF AMERICA, CP65–169, CP65–325; TRANSWESTERN PIPELINE COMPANY, CP65–208, CP65–236, CP65–237, CP65–320

ORDER GRANTING TEMPORARY CERTIFICATES

(Issued July 23, 1965)

Natural Gas Pipeline Company of America (Natural) and Transwestern Pipeline Company (Transwestern) filed applications on June 29, 1965, and July 6, 1965, respectively, for temporary certificates of public convenience and necessity authorizing Transwestern and Natural to construct and operate facilities and to exchange, transport, and sell natural gas in interstate commerce for resale as described in their respective applications under Docket Nos. CP65–320, CP65–325, and a portion of CP65–169 comprising Phase 1 of the consolidated proceedings in the above-entitled cases as delineated in the Commission's order issued herein on June 4, 1965, a public hearing on which was held July 12 and 14, 1965.

Natural requests authorization to construct and operate pipeline, compressor, and other facilities:

1. To increase the daily design sales capacity of its transmission system by 185,000 Mcf to a total of 2,154,000 Mcf;

2. To transport natural gas to be produced from reserves located in the West Cameron Blocks 17–49 Field Area, South Louisiana, to a point of connection with Natural's existing Gulf Coast line in Montgomery County, Texas;

3. To increase the maximum day withdrawal capacity of Natural's storage facilities by 50,000 Mcf to a total of 1,000,000 Mcf;

4. To transport gas which Natural will purchase from producers in the Indian Basin and Dagger Draw areas in Eddy County, New Mexico, to a point of connection with Transwestern's 24-inch West Texas lateral and to effect an exchange of such gas with Transwestern.

The facilities for which Natural requests temporary authorization to construct and operate are described in detail in Phase 1 hearing exhibit 71 and in Natural's application under Docket No. CP65–325. Natural estimated their total cost at $40,150,000.

Transwestern requests temporary authorization to construct, install, and operate the facilities described in its application under Docket No. CP65–320, which was included in the Phase 1 hearing, namely 35.2 miles of 24-inch loop line along Transwestern's West Texas lateral; an additional 1,000 horsepower compressor near Transwestern's existing Roswell compressor station; and measuring stations at proposed points of delivery of gas to Natural in the Panhandle area of Texas at a total estimated cost of approximately $3,391,000.

Natural and Transwestern request temporary authorization to exchange up to 130,000 Mcf of natural gas per day pursuant to an "Agreement for the Temporary Exchange of Gas" (Phase 1 hearing exhibits 66 and 75) as described in their applications under Docket Nos. CP65–325 and CP65–320, respectively, pending final determination of, and the Commission's decision in, Phase 2 of the consolidated proceedings in the above-captioned cases as delineated in the Commission's order issued June 4, 1965. The facilities for which Natural and Transwestern request temporary authorization include the facilities which are needed to implement the exchange of gas but are not limited to such facilities.

Natural also requests temporary authorization to transport in interstate commerce and sell additional volumes of natural gas up to 192,400 Mcf [1] per day on a firm basis commencing December 1, 1965, to seventeen present resale customers and to one present direct industrial customer. Natural alleged that its customers have executed precedent agreements to purchase all of the requested additional volumes of gas and also the proposed 50,000 Mcf per day increase in storage withdrawal capacity.

Natural alleged, and submitted supporting evidence, that the additional volumes of gas which it proposes to sell and deliver will be needed by its customers during the winter of 1965–66 in order to avoid serious shortages of gas which would require curtailment of firm service; that it must commence construction by August 1, 1965, if the proposed facilities are to be put in operation in time for the 1965–66 winter heating season; and that the temporary certificates requested by Natural and Transwestern are needed in order to assure maintenance of adequate service in Natural's market areas within the terms of Section 7(c) of the Natural Gas Act and of Section 157.17 of the Commission's Regulations.

Transwestern noted in its application for a temporary that Gulf Pacific Pipeline Company had no objection to the installation of the facilities requested provided the certificate issued contains the following condition:

> The authorization issued herein is without prejudice to the application of Gulf Pacific Pipeline Company in the consolidated proceedings at CP63–204, *et al.*

It noted further that the Commission staff had indicated that the certificate should contain the following condition:

> In the event the final determination in the comparative proceedings in FPC Docket No. CP65–1, et al. is adverse to Transwestern and its applications filed in CP65–208, CP65–236 and CP65–237 are denied and additional sales or deliveries from its system have not materialized, Transwestern will not include the cost of the facilities installed for the interim service in its rate base in any rate increase proceeding until such time as Transwestern can make proof that the additional capacity which such facilities provide is needed.

Transwestern is willing that such conditions be included. Transwestern further indicated that it was willing that the temporary authorization be conditioned upon a guarantee that the "*interim exchange arrangement* will not cause the Btu of gas delivered by Transwestern to California to fall below 1065 Btu per cubic foot." We have conditioned the issuance of this temporary certificate to reflect each of the above set forth conditions.

Transwestern stated in its application that the temporary authorization "*should expressly provide* that Transwestern would not be required to reduce its existing rates as a result of revenues realized or to be realized from the interim exchange arrangement with Natural *and* that if the interim exchange arrangement is approved after hearing, Transwestern will be permitted to file and place into effect the rates agreed upon with Natural for that service in the March 19, 1965 agreement." As we understand the primary contested issue in the Phase I proceeding concerns allegations by California that excess revenues over the cost incurred for this specific project should be flowed through for the benefit of the California consumers. It would be inappropriate for us to prejudge that issue in this order. Accordingly, we can not and will not find, in granting this temporary certificate to Transwestern, that it should not be required to reduce its existing rates or that after the hearing it will be permitted to file and place into effect the agreed upon rates. We expressly make no finding on this

[1] Billing units of Mcf at 1,000 Btu per cubic foot and 14.65 psia at 60 degrees F.

question at this time. We understand that the hearing in that phase of the proceeding has been completed and that the matter is now pending before the examiner for decision. In all likelihood, therefore, the specific issue presented will be decided by us prior to the time the facilities for which temporary authorization is hereby requested are put in operation pursuant to the temporary certificate we grant herein.

The Commission finds:

(1) The Applicants, Natural Gas Pipeline Company of America and Transwestern Pipeline Company, Delaware corporations having their principal offices and places of business in Chicago and Houston, respectively, are engaged in the transportation of natural gas in interstate commerce and the sale in interstate commerce of natural gas for resale, and they are natural gas companies as defined in the Natural Gas Act.

(2) The proposed facilities for which the Applicants request temporary certificates of public convenience and necessity will be used for the transportation and sale for resale of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof will be subject to the requirements of Section 7(c) of the Natural Gas Act.

(3) The Applicants are able and willing to do the acts and perform the services proposed in their respective applications in Docket Nos. CP65-320, CP65-325, and a part of CP65-169, as embraced in Phase I of the hearing, and to conform to the provisions of the Natural Gas Act and the Rules and Regulations of the Commission thereunder.

(4) The temporary certificates requested by the Applicants are needed in order to assure maintenance of adequate service to Natural's present customers within the terms of Section 7(c) of the Natural Gas Act and of Section 157.17 of the Commission's Regulations.

(5) Public convenience and necessity require that the temporary certificates issued hereinafter and the rights granted thereunder be conditioned as hereinafter provided.

The Commission orders:

(A) A temporary certificate of public convenience and necessity is issued to each of the Applicants authorizing them to construct and operate the facilities and to transport, exchange and sell natural gas as described hereinbefore upon the terms and conditions of this order.

(B) The certificates issued by this order and the exercise of the rights granted thereunder are conditioned upon compliance by the Applicants with all applicable Regulations of the Commission under the Natural Gas Act, and particularly Section 157.20 of said Regulations.

(C) The certificates issued by this order and the exercise of any right thereunder are subject to the further condition that in the event that the Commission's decision in Phase II of the hearing, which will be held in the future in these consolidated proceedings, results in any of the temporarily-authorized facilities which are constructed by Natural or Transwestern not being permanently certificated, the cost of such facilities will be excluded from Transwestern's rate base and from Natural's rate base.

(D) The certificate issued to Natural by this order and the exercise of any right thereunder is subject to the further condition that the cost of facilities constructed by Natural to enable it to take gas produced in the West Cameron Block 17-49 Field Area, South Louisiana, which is to be purchased from The California Company, and in the Indian Basin Area and the Dagger Draw Area of New Mexico, will not be included in Natural's rate base until after FPC

certificates authorizing the sale of such gas have been issued to, and accepted by, The California Company and producers of gas in the Indian Basin, Dagger Draw and Bluitt areas who have contracts for the sale of such gas to Natural, and who are able to produce and sell to Natural such gas in volumes aggregating at least 130,000 Mcf per day.

(E) The temporary certificates issued to Natural and Transwestern by this order are subject to further conditions, as follows:

(1) The exchange charge proposed by Natural and Transwestern in their "Agreement for the Temporary Exchange of Gas" dated March 19, 1965, shall remain in effect until a final order is issued by the Commission in Phase I of the proceedings under Docket No. CP65–1, *et al.*

(2) Natural shall enrich the gas delivered to Transwestern from reserves in the Indian Basin and Dagger Draw areas in accordance with its letter agreement with the Pacific Lighting Companies dated April 16, 1965 (Phase I hearing exhibit 67) and accepted by the Pacific Lighting Companies by letter dated July 7, 1965 (T. 814).

(3) Transwestern shall guarantee that, subject to the assurances given by Natural, the exchange of gas pursuant to their temporary exchange agreement will not cause the thermal content of gas delivered by Transwestern to California to fall below 1,065 Btu per cubic foot.

(4) The certificates issued herein shall not prejudice in any respect the application of Gulf Pacific Pipeline Company in the consolidated proceedings under Docket No. CP63–204, *et al.*

(5) The certificates issued herein shall be void unless they are accepted in writing by both Natural and Transwestern within seven days after the date of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

EASTERN SHORE NATURAL GAS COMPANY, DOCKET NO. CP65–365

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued July 26, 1965)

On May 17, 1965, Eastern Shore Natural Gas Company (Applicant) filed in Docket No. CP65–365 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain facilities and the transportation and delivery of natural gas, on an interruptible basis, to the plant of O. A. Newton & Son Company (Newton), Bridgeville, Delaware, all as more fully set forth in the application in this proceeding.

Specifically, Applicant proposes to tap its existing 6-inch transmission line and construct and operate approximately 1,600 feet of 2-inch lateral line to the plant of Newton. Newton's estimated third year peak day and annual requirements are 336 Mcf and 17,611 Mcf, respectively. Newton will use the gas to dry grain and to produce steam for feed manufacturing primarily in the summer and fall periods of relatively low demand for gas.

The estimated cost of the proposed facilities is $7,000.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on July 21, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Eastern Shore Natural Gas Company, a Delaware corporation having its principal place of business in Salisbury, Maryland, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order issued November 29, 1957, in Docket No. G-12200 (18 FPC 710).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and delivery of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the proposed transportation and delivery of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the proposed transportation and delivery of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is issued authorizing Applicant, Eastern Shore Natural Gas Company, to construct and operate the proposed facilities and to transport and deliver natural gas as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities authorized shall be constructed and placed in actual operation and the transportation and delivery of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within six months from the date on which this order issues.

(D) The certificate issued herein is granted on the express condition that the interruptible service authorized herein shall be curtailed or interrupted to the extent required to meet existing or future contracted minimum delivery obligations of Applicant for firm service to its customers.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

TENNESSEE GAS TRANSMISSION COMPANY, DOCKET NO. CP65-352

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued July 26, 1965)

On May 5, 1965, Tennessee Gas Transmission Company (Applicant) filed in Docket No. CP65-352 an application, as supplemented May 17, July 2 and July 6, 1965, pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing construction and operation of facilities for the liquefaction, storage and vaporization of natural gas, and authorizing the sale of such natural gas to its General Service Customers in the New England Area, all as more fully set forth in the application.

Applicant proposes to install a liquefied natural gas (LNG) plant, a cryogenic in-ground LNG storage facility and regasification (vaporization) facilities at its compressor station No. 267 near Hopkinton, Massachusetts. By means of these facilities, natural gas will be taken from Applicant's mainline during off-peak periods, liquefied at a rate of 12,500 Mcf per day, and stored at a temperature of —260° Farenheit in two in-ground frozen bedrock containers. During winter peak periods, liquefied natural gas will be pumped from the storage containers, converted to the gaseous phase by addition of heat and re-introduction into Applicant's mainline for delivery on a firm basis to the 18 existing General Service Customers who have contracted with Applicant for LNG service.

Applicant has obtained contract commitments for the full service of 121,454 Mcf maximum daily LNG quantity and 3,032,176 Mcf maximum winter LNG contract quantity proposed in the subject application. In order to meet these daily and winter LNG obligations, Applicant will replace several lateral facilities with larger diameter pipe.

Total estimated cost of this project to Applicant is $14,950,000, which includes $13,924,000 for LNG plant and storage facilities, $690,000 for lateral replacement, $236,000 for meter station alterations and $100,000 for administrative expenses. Applicant will finance these costs initially with general funds or by means of $50,000,000 of revolving credit presently available. This credit will be retired in the future through Applicant's usual permanent financing, such as first mortgage bonds and stock.

On June 7, 1965, a joint petition to intervene herein was filed by The Manufacturers Light and Heat Company, United Fuel Gas Company and The Ohio Fuel Gas Company (Petitioners). The intervention states that Petitioners do not request a formal hearing and have no objection to the disposition of the instant application under the Commission's shortened procedure provided the Commission imposes conditions substantially equivalent to those prescribed in its order of July 3, 1963, *Transcontinental Gas Pipe Line Corporation*, Docket No. CP63-228, 30 FPC 38. By supplement filed herein July 6, 1965, Applicant stated its willingness to accept a certificate with such conditions. No other petitions to intervene have been filed.

At a hearing held on July 21, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits and supplements thereto, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Tennessee Gas Transmission Company, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of July 12, 1947, in Docket No. G-910 (6 FPC 777).

(2) The proposed construction and operation of facilities and sales of natural gas by Applicant hereinbefore described, as more fully described in the application in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed, and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The proposed construction and operation of facilities and sales of natural gas by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Applicant, Tennessee Gas Transmission Company, authorizing the construction and operation of facilities and sales of natural gas hereinbefore described, as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(2), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereinbefore described shall be constructed and placed in actual operation and the sales of natural gas shall be undertaken, as provided by paragraph (b) of Section 157.20 of the aforesaid Regulations within 36 months from the date on which this order issues.

(D) Applicant shall submit in a form acceptable to the Commission annual reports showing the pertinent operating data and the experienced associated costs covering the facilities and service authorized for each of the first three full years of service.

(E) Upon full development of all facilities authorized herein, Applicant shall notify the Commission of the date when it has delivered, on demand of its customers, the maximum LNG winter contract quantity of gas, or that it has been unable to so deliver this quantity. In the event that Applicant shall have been unable, because of mechanical or operational failure of the LNG facilities, to deliver the maximum LNG winter contract quantity of gas, it shall, in any rate determination, if so directed by the Commission, remove from its rate base an amount which shall be determined by multiplying the net original cost of plant and facilities authorized by a fraction the numerator of which shall be the annual winter contract quantity which Applicant was unable to deliver and the denominator of which shall be the maximum winter contract quantity of 3,032,176 Mcf of gas; provided, however, this said amount may again be included in Applicant's rate base in any rate determination if Applicant can deliver the maximum LNG winter contract quantity of gas during any winter withdrawal period.

(F) In any rate proceeding instituted after the liquefied natural gas facilities certificated have been transferred to gas plant in service, should the "test-period" (as presently defined in the Commission's Regulations) or any part thereof fall prior to the commencement of the full service of 121,454 Mcf per day

authorized herein, Applicant shall nevertheless reflect revenues and costs based upon such full service.

(G) Applicant shall not, in any rate proceeding, attempt to assess against any other class of service any deficiency in revenues for rendering the service certificated herein below the cost of service associated with the certificated LNG plant and storage facilities, prepared in the manner shown by Exhibits N and P, Schedule 1 of the application in this proceeding.

(H) Applicant shall file, in a form acceptable to the Commission, its Rate Schedule LNG for the natural gas service authorized herein.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge

VALLEY GAS TRANSMISSION, INC., DOCKET NO. CP65-280

FINDINGS AND ORDER AFTER STATUTORY HEARING PERMITTING AND APPROVING ABANDONMENT, TERMINATING CERTIFICATES AND CANCELLING RELATED RATE SCHEDULES

(Issued July 26, 1965)

On March 10, 1965, Valley Gas Transmission, Inc. (Applicant), filed in Docket No. CP65-280 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon certain natural gas facilities, all as more fully set forth in the application.

Applicant seeks permission and approval to abandon (1) approximately nine miles of 4-inch gathering line, nine miles of 6-inch gathering line, two miles of 5-inch well line and miscellaneous 2-inch well lines, together with certain compression, liquid extraction and related facilities running from the Refugio Field Area in Refugio County, Texas, to a point on the mainline of Tennessee Gas Transmission Company (Tennessee) also located in Refugio County, and (2) 2.76 miles of 6-inch gathering line and miscellaneous 2-inch line, together with appurtenant facilities, in the Pheasant Field, Matagorda County, Texas. Due to low pressure conditions in Refugio County and drainage conditions in the Pheasant Field, continued operation in the same manner as in the past and as required under existing contracts of the facilities proposed to be abandoned, is no longer economically feasible.

With the exception of three producers in the Refugio Field Area in Refugio County and the Pheasant Field Area in Matagorda County, all producers have agreed to cancel their contracts with the Applicant in this proceeding, and have filed applications for abandonment, which are being granted under separate order. The three producers referred to, made sales under authorizations and related rate schedules until late 1963 when deliveries from them to Applicant ceased. Since the Applicant has made an effort to contact the producers, Glen Humphrey, Jr., Humphrey Oil Corp., and J. R. Oribison, and sales of natural gas by said producers have ceased, their respective certificate authorizations should be terminated and their respective related rate schedules should be cancelled as hereinafter provided for.

After due notice, no petition to intervene, notice of intervention, or protest to the granting of the application has been filed.

At a hearing held on July 21, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought, and upon consideration of the record,

The Commission finds:

(1) Applicant, Valley Gas Transmission, Inc., a Texas corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of December 29, 1960, Docket No. G–19618 (25 FPC 233).

(2) The facilities proposed to be abandoned, as hereinbefore described and as more fully described in the application herein, are used in the transportation and sale of natural gas in interstate commerce subject to the jurisdiction of the Commission, and such abandonment is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(3) The proposed abandonment of the aforesaid facilities is permitted by the public convenience and necessity and approval thereof should be granted as hereinafter ordered.

(4) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act, and the public convenience and necessity require (1) that the certificates of public convenience and necessity issued to Glen Humphrey, Jr., in Docket No. CI63–703, Humphrey Oil Corp., in Docket No. CI63–706 and to J. R. Oribison in Docket No. CI63–1320 be terminated and (2) Glen Humphrey, Jr., Rate Schedule No. 2, Humphrey Oil Corp., Rate Schedule No. 1 and J. R. Oribison Rate Schedule No. 1 be cancelled as of the date of issuance of this order.

The Commission orders:

(A) Permission for and approval of the abandonment of the facilities hereinbefore described, as more fully described in the application in this proceeding, are hereby granted to Applicant, Valley Gas Transmission, Inc.

(B) Applicant shall advise the Commission of the date of abandonment of the facilities as authorized in paragraph (A) above within 10 days of such abandonment.

(C) The certificates of public convenience and necessity issued to Glen Humphrey, Jr., in Docket No. CI63–703, Humphrey Oil Corp., in Docket No. CI63–706, and to J. R. Oribison in Docket No. CI63–1320 are hereby terminated effective on the date of this order.

(D) The rate schedules of Glen Humphrey, Jr., Rate Schedule No. 2, Humphrey Oil Corp., Rate Schedule No. 1, and J. R. Oribison Rate Schedule No. 1 are hereby cancelled, effective on the date of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

KANSAS-NEBRASKA NATURAL GAS COMPANY, INC., COMPLAINANT v. COLORADO INTERSTATE GAS COMPANY, DEFENDANT, DOCKET NO. RP65–43

ORDER APPROVING SETTLEMENT AGREEMENT, ACCEPTING REVISED TARIFF SHEETS FOR FILING, AND TERMINATING PROCEEDING

(Issued July 27, 1965)

This proceeding was instituted by Commission order accompanying Opinion No. 450, issued February 18, 1965, 33 FPC 281, in Docket No. CP64–294, for the purpose of providing Kansas-Nebraska Natural Gas Company, Inc. (Kansas-Nebraska) with an opportunity to present evidence in support of its allegations of discriminatory rate treatment which it made in Docket No. CP64–294. In that

prior proceeding Colorado Interstate Gas Company (Colorado Interstate) was granted a certificate authorizing the construction of facilities and sale of gas to Cheyenne Light, Fuel & Power Company (Cheyenne). The sales authorized were to be made from Colorado Interstate's 12-inch, 40-mile lateral originally certified in 1963 (30 FPC 356) to serve Kansas-Nebraska in the 3-state area of northwestern Colorado.

A pre-hearing conference was convened before the Presiding Examiner on June 15, 1965, in this proceeding. Prepared testimony and exhibits were introduced into the record by Kansas-Nebraska, Colorado Interstate and the Commission staff. After brief opening statements, counsel for all parties requested a recess for negotiations, which were successful in reaching a compromise agreement. On June 16, 1965, counsel for Colorado Interstate read into the record a "Statement of Settlement" which had been agreed to by all parties who entered an appearance in hearing, including in addition to the aforementioned parties, Kansas-Colorado Utilities, Inc., Public Service Company of Colorado, Western Slope Gas Company, Cheyenne Light, Fuel & Power Company, Kansas Corporation Commission, and the Commission staff. The Presiding Examiner certified the record to the Commission for its consideration.

On June 16, 1965, Colorado Interstate tendered for filing as proposed changes in its FPC Gas Tariff, First Revised Volume No. 1, Original Sheet No. 11F, First Revised Sheet 11D, Second Revised Sheets Nos. 11C, 11E, 16A, and 16B, and Third Revised Sheet No. 11B. Copies thereof, together with copies of the settlement agreement, have been served upon all customers and interested State commissions. No protests or objections thereto have been received by the Commission.

Briefly stated, the settlement agreement provides:

(1) Colorado Interstate will submit for filing a new Rate Schedule PR–1, Partial Requirement Service, to be effective as of July 1, 1965, superseding Rate Schedule P–2. For comparative purposes, Appendix A hereto reflects the three major changes: (A) Availability; (B) Minimum Monthly Bill; (C) Minimum Annual Bill. The new PR rate schedule contains other minor and supplementary changes from those contained in P–2 rate schedule.

(2) The existing service agreement between Kansas-Nebraska and Colorado Interstate for sales under Rate Schedule P–2 shall be modified to include sales under Rate Schedule PR–1 and to include an additional delivery point for gas sold under PR–1 at an existing interconnection in the Hugoton Field in Kansas.

(3) Kansas-Nebraska withdraws its complaint herein and the Commission shall terminate this proceeding.

(4) The parties request that the Commission waive the requirements of applicable Regulations to effectuate the agreement.

(5) No party shall be bound by the agreement unless it is approved without modification, in its entirety, by the Commission.

(6) The parties shall not be considered as approving any principles of tariff construction by the agreement to the settlement terms.

The Commission finds:

(1) Good cause exists for waiving the 30-day requirements of Part 154 of the Commission's Regulations under the Natural Gas Act in order that the tariff sheets specified above may become effective as hereinafter ordered.

(2) The proposed Statement of Settlement and the tariff sheets tendered for filing on June 16, 1965, specifically mentioned above, are proper and in the public interest in carrying out the provisions of the Natural Gas Act, and should be accepted for filing and made effective as hereinafter provided and ordered.

The Commission orders:

(A) The 30-day notice requirement of Part 154 of the Commission's Regulations under the Natural Gas Act is hereby waived subject to the terms and conditions of this order and of the Statement of Settlement herein.

(B) The Statement of Settlement and the tariff sheets specifically described above are accepted for filing to become effective as of July 1, 1965, subject to the terms and conditions of this order; *provided, however,* that this order shall not be construed to change or otherwise affect the existing obligations of Colorado Interstate, including but not limited to those relating to refunds and rate reductions, which are not specifically changed, modified or terminated by the Statement of Settlement and the tariff sheets described above.

(C) Upon compliance by Colorado Interstate with each of the terms and conditions of the Statement of Settlement and of this order, this proceeding shall be terminated.

(D) This order is without prejudice to any findings or orders which have been made or may hereafter be made by the Commission and is without prejudice to any claims or contentions which may be made by the Commission, Colorado Interstate Gas Company, the Commission staff, or any other party affected by this order, in any proceedings now pending or hereafter instituted by or against Colorado Interstate Gas Company or any other persons or parties affected by this order.

APPENDIX A

MAJOR CHANGES PROPOSED BY CIG IN RATE SCHEDULE PR–1 [1] TO REFLECT SETTLEMENT OF ISSUES RAISED IN DOCKET NO. RP65–43

		Minimum monthly bill	Minimum annual bill	Billing demand
P–2	Limited to K–N at a point or points along Seller's 12" lateral Wyoming pipeline.	Monthly demand charge plus a minimum commodity charge based on *75 percent* use of the C.D. for each billing month.	Sum of monthly demand charges plus a minimum commodity charge based on *75 percent* use of the C.D. for the billing year.	Contract demand.
PR–1	Generally available to any pipeline company when such pipeline is receiving a substantial portion of its requirements from other sources.	Same as P–2 except the minimum commodity charge is based on *40 percent* use of the C.D.	Same as P–2 except the minimum commodity charge is based on *70 percent* use of the C.D.	No change from P–2.

[1] Supersedes the presently effective P–2 schedule. Rate Schedules P–2 and PR–1 contain the same rate levels as the P–1 schedule, $0.93 per Mcf demand charge and 18.5 cents per Mcf commodity charge.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

CITY OF LORETTO, TENNESSEE AND TEXAS EASTERN TRANSMISSION CORPORATION, DOCKET NO. CP65–305

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued July 27, 1965)

On March 26, 1965, the City of Loretto, Tennessee (Applicant) filed in Docket No. CP65–305, an application, as supplemented, on May 18, 1965, pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Texas Eastern Transmission Corporation (Respondent) to establish physical

connection of its transmission facilities with the proposed facilities of and to sell natural gas to Applicant for resale and distribution in Loretto, all as more fully set forth in the application in this proceeding.

Applicant proposes to construct and operate approximately 1.2 miles of 4-inch transmission line from the proposed interconnection with Respondent in Lawrence County, Tennessee, to Loretto, together with the distribution facilities necessary to provide the subject service.

The application shows Applicant's estimated third year peak day and annual natural gas requirements to be 320 Mcf and 23,489 Mcf, respectively.

The total estimated cost of the proposed project, including transmission and distribution facilities, is $140,000, which cost will be financed by the issuance and sale of natural gas revenue and general obligation bonds. Exhibit N of the application shows that, based on a third year leveling of sales and expenses, net revenue covers debt service 1.56 times. This ratio satisfactorily indicates the feasibility of Applicant's proposal.

On April 28, 1965, Respondent filed an answer to the subject application stating that it will abide by the Commission's decision in this matter.

Due notice of the filing of the application and opportunity for hearing thereon has been given by publication in the Federal Register on April 13, 1965 (30 F.R. 4728). No protest or petition to intervene has been filed in this proceeding.

The Commission finds:

(1) Respondent, Texas Eastern Transmission Corporation, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of October 10, 1947, in Docket No. G–880 (6 FPC 148).

(2) Applicant, City of Loretto, Tennessee, is a municipal corporation incorporated under the laws of the State of Tennessee, and is legally empowered to construct and operate natural gas facilities and to sell and distribute natural gas in said city.

(3) It is necessary and desirable in the public interest that Respondent be directed to establish physical connection of its natural gas transmission system with the proposed facilities of Applicant and to sell and deliver up to 320 Mcf of natural gas per day to Applicant, as set forth in the application, as supplemented, and as hereinafter ordered and conditioned.

(4) This order should be conditioned upon Applicant being prepared to receive gas from Respondent, as proposed, within one year from the date on which this order issues and upon the execution of a service agreement between Applicant and Respondent in accordance with the Commission's Regulations under the Natural Gas Act.

(5) The requirement that Respondent serve Applicant, as proposed, will not place any undue burden upon Respondent nor impair its ability to render adequate service to its existing customers.

The Commission orders:

(A) Respondent, Texas Eastern Transmission Corporation, is directed to establish physical connection of its natural gas transmission system with the proposed facilities of Applicant and to sell and deliver up to 320 Mcf of natural gas per day to Applicant, all as hereinbefore described and as set forth in the application, as supplemented, in this proceeding.

(B) This order is conditioned upon Applicant being prepared to receive natural gas from Respondent, as proposed, within one year from the date on which this order issues and upon the execution of a service agreement between

Applicant and Respondent in accordance with the Commission's Regulations under the Natural Gas Act.

(C) Respondent shall report to the Commission in writing the date of commencement of service to Applicant.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

SOUTH GEORGIA NATURAL GAS COMPANY, DOCKET NO. CP65-392

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued July 27, 1965)

On June 9, 1965, South Georgia Natural Gas Company (Applicant) filed in Docket No. CP65-392 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain facilities and the sale and delivery of natural gas to the City of Jasper, Florida, for resale and the delivery of natural gas, on an interruptible basis, to the Occidental Corporation of Florida (Occidental), all as more fully set forth in the application in this proceeding.

Specifically, Applicant proposes to construct and operate a total of 27 miles of pipeline ranging from three inches to six inches together with the necessary metering and regulating facilities and appurtenances. The proposed pipeline is to connect with Applicant's present system at a point approximately 10 miles north of the Florida Power Corporation's plant and extend in an easterly direction to the vicinity of Purvis Still, Florida, with a 3-inch lateral line from the proposed main line for service to Jasper. Occidental will receive deliveries at the terminus of the proposed new main line.

The estimated third year peak day and annual natural gas requirements for Jasper are 599 Mcf and 49,224 Mcf, respectively. Occidental is estimated to require 500,000 Mcf annually during the third year of operations. Occidental will utilize gas in phosphate mining operations and processing.

The total estimated cost of Applicant's proposed facilities is $546,000, which cost will be financed from cash on hand.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on July 21, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, South Georgia Natural Gas Company, a Georgia corporation having its principal place of business in Thomasville, Georgia, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of August 3, 1954, in Docket No. G-1915 (13 FPC 666).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the sale and/or transportation and delivery of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the proposed sale and/or transportation and delivery of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the proposed sale and/or transportation and delivery of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is issued authorizing Applicant, South Georgia Natural Gas Company, to construct and operate the proposed facilities and to sell and/or transport and deliver natural gas as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities authorized shall be constructed and placed in actual operation and the sale and/or transportation and delivery of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within eight months from the date on which this order issues.

(D) The certificate issued herein is granted on the express condition that the interruptible service authorized herein shall be curtailed or interrupted to the extent required to meet existing or future contracted maximum delivery obligations of Applicant for firm service to its customers.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

UNITED GAS PIPE LINE COMPANY, DOCKET NO. CP65-391

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued July 27, 1965)

On June 7, 1965, United Gas Pipe Line Company (Applicant) filed in Docket No. CP65-391 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain facilities and the transportation and delivery of natural gas, on a firm basis, to Louisiana Plywood Corporation (Plywood) for use by the latter in its new plant in Winn Parish, Louisiana, all as more fully set forth in the application in this proceeding.

Specifically, Applicant proposes to construct and operate approximately 1.9 miles of 2-inch pipeline extending from Applicant's 30-inch Refugio-Sterlington main line in Jackson Parish, Louisiana, to the delivery station in Winn Parish,

together with a positive meter station and appurtenances. Plywood will utilize natural gas in direct fired dryers, in boilers for producing steam for processing operations and in miscellaneous plant purposes.

Plywood's estimated third year maximum day and annual requirements are 1320 Mcf and 336,600 Mcf, respectively.

The total estimated cost of the proposed facilities is $41,581, which cost will be financed from current working funds.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on July 21, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, United Gas Pipe Line Company, a Delaware corporation having its principal place of business in Shreveport, Louisiana, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of January 20, 1942, in Docket No. G–216 (3 FPC 3).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and delivery of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the proposed transportation and delivery of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the proposed transportation and delivery of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is issued authorizing Applicant, United Gas Pipe Line Company, to construct and operate the proposed facilities and to transport and deliver natural gas as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities authorized shall be constructed and placed in actual operation and the transportation and delivery of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within six months from the date on which this order issues.

(D) This certificate shall not entitle the industrial customer to whom firm deliveries are authorized herein to any priorities to additional gas for meeting any future increases in its requirements at the expense of firm resale customers desiring to acquire additional gas to meet any future increases in their requirements.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

CODY GAS COMPANY, DOCKET NO. CP65-378; HUSKY PIPELINE COMPANY, DOCKET NO. CP65-379

DECLARATIONS OF EXEMPTION

(Issued July 28, 1965)

On May 28, 1965, Cody Gas Company (Cody) and Husky Pipeline Company (Husky) filed their respective applications for exemption of their facilities described below from the provisions of the Natural Gas Act, pursuant to Section 1(c) thereof.

Cody is a legal entity engaged in the transportation and distribution of natural gas in the State of Wyoming. A portion of the natural gas so transported and distributed by Cody is transported in interstate commerce subject to the jurisdiction of the Federal Power Commission.

The communities of Cody and Meeteetse and environs thereof, are served by a non-integrated transmission system of Cody, one segment of which extends north from Cody to a point of connection with Husky Pipeline Company, all in Park County, Wyoming.

Natural gas received by Cody for transportation and distribution through its said system is consumed ultimately within the State of Wyoming, and all of its said facilities are located within said State.

Husky's sole service consists of transporting gas for the account of Cody which Cody purchases at the tailgate of Husky Oil Company's Ralston Plant. The said plant processes casinghead gas produced from sources in Montana and Wyoming, and the sales by the oil company to its pipeline affiliate were certificated by order of the Commission issued July 23, 1965, in Docket No. CI65-1249. Husky's facilities consist of approximately 22 miles of 4½-inch transmission pipeline extending Southwest from the tailgate of the said plant to a point of connection with Cody's facilities north of Cody.

All natural gas received by Husky for transportation through its said system is received within the State of Wyoming and ultimately consumed within the State of Wyoming. Husky's facilities are all located within the State of Wyoming.

The Public Service Commission of Wyoming has certified to the Federal Power Commission that it has been and will be exercising regulatory jurisdiction over the rates, service and facilities of Cody and Husky.

Wherefore, the Commission declares, by reason of the foregoing:

Cody Gas Company and Husky Pipeline Company are exempt from the provisions of the Natural Gas Act, and the orders, rules and regulations of this Commission issued thereunder.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

EL PASO NATURAL GAS COMPANY, DOCKET NO. CP62-265

ORDER FURTHER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued July 28, 1965)

On July 1, 1965, El Paso Natural Gas Company (Applicant), filed in Docket No. CP62-265 an application to further amend the order of the Commission in Docket No. CP62-265 on May 16, 1963, 29 FPC 984, as amended on July 2, 1963, 30 FPC 16 and April 28, 1964, 31 FPC 1034, which authorized, among other things, the installation and operation of an 880 Hp reciprocating compressor unit at its Albany Compressor Station located in Linn County, Oregon, to be utilized in supplying the natural gas requirements of California-Pacific Utilities Company. The application to further amend seeks revision of the said order of the Commission so as to authorize the substitution of a 1040 Hp gas turbine-driven compressor unit in the place of the 880 Hp reciprocating compressor unit authorized for the Albany Compressor Station, all as more fully set forth in the application to amend.

Applicant states it has re-evaluated its horsepower requirements at the Albany Compressor Station, and decided to install one 1040 Hp gas turbine unit at a cost of $300,000, which would effect a saving on capital investment of $165,000, as well as additional operational savings.

California-Pacific Utilities Company under letter of July 8, 1965, advised the Commission it was in complete accord with an approves of the proposal of the Applicant to substitute the gas-turbine unit for the certificated reciprocating unit.

Due notice of the filing of the application to amend and opportunity for hearing thereon has been given by publication in the Federal Register on July 15, 1965 (30 F.R. 8920). No petition to intervene, notice of intervention, or protest to the granting of the application to amend has been filed.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued May 16, 1963, as amended on July 2, 1963, and April 28, 1964, in Docket No. CP62-265, be amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order issued May 16, 1963, as amended on July 2, 1963, and April 28, 1964, in Docket No. CP62-265, is amended so as to authorize El Paso Natural Gas Company to substitute a 1040 Hp gas turbine-driven compressor unit for the 880 Hp reciprocating compressor unit certificated in the said order of the Commission.

(B) In all other respects said order shall remain in full force and effect.

Before Commissioners: L. J. O'Connor, Jr., Acting Chairman; Charles R. Ross and Carl E. Bagge.

NORTHERN STATES POWER COMPANY, DOCKET NO. E-7232

SUPPLEMENTAL ORDER AUTHORIZING THE ISSUANCE OF COMMON STOCK

(Issued July 28, 1965)

By order issued July 19, 1965, *supra*, p. 74, in the above-entitled matter, Northern States Power Company (Applicant), was authorized pursuant to Section 204 of the Federal Power Act to issue and sell 772,008 additional shares of its Common Stock subject to the provisions, among others, set forth in Paragraph (B) of that order as follows:

(B) The proposed issuance and sale of Common Stock in the manner set forth in the application shall not be consummated until:

(i) Applicant shall have amended its application pursuant to the requirements of Section 34.2(g) of the Commission's Regulations under the Federal Power Act relating to compliance with competitive bidding requirements, and Section 34.2(h)(1) of those Regulations relating to affiliation, and shall have either filed such amendments or shall have mailed them and advised the Commission by telephone and telegraph, as contemplated in Section 34.9 of the Regulations.

(ii) The Commission, by further order, shall have approved the price per share to be received by Applicant for the Common Stock and the amount of any compensation for underwriters to be paid by Applicant in connection with the Common Stock.

Applicant on July 26, 1965, filed an amendment, pursuant to the requirements of the aforementioned Commission order, in which it stated among other things, that it proposes to offer the Common Stock to the stockholders at a price of $33.00 per share. On July 28, 1965, Applicant filed an amendment, also pursuant to the requirements of the aforementioned Commission order, in which it stated that it proposes to accept as representing the lowest commitment fee, the bid of Blyth & Co., Inc., The First Boston Corporation, and Kuhn, Loeb & Co. Incorporated to receive $70,950 aggregate amount of compensation for commitment to purchase the Common Stock unsubscribed for by stockholders.

The Commission finds:

(1) Applicant has satisfactorily complied with the requirements contained in Paragraph (B) of the Commission's order issued July 19, 1965 in the above-entitled docket; the price per share to be received by the Applicant is reasonable, and the compensation to be paid to the underwriter under the bid Applicant proposes to accept for underwriting the proposed issuance of Common Stock is reasonable.

(2) The proposed issuance and sale of Common Stock as hereinafter authorized will be for a lawful object within the corporate purposes of Applicant and compatible with the public interest which is appropriate for and consistent with the proper performance of service by Applicant as a public utility and which will not impair its ability to perform that service and is reasonably appropriate for such purposes.

The Commission orders:

(A) The price per share to be received by Applicant for the proposed issuance of Common Stock and the compensation to be paid to the underwriter for underwriting the issuance of that Common Stock, under the respective bids referred to above, are approved as reasonable.

(B) The proposed issuance and sale of Common Stock referred to above, upon the terms and conditions, and for the purposes specified in the application, as supplemented by the amendment referred to above, and hereby authorized, subject only to the provisions of Paragraphs (C), (D) and (E) of the Commission's order issued July 19, 1965.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

TENNESSEE GAS TRANSMISSION COMPANY, DOCKET NO. CP65-381

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued July 28, 1965)

On May 28, 1965, Tennessee Gas Transmission Company (Applicant) filed in Docket No. CP65-381 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing it to render natural gas service to the Cities of New Albany and Pontotoc, Mississippi, under separate gas sales contracts, as more fully set forth in the application.

The cities have been served under one service agreement since 1951. They would have preferred to have been separate customers, but it was not economically feasible for each city to build a separate supply lateral to Applicant's main line. New Albany built a 30-mile lateral, and Pontotoc built an 18-mile extension from New Albany to Pontotoc.

In 1955 Applicant constructed its Kinder-Portland line which crossed the supply lateral of the cities between New Albany and Applicant's main line and relocated its meter station from the main line to the Kinder-Portland line. In 1963 Pontotoc constructed a separate three-mile supply lateral connecting the Kinder-Portland line to Pontotoc's existing facilities.

Pursuant to the request of the cities that they be treated as two separate customers, Applicant entered into separate gas sales contracts with each, allocating the authorized maximum daily quantity of 5,823 Mcf between the two contracts in accordance with the election of the cities. Such allocation resulted in 4,039 Mcf per day being assigned to New Albany and 1,784 Mcf per day being assigned to Pontotoc. The separate contracts were tendered to the Commission for filing on October 1, 1964, with a proposed effective date of November 1, 1964. The Commission, by letter dated October 28, 1964, rejected the separate contracts since no certificate authorization had been issued permitting separate deliveries to the two cities.

Neither construction of new facilities nor change in Applicant's operations is involved in the proposal.

The Cities of New Albany and Pontotoc, in a letter signed by the mayors of the cities, have indicated their support of the separate service.

Due notice of the filing of the application was published in the Federal Register on June 11, 1965 (30 F.R. 7627). No petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on July 27, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Tennessee Gas Transmission Company, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of July 15, 1947, in Docket No. G–910 (6 FPC 777).

(2) The proposed separate sales hereinbefore described, as more fully described in the application in this proceeding, are sales for resale in interstate commerce subject to the jurisdiction of the Commission and are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The separate sales of natural gas, as proposed in the application, are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c) (3), and (e) of Section 157.20 of said Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Applicant, Tennessee Gas Transmission Company, authorizing the separate sales of natural gas, as hereinbefore described and as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c) (3) and (e) of Section 157.20 of such Regulations.

(C) The sales of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within six months from the date of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

TEXACO INC., ET AL. (FORMERLY SUNRAY DX OIL COMPANY, ET AL., DOCKET NO. G–4281, ET AL.), DOCKET NO. G–8087, ET AL.

ORDER DENYING APPLICATION FOR REHEARING

(Issued July 28, 1965)

On July 9, 1965, the Public Utilities Commission of the State of California, *et al.*, filed an application for rehearing of the Commission's Opinion No. 464, issued on June 10, 1965, 33 FPC 1228. Applicants contend the opinion erred in not imposing conditions that would make the certificates there issued subject to the Commission's final order in Docket No. R–200. This contention was considered and rejected in our opinion, and we reaffirm our conclusion that it is without merit. Therefore, the application for rehearing will be denied.

312–270—69——12

The Commission orders:

The application filed by the Public Utilities Commission of the State of California, *et al.*, on July 9, 1965, for rehearing of Opinion No. 464, issued herein on June 10, 1965, is denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

TOWN OF WEIR, MISSISSIPPI AND TEXAS EASTERN TRANSMISSION CORPORATION, DOCKET NO. CP65-375

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued July 28, 1965)

On May 27, 1965, the Town of Weir, Mississippi (Applicant) filed in Docket No. CP65-375 an application pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Texas Eastern Transmission Corporation (Respondent) to establish physical connection of its natural gas transmission facilities with the facilities proposed to be constructed by Applicant, and to sell and deliver natural gas to Applicant for resale and distribution in Weir, Mississippi and environs, all as more fully set forth in the application.

Applicant seeks physical connection of its proposed transmission facilities with Respondent's system at a point in Choctaw County, Mississippi, approximately one mile south of Applicant's town limits, and the sale and delivery of Applicant's estimated third year peak day requirements of 191 Mcf of natural gas at such connection.

Applicant's third year annual and peak day requirements are estimated to be 15,754 Mcf and 191 Mcf respectively.

Total estimated cost of Applicant's proposed construction, including transmission facilities and distribution system, is $95,000, and will be financed with proceeds from the issuance and sale of gas revenue bonds.

Third year revenues and expenses indicate that Applicant's debt service coverage ratio would be 1.69 and its proposal appears to be feasible.

On June 24, 1965, Respondent filed its answer herein, stating that it will abide by whatever decision the Commission may make on the merits of the application.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

The Commission finds:

(1) Texas Eastern Transmission Corporation, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of March 30, 1949, in Docket No. G-859, *et al.* (8 FPC 190).

(2) Applicant is legally authorized to construct and operate the proposed facilities and to engage in the local distribution of natural gas to the public, as proposed, within the meaning of Section 7(a) of the Natural Gas Act.

(3) It is necessary and desirable in the public interest that Respondent be directed to establish physical connection with Applicant's proposed facilities and to sell and deliver natural gas to Applicant, as proposed, upon the terms and conditions of this order.

(4) The requirement that Respondent serve Applicant, as hereinafter ordered, will not place any undue burden upon Respondent, require it to enlarge its trans-

portation facilities or impair its ability to render adequate service to its existing customers.

The Commission orders:

(A) Respondent, Texas Eastern Transmission Corporation, is directed to establish physical connection of its facilities with the facilities proposed to be constructed and operated by Applicant, and to sell and deliver up to 191 Mcf of natural gas per day to Applicant, as hereinbefore described and as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) Respondent shall report to the Commission in writing the date of commencement of service to Applicant, within 10 days thereof.

(C) Applicant shall be prepared to receive service from Respondent as directed, within one year from the date on which this order issues.

(D) Respondent shall file, pursuant to part 154 of the Commission's Regulations under the Natural Gas Act, an executed service agreement with Applicant.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

WESTFIELD GAS CORPORATION AND PANHANDLE EASTERN PIPE LINE COMPANY, DOCKET NO. CP65-240

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued July 28, 1965)

On February 12, 1965, Westfield Gas Corporation (Applicant) filed in Docket No. CP65-240 an application pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Panhandle Eastern Pipe Line Company (Respondent) to establish physical connection of its natural gas transmission facilities with the facilities proposed to be constructed by Applicant, and to sell and deliver natural gas to Applicant for resale and distribution in Westfield, Indiana, all as more fully set forth in the application.

Applicant seeks physical connection of its proposed lateral transmission facilities with Respondent's main transmission line at a point in Hamilton County, Indiana, and the sale and delivery by Respondent to Applicant of the third-year maximum day requirements of Westfield of 397 Mcf of natural gas at such connection.

Applicant's estimated third year annual and peak day requirements are 40,741 Mcf and 397 Mcf, respectively.

Total estimated cost of Applicant's proposed construction, including transmission facilities and distribution system, is $140,000, and will be financed with a loan of $100,000 from the Merchants National Bank and Trust Company of Indianapolis, Indiana and with internally generated funds.

Respondent has filed no objection to the issuance by the Commission of an order as requested by Applicant.

Using the revenue, expense and income information supplied by Applicant, the calculated third year rate of return is 11.6 percent. This indicates the project is economically feasible.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

The Commission finds:

(1) Respondent, Panhandle Eastern Pipe Line Company, a Delaware corporation having its principal place of business in Kansas City, Missouri, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of October 17, 1945, in Docket No. G–254 (4 FPC 1081).

(2) Applicant is legally authorized to construct and operate the proposed facilities and to engage in the local distribution of natural gas to the public, as proposed, within the meaning of Section 7(a) of the Natural Gas Act.

(3) It is necessary and desirable in the public interest that Respondent be directed to establish physical connection with Applicant's proposed facilities and to sell and deliver natural gas to Applicant, as proposed, upon the terms and conditions of this order.

(4) The requirement that Respondent serve Applicant, as hereinafter ordered, will not place any undue burden upon Respondent, require it to enlarge its transportation facilities or impair its ability to render adequate service to its existing customers.

The Commission orders:

(A) Respondent, Panhandle Eastern Pipe Line Company, is directed to establish physical connection of its facilities with the facilities proposed to be constructed and operated by Applicant, and to sell and deliver up to 397 Mcf of natural gas per day to Applicant, as hereinbefore described, as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) Respondent shall report to the Commission in writing the date of commencement of service to Applicant, within 10 days thereof.

(C) Applicant shall be prepared to receive service from Respondent, as directed herein, within one year from the date on which this order issues.

(D) Respondent shall file pursuant to Part 154 of the Commission's Regulations, an executed service agreement with Applicant.

OPINION NO. 467

CUMBERLAND NATURAL GAS COMPANY, INC., G–18740; TRUMAN DRAKE, G–18744; CREEK OIL COMPANY, INC., CI64–457; J. C. MILLER OIL COMPANY, INC., G–18743 AND CI64–1107

OPINION AND ORDER ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY, AND DENYING APPLICATION FOR ABANDONMENT

(Issued July 29, 1965)*

Syllabus

1. Natural Gas Act gives Commission no authority to place limits on deliveries of gas dedicated to interstate commerce to protect correlative rights of intrastate sellers on adjacent acreage, at least in absence of any evidence indicating such limitation would benefit interstate operations. P. 135; 142.
2. It is well established that dedication of reserves for sale in interstate commerce occurs at least as soon as deliveries commence and once service is begun, producer cannot terminate service without Commission approval. P. 136.

*Initial decision appears on p. 140.

3. Section 7(b) of the Gas Act provides only procedure available to producer [or any assignee] for consent to cease service; such procedure requires affirmative showing that abandonment is warranted. P. 136.
4. Record fails to support finding that available supply of natural gas underlying originally dedicated acreage is so depleted that continuance of service in interstate commerce is unwarranted. P. 137.
5. Fact that producer's percentage interest in subject acreage was a minor one did not serve to remove such interest from encompassing effects of act of dedication. P. 137.
6. Producer's interest in acreage was effectively dedicated irrespective of fact that at time of dedication gas reserves in such area may have been unproven and were never connected to buyer's facilities. P. 137.
7. Commission finds application for abandonment should be denied for want of prosecution by producer-applicant and lack of assignee's satisfactory showing on merits—neither party has satisfied statutory requirements of Section 7(b). P. 137.
8. It would be violative of purpose of Section 7(b) of Gas Act to permit producer-applicant to accomplish by non-action under Section 7(c) that which it could not establish under Section 7(b). P. 138.
9. In a proceeding under Sections 7(c) and 7(b) of the Natural Gas Act, Commission *issues* certificates of public convenience and necessity and *denies* application for abandonment.

Commissioner O'Connor *concurring.*

W. D. Bratcher for Cumberland Natural Gas Company, Inc. and Har-Ken Oil Co.

William R. Connole and *Howard S. Spering* for Tartan Oil Co. and J. C. Miller Oil Company, Inc.

Harold M. Streets for Creek Oil Company, Inc.

George P. Lewnes for the Staff of the Federal Power Commission.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

Ross, *Commissioner:*

This is a certificate proceeding under Section 7 of the Natural Gas Act involving: (a) the application of Cumberland Natural Gas Company, Inc. (Cumberland) for authorization to gather and sell gas to Texas Gas Transmission Corporation (Texas Gas); (b) the applications of J. C. Miller Oil Company, Inc. (Miller), Truman Drake (Drake), and the Creek Oil Company, Inc. (Creek), for authorization to sell gas to Cumberland; and (c) the subsequent application of Miller for authorization to abandon its sales to Cumberland. The Commission granted temporary authorizations for the proposed sales. On November 10, 1964, an initial decision was issued by Examiner Robert M. Weston who granted permanent certificates to Cumberland and Creek, dismissed the applications of Drake and of Miller for want of prosecution, and denied Miller's application for abandonment. This case is before the Commission on exceptions filed on December 30, 1964, by the staff and by Tartan Oil Company (Tartan), an intervener in the Creek-Cumberland dockets.

Tartan filed a motion for oral argument which was objected to by Cumberland and by Creek. The issues in this proceeding have been so thoroughly considered in the briefs submitted by the participants that, in our judgment, oral argument would contribute little which has not already been presented. The motion for oral argument will be denied.

Factual and Procedural Background

On June 8, 1959, Cumberland, a pipeline gathering system in western Kentucky, applied in Docket No. G–18740 for authorization to gather and sell gas to Texas Gas at the rate of 21 cents per Mcf (at 15.025 psia). This consisted of a 15 cent base plus 6 cents for gathering, compressing, and transporting. Concurrently, two independent producers, Drake in Docket No. G–18744, and Miller in Docket No. G–18743, applied to sell gas to Cumberland at an initial rate of 10 cents per Mcf (at 15.025 psia), to be increased to 15 cents per Mcf after Cumberland had amortized certain gathering facilities. We granted temporary authorization in 1959. In 1963, Creek, another independent producer, applied in Docket No. CI64–457 to sell gas to Cumberland at 15 cents per Mcf, and received temporary authorization on April 2, 1964. Cumberland's facilities were connected to the wells of Miller and Creek, and gas from these wells has flowed into Cumberland's systems. Drake took no action under his authorization.

Miller contracted with Cumberland to dedicate some 9,000 acres in the Harps Hill Area of Kentucky to interstate service, and began delivering gas to Cumberland from two wells in this area in 1959. Miller sold 150,000 Mcf to Cumberland, but ceased deliveries after November 1961 because of water accumulation in its wells. These wells are not, however, fully depleted, and Cumberland has estimated that approximately 7 billion cubic feet of recoverable reserves remain in Miller's dedicated acreage. On March 18, 1964, Miller applied in Docket No. CI64–1107 to abandon all service authorized in Docket No. G–18743, alleging depletion.

On July 14, 1964, the Har-Ken Oil Company, Inc. (Har-Ken) applied for succession in interest to Miller's application in Docket No. G–18743, stating that Miller had assigned to Har-Ken its rights to certain acreage in the Harps Hill properties, including its two wells. We recognized this assignment as a "partial succession", and we permanently certificated Har-Ken in Docket No. CI65–139, deleting Har-Ken's acreage from Miller authorization. See *Humble Oil & Refining Company, et al.*, Docket No. G–3072, *et al.*, October 7, 1964.

Also, on July 14, 1964, Tartan filed a Notice of Substitution for Miller in the abandonment proceeding, stating that Miller had assigned to it Miller's leasehold rights in 80.5 acres in the "Collier Unit" of the dedicated Harps Hill Area. This acreage did not include the two wells assigned to Har-Ken. Tartan drilled a well capable of commercial production on the "Collier Unit" in the summer of 1963, but did not connect this well to Cumberland, nor has it indicated any intent to continue sales to Cumberland from the 80.5 acres.

Tartan had petitioned on November 14, 1963, to intervene in the Creek-Cumberland proceedings, alleging that it produced gas from the same field as Creek, and that it would be damaged because of excessive drainage by Creek. We denied this petition on April 2, 1964, 31 FPC 763. Tartan petitioned for reconsideration, and on June 1, 1964, 31 FPC 1329, we granted intervention finding that Tartan might provide useful information regarding the "overall nature of Cumberland's activities." We also granted a petition by Cumberland to intervene in the Miller abandonment proceedings, and consolidated the above matters for hearing.

Hearings were held at Washington, D.C., between July 13 and July 30, 1964, and were concluded on the latter date. The Examiner permitted Tartan to present evidence in support of Miller's abandonment application conditioned on our grant of Tartan's request for substitution. We denied such request on August 26, 1964, and the Examiner accordingly gave no consideration to Tartan's showing in support of the abandonment.

The Examiner's Initial Decision

On November 10, 1964, the Examiner issued an initial decision proposing the grant of permanent certificates to Cumberland and to Creek, subject to the finding that Cumberland qualified as a Class D natural-gas pipeline company, and that Cumberland's rates to Texas Gas should not at any time exceed 6 cents per Mcf at 15.025 psia plus any rate lawfully in effect for the sale of gas to Cumberland by producers of natural gas in the area of Cumberland's operations including any rate applicable to Cumberland's own production.

The Examiner dismissed for want of prosecution Drake's application in Docket No. G–18744, and Miller's application in Docket No. G–18743 to the extent that the latter was not disposed of by Commission action in the Har-Ken proceeding, Docket No. CI65–139, and in the Miller abandonment proceeding, Docket No. CI64–1107. The Examiner also denied the Miller abandonment proceeding for want of prosecution.

In connection with Creek's application in Docket No. CI64–457, the Examiner approved Creek's price for the sale of gas to Cumberland at a flat 15 cents per Mcf at wellhead,[1] and rejected Tartan's request that Creek's certification be limited to a temporary authorization and a restricted production stating that the "Commission has never asserted jurisdiction to decide conflicting claims to gas in place, or how such gas should be allocated between claimants." The Examiner further observed that Tartan's allegations that Creek's rate of production would impair the value of Tartan's reserves, although backed by expert authority, were refuted by equally expert testimony, and he determined that on balance Tartan's charges were not proved.

Issues Raised by Exceptions to the Examiner's Decision

Two basic issues are presented in the exceptions to the Examiner's decision filed by Tartan and by the staff. First, Tartan asserts that the Examiner is in error because of his refusal to limit Creek's certification to a temporary authorization and to restrict production on the basis of Tartan's allegations of drainage and waste. Second, the staff contends that clarification is required with respect to the Examiner's dismissal of Miller's application in Docket No. G–18743 for want of prosecution, since the apparent effect of this dismissal is to accord Miller the very relief which it sought and was denied in its abandonment proceeding.

We find no merit in Tartan's exception to the Examiner's refusal to impose a restrictive limitation upon Creek's production. The record in this matter shows that Tartan's deliveries and sales of gas from the White Plains North Gas Field, where its wells are adjacent to those of Creek, are solely in intrastate commerce, and hence are plainly beyond the Commission's jurisdiction by operation of Section 1(b) of the Natural Gas Act, 15 U.S.C. § 717(b). See also *Federal Power Commission* v. *Transcontinental Gas Pipe Line Corp.*, 365 U.S. 1, 17 (1961). Without passing on the extent of our jurisdiction, if any, in a situation where there is no state conservation law and where an interstate producer is being drained by one selling in interstate or in intrastate commerce, it is clear that the Natural Gas Act gives us no authority to place limits on deliveries of gas dedicated to interstate commerce in order to protect the correlative rights of intrastate sellers on adjacent acreage at least, in the absence of any evidence indicating that such a limitation would benefit interstate operations. It would be anomalous to impose a restriction upon production by Creek for sales in inter-

[1] The Examiner found that Creek's price was not excessive in view of a staff-prepared summary of all of the 101 producer contracts in Kentucky which have been certificated, showing that of 99 permanent certifications, 82 are at prices over 15 cents per Mcf, and 23 are at prices of 20 cents or above.

state commerce where neither we nor the conservation authority of the State of Kentucky could impose a like restriction on production by Tartan for sales in intrastate commerce. The *Northern Natural Gas Company* case [2] cited by Tartan in support of its position is inapposite, for that case involved a situation where state conservation regulations conflicted with sales of gas in interstate commerce.

It is therefore unnecessary to rule specifically on the question as to whether Tartan's request for a restriction on Creek's production is also barred by that language in Section 1(b) of the Natural Gas Act which states that the provisions of the Act shall not apply to the "production or gathering of natural gas."

With respect to the second basic issue involving the Examiner's action in dismissing Miller's application in Docket No. G–18743, we find the staff's request for clarification to be appropriate. The authorization granted Miller by the Commission's action of July 2, 1959, carried with it the following requirement:

> * * * once service is commenced under this authorization it may not be discontinued without permission of the Commission issued pursuant to the provisions of the Natural Gas Act.

Acting under this authorization, Miller commenced deliveries of gas to Cumberland from two producing wells in the Harps Hill Area of Muhlenberg County pursuant to a contract in which Miller dedicated for sale in interstate commerce "all gas reserves on the leases under the Seller's [Miller's] control * * * where it is economically feasible to collect or transport the gas." Miller's leases in the Harps Hill Area encompassed approximately 9,000 acres of property and included the two tracks containing recoverable reserves of gas which Miller subsequently assigned to Har-Ken and to Tartan.

The principle is well established that dedication of reserves for sale in interstate commerce occurs at least as soon as deliveries commence, and that once such service is begun, the producer cannot terminate the service without Commission approval. *Atlantic Refining Co.* v. *Public Service Commission of New York*, 360 U.S. 378, 387–389 (1959); *Sunray Mid-Continent Oil Co.* v. *Federal Power Commission*, 364 U.S. 137, 156 (1960). It is thus plain that in this instance Miller assumed the continuing duty to deliver for sale in interstate commerce the gas from its 9,000 dedicated acres until it exhausted its reserves or received Commission permission to cease service. See *Hunt* v. *Federal Power Commission*, 306 F. 2d 334 (CA5-1962); *cf.*, *Sunray Mid-Continent Oil Co.* v. *Federal Power Commission, supra; Sun Oil Co.* v. *Federal Power Commission*, 364 U.S. 170 (1960).

The fact that Tartan had succeeded as an assignee to Miller's interest in 80.5 acres in the Collier Unit was adequately established in the course of the hearing. In retrospect, we should have permitted Tartan to be joined as a party to this application and shall so provide herein. Granting Tartan's request at this time is not prejudicial because the Examiner permitted it to introduce all relevant evidence on this issue during the hearing.

The only procedure available to Miller (and to any assignee of Miller) for obtaining Commission consent to cease service was by application for authorization to abandon in accordance with the provisions of Section 7(b) of the Natural Gas Act, 15 U.S.C. §717(b). This section provides that no natural-gas company shall abandon all or any portion of its facilities subject to the Commission's jurisdiction or service rendered by means of such facilities without the Commission's approval after due hearing and a finding that the available supply of natural gas is depleted to the extent that the continuance of service is unwarranted, or that the present or future public convenience or necessity permit the abandonment. This procedure plainly required of Miller an affirmative

[2] *Northern Natural Gas Company* v. *State Corporation Commission of Kansas*, 372 U.S. 84 (1963).

showing that abandonment was warranted. The importance of this showing was recognized in *Michigan Consolidated Gas Co.* v. *Federal Power Commission*, 283 F. 2d 204, 214, 180, U.S. App. D.C. 409, 419 (1960), cert. denied, 364 U.S. 913, where the Court stated:

> * * * An applicant for abandonment under § 7(b) of the Act has the burden of making the factual showing which will assure the Commission charged with protecting the public interest, that that interest will in no way be disserved; just as the applicant under § 7(c) for a certificate to commence service must bear the burden of proving that that public interest will be served.

Miller and Tartan failed to make the required statutory showing. The record fails to support a finding that the available supply of natural gas underlying the acreage originally dedicated to interstate commerce is so depleted that the continuance of service in interstate commerce is unwarranted. The acreage assigned by Miller to Har-Ken contains two wells in the "Harps Hill Gas Field" which Har-Ken intends to maintain in production under contract with Cumberland, and for the operation of which Har-Ken has been certificated in Docket No. G–3072, *et al.* The dedicated acreage assigned by Miller to Tartan contains one well which Tartan admits is capable of commercial production, with an open flow rate of three million cubic feet per day, and the record shows that Tartan has constructed a line to this well with the intent of transporting and selling production therefrom in an intrastate market.

Unable to establish the depletion of the dedicated acreage, Miller attempted to argue that its percentage interest in the 80.5 acres was so small that it had never accomplished an effective dedication of this plot. This argument, however, is plainly without merit. The fact that Miller's interest in the 80.5 acres was a minor one did not serve to remove such interest from the encompassing effects of the act of dedication. See *Deep South Oil Company of Texas, et al.*, 14 FPC 83, 87 (1955); *cf. Valvoline Oil Co.* v. *United States*, 308 U.S. 141, 147 (1939); *Jersey Central Power & Light Co.* v. *Federal Power Commission*, 319 U.S. 61 (1943). Moreover, Miller's interest in these 80.5 acres was effectively dedicated irrespective of the fact that at the time of dedication the gas reserves in such acreage may have been unproven, and were never connected to Cumberland's facilities. *Phillips Petroleum Company, et al.* (Docket No. G–11990), 23 FPC 260, 263 (1960).

Tartan on its part conceded that Miller's act of dedication covered its 80.5 acres, and rested its argument on the contention that the output of its one well was so small in relationship to the demands of Texas Gas Transmission Corporation, and Tartan's percentage interest in this output in turn was so small, that abandonment in this case would not impair the present or future public convenience or necessity. Tartan's position thus resolves itself into an argument of "de minimis." However, the fact that an operation may be small does not suffice to remove such operation from our jurisdiction. *Deep South Oil Company of Texas, et al.*, 14 FPC 83, 87 (1955). Were we to accept Tartan's argument all but a few very large sales could be abandoned whenever it suited the interests of the producer since the particular sale could be only a small part of the pipeline's gas supply.

We accordingly find that Miller's application for abandonment should be denied, not only for want of adequate prosecution on Miller's part, but also for lack of a satisfactory showing on the merits as presented by Tartan. Neither party has satisfied the statutory requirements of Section 7(b) of the Act.

Our denial of Miller's abandonment applications certainly is not to be frustrated by Miller's failure to prosecute its application for permanent certifica-

tion in Docket No. G–18743. While we find no basis for holding, as the staff suggested, that permanent certification should be granted, neither do we find any basis for relieving Miller (except as we have already done so by our certification of Har-Ken in Docket No. G–3072, *et al.*) of the responsibilities assumed by it under its temporary authorization. It indeed would be violative of the purpose of Section 7(b) of the Natural Gas Act to permit Miller to accomplish by non-action under Section 7(c) that which it could not establish under Section 7(b). Accordingly, the Examiner's ordering paragraph (F) will be modified to avoid any inconsistency with his order denying the abandonment application of Miller. Miller's temporary authorization will remain in effect and will continue to apply to the acreage it dedicated, and to be binding upon any person taking Miller's present interest by assignment. Of course, Tartan may file a certificate application to succeed to Miller's interest in the 80.5 acres and assume Miller's obligation to deliver gas produced from this acreage to Cumberland or to another purchaser if it can make the showing required by Section 7(b) of the Natural Gas Act.

Of the thirty-nine exceptions filed by Tartan approximately one-half relate in one way or another to the Examiner's refusal to limit Creek's production, and are disposed of by our discussion concerning that point. We find that the other exceptions do not present any major issues, and consist for the most part of assertions that the Examiner committed certain procedural errors, that he was in error in not finding that Cumberland and Creek had each failed to meet the burden of proof for obtaining permanent certification, and that he was in error in finding that there was no evidence in the record to support Miller's application to abandon service. We have considered Tartan's exceptions in light of the facts of record and the pleadings of the parties, and we find no basis in these exceptions for reversing or modifying the findings and conclusions of the Examiner, other than to the extent that we have considered Tartan's evidence in support of Miller's application for abandonment, and have found it to be inadequate.

The record in this matter amply supports the Examiner's findings that Cumberland and Creek each adequately met the burden of proof required of them for certification. Insofar as both the Cumberland and the Creek applications are concerned, we approve and adopt the Examiner's findings and conclusions as to the qualifications of these applicants, the financial, engineering, and economic data submitted in support of their applications, and the rates approved for the sale of gas together with the conditions imposed on the certificates.

The Commission finds:

(1) The following applicants, Cumberland Natural Gas Company, Inc. (Docket No. G–18740), and Creek Oil Company, Inc. (Docket No. G–18744), are engaged in the sale of natural gas in interstate commerce for ultimate public consumption and each is, therefore, a "natural-gas company" within the meaning of the Natural Gas Act.

(2) The sales of natural gas hereinbefore described, as more fully described in the applications, are or will be made in interstate commerce, subject to the jurisdiction of the Commission, and such sales, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Subject to the requirements of our order herein and conditions attached to the certificates herein issued, the Cumberland Natural Gas Company, Inc., and the Creek Oil Company, Inc., are able and willing properly to do the acts and to perform the services proposed, and to conform to the provisions of the

Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(4) The sales of natural gas by the Cumberland Natural Gas Company, Inc., and by the Creek Oil Company, Inc., together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are and have been required by the public convenience and necessity, and certificates therefor should be issued as hereinafter ordered and conditioned.

(5) The conditions attached to the certificates herein issued are required by the public convenience and necessity.

(6) The J. C. Miller Oil Company, Inc., and its assignee, Tartan Oil Company, have failed to make the showing required under Section 7(b) of the Natural Gas Act to warrant the grant of Miller's application for authorization to abandon all or any portion of its facilities subject to the jurisdiction of the Commission, or any service rendered by means of such facilities.

(7) Except as herein granted, the exceptions to the Examiner's decision should be denied.

The Commission orders:

(A) A certificate of public convenience and necessity is hereby issued to Cumberland Natural Gas Company, Inc., for the operations and sales as hereinbefore described and as more fully described in its application, supplementary filings, and the record herein, subject to the conditions hereinafter set forth.

(B) Cumberland Natural Gas Company, Inc., is a Class D natural-gas pipeline company within the meaning of the Commission's Regulations under the Natural Gas Act and Uniform System of Accounts, and shall keep the accounts and make the filings appropriate to its classification.

(C) The certificate issued to Cumberland Natural Gas Company, Inc., is conditioned to require that its rate for sales to Texas Gas Transmission Corporation shall not at any time exceed the sum of 6 cents per Mcf at 15.025 psia plus any rate lawfully in effect for the sale of gas to said Cumberland by producers of natural gas in the area of Cumberland's operations, including any rate applicable to Cumberland's own production, if any.

(D) The application of Truman Drake (Docket No. G–18744) is hereby dismissed for want of prosecution.

(E) A certificate of public convenience and necessity is hereby issued to Creek Oil Company, Inc., for the sale hereinbefore described and as more fully described in its application and the record herein.

(F) The Commission's letter-order of August 26, 1964, is modified to make Tartan a party to the abandonment application in Docket No. CI64–1107.

(G) To the extent that the application of J. C. Miller Oil Company, Inc., for a certificate of public convenience and necessity (Docket No. G–18743) has not been disposed of by Commission action in Docket No. CI65–139, no change is made in the temporary authorization granted this applicant by the Commission's order of July 2, 1959.

(H) The abandonment application of J. C. Miller Oil Company, Inc. (Docket No. CI64–1107), is hereby denied.

(I) The certificates issued in paragraphs (A) and (E) are not transferable, and shall be effective only so long as applicants continue the acts or operations hereby authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations and orders of the Commission.

(J) The issuance of the certificates in paragraphs (A) and (E) shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act or of Part 154 or Part 157 of the Commission's Regulations thereunder, and is without prejudice to any findings or orders which have been or may hereafter be

made by the Commission in any proceeding now pending or hereafter instituted by or against the applicants. Further, our action in this proceeding shall not foreclose or prejudice any future proceedings or objections relating to the operation of any price or related provisions in the gas purchase contracts herein involved, except as specified in paragraph (C) hereof. Nor shall the issuance of such certificates imply approval of all of the terms of the respective contracts basing the operations and sales herein certificated.

(K) The Examiner's decision, to the extent not inconsistent herewith, is hereby adopted as part of this Opinion and Order.

(L) Except as herein granted, the exceptions to the Examiner's decision are hereby denied.

(M) The motion for opportunity to present oral argument before the Commission is denied.

Commissioner O'Connor *concurring.*

O'CONNOR, *Commissioner, concurring:*

While concurring fully in the disposition of this proceeding, I cannot lend my approval to the *obiter dictum* in the majority opinion which would, first, seek to affirm a "well-established rule", but would, second, proceed to reopen that rule for further litigation. The reopened issue is the event by which reserves are dedicated to interstate commerce, and the well-established rule is the moment at which gas begins to flow. See *e.g.*, *Continental Oil Co.*, 31 FPC 1079 (1964); *J. M. Huber Corp.* v. *F.P.C.*, 236 F. 2d 550 (3d Cir. 1956), cert. den. 352 U.S. 971 (1957). Although my colleagues are willing to admit this, they would prefer that prior events also justify federal control. Such earlier events would include accepting a certificate, filing a certificate, or even negotiating a contract for an interstate sale. The thrust of the main opinion is to depart from the flow of gas as the accepted measure of our jurisdiction for the purpose of indicating a willingness to assert control over formative intentions of an applicant. Not only does this cloud a firm jurisdictional test and proceed to enter a wilderness of indefinable intent; it is a comment totally removed from the facts before us.

INITIAL DECISION
OF THE PRESIDING EXAMINER ON APPLICATIONS UNDER SECTION 7
OF THE NATURAL GAS ACT

(Issued November 10, 1964)

WESTON, *Presiding Examiner:* Cumberland Natural Gas Company, Inc. is a pipeline gathering system connecting several producing fields located in western Kentucky, and sells the gathered gas to Texas Gas Transmission Corporation at a point near Nortonville, Kentucky. It has been operating under temporary authorization issued July 2, 1959; it here seeks permanent certification.

Truman Drake is an independent producer who dedicated putative reserves in the Apex area of Christian County by contract with Cumberland. The area is still under study as to gas reserve potential, and has not been connected to the Cumberland system. Drake received a temporary authorization to sell gas to Cumberland on June 3, 1959, but no action has been taken thereunder. Drake has failed to appear or prosecute his application for permanent certification; Staff therefore moves that the application be dismissed, and the motion clearly must be granted.

Creek Oil Company, Inc. is an independent producer which, so far as is presently pertinent, operates one well in the White Plains North field of Hopkins and Muhlenberg Counties. On April 2, 1964, it was temporarily authorized to sell gas

to Cumberland, and the latter was likewise authorized to, and thereafter did, connect Creek's well to its system. Creek here seeks permanent certification.

J. C. Miller Oil Company, Inc. is an independent producer which owned, *inter alia*, properties in the Harps Hill area of Muhlenberg County and in the Collier Unit adjacent to the White Plains North field. It was temporarily authorized to sell gas to Cumberland, and the latter was likewise authorized to connect the gas, on July 2, 1959. Thereafter, Cumberland connected two Miller wells in the Harps Hill area, and deliveries of a total of about 150,000 Mcf of gas were made up to November, 1961. At that time, water accumulation in the wells made further deliveries impossible. Docket No. G–18743 is Miller's application for permanent certification. Docket No. CI64–1107 is Miller's application to abandon service filed March 18, 1964. The latter application is principally based on depletion of the "only wells" on the dedicated acreage "from which Cumberland has ever taken any gas deliveries."

It appears that Miller has disposed of the Harps Hill property and the Collier Unit property—that part of the originally dedicated acreage actually in Miller's control in which production potential is believed to exist. The disposition was by two assignments, next detailed.

1. On July 7, 1964, Miller assigned, *inter alia*, the Harps Hill gas well properties to the Har-Ken Oil Company of Owensboro, Kentucky. The assignment, designated a "partial succession," was recognized by the Commission in Docket No. CI65–139, on October 7, 1964, with the specific order that—

> * * * (F) The temporary certificate heretofore issued in Docket No. G–18743 is hereby amended by deleting therefrom authorization granted herein, in Docket No. CI65–139. ("Humble Oil & Refining Company and other applicants listed herein", Docket No. G–3072, *et al.*)

2. It appears that on April 29, 1963 Miller assigned approximately 80.5 of the dedicated acres to Tartan Oil Company. These acres lie east by north of the White Plains North field. On July 14, 1964, Tartan filed herein a notice of substitution of itself for Miller, asking that it "be recognized in these proceedings as standing in the place and stead of J. C. Miller Oil Company, Inc., as a beneficial party in interest", with regard to its 80.5 acres, insofar as the Miller abandonment application is concerned, and in recognition of the "very recent" assignment to Har-Ken, "a party whose interests * * * may lead it to seek to withdraw in part the Application for Authorization to Abandon Service."

By letter-order of August 26, 1964, the Commission rejected Tartan's request for substitution in the abandonment application, Docket No. CI64–1107; consequently, Tartan has no standing to pursue its desire for abandonment in the proceedings at bar, and will presumably be heard thereon at a later time.[1]

Tartan's main interest herein arises from its position as an intervenor in the Cumberland and Creek applications. Tartan says that "the most that the Commission should grant to these Applicants at this time is permission to continue operation on a restricted and controlled basis under their temporary authorizations with production and deliveries from the Creek lease restricted to not more than 10% of the daily open flow rate of its well or wells in any month," with reporting and other requirements imposed on both applicants. (Br. 68–71). The gravamen of Tartan's complaint is drainage and waste.

Drainage and Waste. As heretofore indicated, Creek operates one producing well, located approximately in the center of the White Plains North field, connected by one mile of 4 inch pipe with Cumberland's line to the north, and flowing

[1] The letter-order discloses that Tartan has not filed for Commission recognition of Tartan's succession to its part of the dedicated acreage covered by the temporary authorization of July 2, 1959 in Docket No. G–18743.

gas ultimately to Texas Gas in interstate commerce. The rest of the field is operated by Tartan, which has connected some 15 gas wells to its Jobe pipeline, and flows gas to Western Kentucky Gas Company in intrastate commerce. All or substantially all of such flow from Tartan occurs during the Kentucky heating season, beginning in September and ending in April of each year. Creek on the other hand, supplies large volumes of gas to Texas Gas during the summer months.

The testimony as to the degree of continuity and unity of the White Plains North field is in conflict. There is no doubt that there is some degree of continuity; there has been no attempt to establish that Creek's production derives from a reservoir wholly separated from the reservoir tapped by Tartan. For present purposes it may be assumed that the Creek well and the Tartan wells draw from a single reservoir, as depicted on the sketch (Appendix A) which is part of the decision. For present purposes, the following additional facts may be taken as established:

1. Tartan drilled the discovery well (#3 on the sketch) in July, 1962, and drilled three other wells (#6, #1, #2) prior to Creeks completion of its well December 7, 1962.

2. Tartan now has nine producing wells in the field. The field contains an estimated 8 million Mcf of producible gas, of which about 5 to 7 percent underlie Creek's acreage and about 90 to 92 percent underlie Tartan's acreage. (One to three percent of the reserves underlie well #12, not connected, and that portion of the field which extends into the Pitman unit shown at the right of the sketch.)

3. Tartan commenced deliveries to Western Kentucky Gas Company in October, 1963, and had produced a total of some 680,000 Mcf as of the end of May, 1964, by which time Western Kentucky had *pro tem* ceased taking deliveries because of the end of the heating season in April.

4. Creek commenced deliveries to Cumberland April 6, 1964, and through June 30, 1964 had produced 171,474 Mcf; a daily average of 1,994 (approximately 2,000) Mcf per day. At that rate, Creek's production as of September 15, 1964 (when Cumberland's production would recommence) would approximate 325,000 Mcf in 5½ months, compared to Tartan's production of 680,000 Mcf in eleven months.

5. At that rate, Tartan, as of September 15, 1964, had suffered drainage to the extent of about 245,000 Mcf, for (at 21¢ per Mcf) a loss of $51,000. Further estimates based on slightly different assumptions as to yearly comparative production indicate drainage at the rate of 1,150–1,380 Mcf per day, or $241–$290 per day; and drainage at exhaustion of the field of some 2,640,000 Mcf for a loss of $554,400.

Legal Analysis. Tartan's basic premise is that the Commission has "recognized" its jurisdiction over drainage by providing for the issuance of temporary certificates in drainage cases; therefore the Commission "cannot ignore" the injury done to Tartan's interests by the drainage taken as established in this case. (Br. 54; Regulations Sec. 157.28(c).) The premise is too broad and the conclusion does not follow.

The Commission has never asserted jurisdiction to decide conflicting claims to gas in place, or how such gas should be allocated between claimants. The Commission does not unitize fields or control rates of production. Quite clearly these are matters of the "production or gathering of natural gas" proscribed from Commission jurisdiction by Section 1(b) of the Natural Gas Act. The Commission, in issuing temporary certificates because of drainage, does not expressly or by implication determine who is entitled to the gas in law or equity—this is a matter of local law.

Assuming without deciding that "waste or loss of production gas from the White Plains North field must be expected to result from production by Creek from its well being consistently maintained on production" at present levels (Tartan Br. 56–57), this fact forms no basis for Commission intervention. The evidence shows that the waste, if it occurs, will be caused by water intrusion and the coning of sands at the bottoms of the gas wells, and will occur even before the "physical acts of draining the gas from the earth and preparing it for the first stages of distribution," which in turn are the preliminary acts of "production" and "gathering" exempted from regulation under the Act. See *Northern Natural Gas Co.* v. *State Corporation Commission of Kansas*, 372 U.S. 84, 90.[2]

Tartan argues that the Creek-Cumberland contract restricts Creek's "daily Contract Quantity" to the lesser of (a) 1,500 Mcf or (b) 10 percent of open flow capacity. The evidence shows that at most, 10 percent of open flow would amount to 730 Mcf per day, against actual deliveries of about 2,000 Mcf per day. Tartan attempts to bring this contract question within the competence of the Commission by showing that Creek's temporary certificate authorizes the producer to "render the sales proposed in its application"; the application, of course, is in pertinent part entirely based on the contract.

The short answer to this argument is, that the provision concerning "Contract Quantity" is conventionally and in this case a restriction on Cumberland's power to draw, and not on Creek's power to send, the gas from the well head. The language of the temporary certificate does not forbid Creek from producing and selling whatever quantities it desires above the Contract Quantity, or Cumberland from buying and taking such overages. It is hard to envisage any case in which such an issue would involve the interests of consumers; certainly there is no such involvement in the case at bar. If a justifiable issue of contract law between Tartan on the one hand and Creek-Cumberland on the other is involved, which seems doubtful, the issue is not one of concern to the Commission, but to the courts of Kentucky.

Tartan raises no other issues of substance. There is no basis in the record for charges of personal unfitness of Messrs. Vogler (Cumberland) and Winters (Creek) to receive certificates of public convenience and necessity, as intimated in Tartan's brief (pp. 67–70).

Tartan's real desire is described in part of its prayer for relief—

> that some satisfactory unitization agreement be worked out with Tartan and said Applicants which will informally control production from the White Plains Field on a sound basis to conserve and recover all producible reserves in said field and to prorate the economic benefits of the gas produced between Creek and Tartan on an equitable basis related to the gas reserves in place under their respective properties * * * (Br. 70–71).

The desire is, for an order governing "the production, or gathering of natural gas"—a matter over which the Commission is specifically denied jurisdiction by Section 1(b) of the Natural Gas Act. See *Colorado Interstate Gas Co.* v. *F.P.C.*, 324 U.S. 581, 602–603; *Lone Star Gathering Co.*, 28 FPC 683; *cf. Northern Natural Gas Co.* v. *State Corporation Commission of Kansas*, 372 U.S. 84, 93.[3]

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[2] The facts that (a) Texas Gas does not need Creek's production at the current high level, and (b) such production may "force Tartan to seek to increase its production level" (Tartan Br. 59–60), if true, are of course immaterial unless the Commission has jurisdiction to order prorationing.

[3] Apparently the matter has been brought to the Commission because Kentucky has no unitization statute; oil and gas ownership is subject to the law of capture. See 58 C.J.S., 211, 215 and cases cited.

Other Issues. There remains to be considered the sufficiency of the evidence to support the several applications digested at the outset, aside from the Drake application, already disposed of.

Miller abandonment application. This has been taken care of by Commission orders. The order of October 7, 1964, in *Humble Oil & Refining Company* and *other applicants listed herein*, Docket No. G–3072, et al., certificated Har-Ken Oil Co., Inc. and accepted as rate schedules its contracts with Cumberland; Har-Ken is free to produce and sell from its part of Miller's original dedication under its certificate. The letter-order of August 26, 1964, *supra*, rejected Tartan's application for partial substitution for Miller in respect of the abandonment; Tartan consequently has no standing to press the matter herein. The Miller Company has not appeared to prosecute the application and there is no evidence in support thereof. The application must therefore be denied.

Cumberland application. Cumberland has already built its pipeline gathering system, which connects three areas with estimated reserves as follows—Sharon School, 2 million Mcf; Harps Hill, 7 million Mcf; and White Plains, 1 million Mcf. The life of producing fields in western Kentucky is relatively short, with exhaustion to be expected in 4 to 5 years or less. Cumberland's depreciation of gathering facilities is accordingly set up on a three year life of pipelines and two year life of its single compressor, with estimated salvage value of $135,000. There is no question as to the financeability of the project; remaining indebtedness is less than $3,000. The evidence indicates that Texas Gas desires early exhaustion of reserves in the area in order to promote availability of the area for storage.

Cumberland's gross revenues for the following fiscal years ended August 31, 1960 were: $265,293; 1961, $204,151.58; 1962, $43,944.60; 1963, $21,475.02. Cumberland is currently drawing heavily on its supply from Creek, with gas runs in Mcfs in 1964 as follows: April, 45,238; May, 68,068; June, 58,168, or gross revenues for the three-month period of $36,009.54.

Operating revenues and net income after heavy depreciation charges are a minus figure for the years 1961 and 1962 (computation in Staff Brief, p. 13, adopted) and presumably also in 1963, when revenues were declining. As proposed by Staff, it is concluded that there is nothing in the record indicating that Cumberland's 6 cents per Mcf transportation charge is excessive.

However, in order that the consumer may be protected against "any risk of uneconomical operation or inability of Cumberland to earn a reasonable return on its investment or to attract capital" (Staff Br. 11), Staff recommends that Cumberland's certificate be conditioned to a ceiling of 6 cents per Mcf for its transportation and any other charges; *i.e.*, cost of purchased gas (at level established by the Commission) plus 6 cents is to equal maximum Cumberland sales price under the certificate here involved. Cumberland finds "no objection to the conclusions of staff counsel brief" (Reply Br. filed October 12, 1964, p. 12).

The Staff recommendation derives from the Commission action under similar circumstances in *Western Transmission Corporation*, Opinion No. 429 issued May 26, 1964, 31 FPC 1295, at pp. 1299, 1300; see also *Medina Gathering Corp.*, 30 FPC 227. The recommendation will accordingly be followed.

Staff also notes that based on annual revenue figures cited *supra*, Cumberland is subject to Commission jurisdiction as a Class D natural gas company, and subject to the appropriate accounting and filing requirements of such classification. See *Ben Bolt Gathering Co.* v. *F.P.C.*, 323 F. 2d 610, 611–612 (CA5–1963),

affirming 26 FPC 825 and 27 FPC 334. The certificate will specify Cumberland's status.[4]

Creek application. As we have seen, Creek is already producing gas under temporary authorization. Tartan's charges that Creek's rate of production will (a) ruin its well through coning and water intrusion, (b) cause influx ("fingering") of water, entrapping and preventing the flow of pockets of gas elsewhere in the reservoir, are backed up by expert testimony, but are refuted by equally expert testimony. On balance, it is determined that Tartan's charges are not proved, assuming *arguendo* that the Commission has jurisdiction to make such determination. It is of critical significance in this regard that the ultimate long-term value of the White Plain's North field may well be realized if the field is converted into a Texas Gas storage field, and that the Texas Gas Director of Gas Storage has found no objection to Creek's rate of production.

Price of Gas. No Statement of General Policy prices have been established covering western Kentucky, nor has the areal boundary been delineated. Cumberland's contract with Texas Gas regarding its own gas provides for a flat 21 cents per Mcf rate made up of 15 cents price plus 6 cents "for the gathering, transportation and necessary compression of said gas from the Seller's wells into Buyer's facilities". See Cumberland's Rate Schedule #1, filed June 8, 1959, Art. VII. The price paid by Cumberland for the Har-Ken gas is 10 cents per Mcf at 15.025 psia until Cumberland's gathering line to Harps Hill is amortized at the rate of 11 cents per Mcf, at which point of time ownership of the line will remain in Cumberland and the price of the gas will become a flat 15 cents per Mcf until exhaustion of the field. The Commission has certificated Har-Ken, as discussed *supra*.

Creek's price is a flat 15 cents per Mcf at the Wellhead. See Creek's Rate Schedule #2, filed October 16, 1963, Arts. VI and VII.

Staff has summarized all of the 101 producer contracts in Kentucky that have been certificated. Of 99 permanent certifications, 82 are at prices over 15 cents per Mcf, and 23 are at prices of 20 cents or above. The 15-cent price provided in the Creek-Cumberland contract is obviously not excessive, and neither Staff nor any other party to the record suggests any price condition.

There being no further objections or issues of substance presented in the record, it is plain that the Creek application should be approved without conditions.

ORDER

WHEREFORE, *It is ordered*, subject to review by the Commission, that—

(A) A certificate of public convenience and necessity is hereby issued to Cumberland Natural Gas Company, Inc. for the operations and sales as hereinbefore described and as more fully described in its application, supplementary filings, and the record herein, subject to the conditions hereinafter set forth.

(B) Cumberland Natural Gas Company, Inc. is a Class D natural gas pipeline company within the meaning of the Commission's Regulations under the Natural Gas Act and Uniform System of Accounts, and shall keep the accounts and make the filings appropriate to its classification.

[4] It is not necessary to discuss in detail Tartan's charges that Cumberland's case is inadequate and that its "operation does not serve public convenience or best public or private interest." The following comments will suffice: 1. If, as charged, (a) owned or controlled reserves are not at estimated levels, and (b) drainage claims well-founded, the matter is *damnum absque injuria* so far as the Commission's jurisdiction is concerned. No interests protected by the Commission will be prejudiced. 2. Cumberland's furnishing of information to Staff was adequate; in any event, this is a matter of Commission, not Tartan, responsibility. 3. The charges relating to Cumberland's "destructive" methods of operation are not sustained by the record; in any event, this is not a matter within the competence of the Commission on the facts of this case, but a matter of local law and private rather than public concern.

(C) The certificate issued to Cumberland Natural Gas Company, Inc. is conditioned to require that its rate for sales to Texas Gas Transmission Corporation shall not at any time exceed the sum of 6 cents per Mcf at 15.025 psia plus any rate lawfully in effect for the sale of gas to said Cumberland by producers of natural gas in the area of Cumberland's operations, including any rate applicable to Cumberland's own production, if any.

(D) The application of Truman Drake (Docket No. G–18744) is hereby dismissed for want of prosecution.

(E) A certificate of public convenience and necessity is hereby issued to Creek Oil Company, Inc. for the sale hereinbefore described and as more fully described in its application and the record herein.

(F) The application of J. C. Miller Oil Company, Inc. for a certificate of public convenience and necessity (Docket No. G–18743), having been disposed of by Commission action in Docket Nos. CI64–1107 and CI65–139 insofar as such application covers productive acreage, is hereby dismissed for want of prosecution.

(G) The abandonment application of J. C. Miller Oil Company, Inc. (Docket No. CI64–1107) is hereby denied.

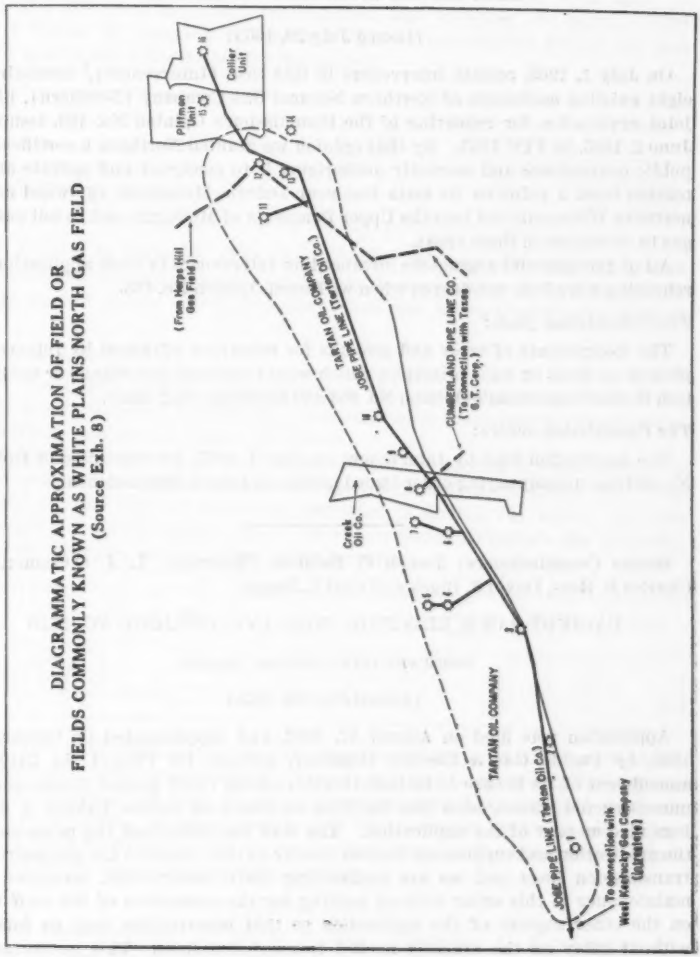
(H) The certificates issued in paragraphs (A) and (E) are not transferable, and shall be effective only so long as Applicants continue the acts or operations hereby authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations and orders of the Commission.

(I) The issuance of the certificates in paragraphs (A) and (E) shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act or of Part 154 or Part 157 of the Commission's Regulations thereunder, and is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against the Applicants. Further, our action in this proceeding shall not foreclose or prejudice any future proceedings or objections relating to the operation of any price or related provisions in the gas purchase contracts herein involved, except as specified in paragraph (C) hereof. Nor shall the issuance of such certificates imply approval of all of the terms of the respective contracts basing the operations and sales herein certificated.

ROBERT M. WESTON,
Presiding Examiner.

APPENDIX A
G–18740, *et al.*

DIAGRAMMATIC APPROXIMATION OF FIELD OR
FIELDS COMMONLY KNOWN AS WHITE PLAINS NORTH GAS FIELD
(Source Exh. 8)



Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

NORTHERN NATURAL GAS COMPANY, DOCKET NO. CP64-255 (PHASE II)

ORDER DENYING APPLICATION FOR REHEARING

(Issued July 29, 1965)

On July 1, 1965, certain interveners in this case (Interveners),[1] consisting of eight existing customers of Northern Natural Gas Company (Northern), filed a joint application for rehearing of the Commission's Opinion No. 463, issued on June 2, 1965, 33 FPC 1163. By that opinion we granted Northern a certificate of public convenience and necessity authorizing it to construct and operate an extension from a point on its main line near Duluth, Minnesota, eastward across northern Wisconsin and into the Upper Peninsula of Michigan, and to sell natural gas to customers in these areas.

All of the material arguments advanced by Interveners in their application for rehearing were fully considered when we issued Opinion No. 463.

The Commission finds:

The assignments of error and grounds for rehearing advanced by Interveners present no facts or legal principles which would warrant any change or modification in the Commission's Opinion No. 463 and accompanying order.

The Commission orders:

The application filed by Interveners on July 1, 1965, for rehearing of Opinion No. 463 and accompanying order issued herein on June 2, 1965 is denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

PACIFIC GAS & ELECTRIC COMPANY, PROJECT NO. 2310

ORDER AMENDING LICENSE (MAJOR)

(Issued July 29, 1965)

Application was filed on August 12, 1963, and supplemented on October 31, 1963, by Pacific Gas & Electric Company, licensee for Project No. 2310, for amendment of its license to include therein, among other project works, certain unconstructed transmission line facilities as shown on certain Exhibit K drawings filed as part of the application. The staff has completed the processing of the application and supplement thereto insofar as they relate to the unconstructed transmission lines and we are authorizing their construction, operation and maintenance in this order without waiting for the completion of the staff work on the other aspects of the application so that construction may go forward without delay on the urgently needed transmission lines. This authorization will necessitate amending: subparagraph (i) of Paragraph (B) of the license to include Exhibit K drawings (FPC Nos. 2310-83, -85, and -90) to the extent

[1] Iowa Power and Light Company, Iowa Public Service Company, Metropolitan Utilities District of Omaha, Minneapolis Gas Company, Northern States Power Company (Minnesota), Northern States Power Company (Wisconsin), North Central Public Service Company, and Eastern Power & Gas Company.

hereinafter indicated; and subparagraph (ii) of Paragraph (B) to describe therein the transmission line facilities herein authorized.

The Commission finds:

(1) Public notice of the application has been given. No protests or petitions to intervene have been received. No conflicting application has been filed.

(2) The following described transmission line facilities are parts of the project within the meaning of Section 3 (11) of the Federal Power Act and should be included in the license for the project:

Line	No. circuits	Voltage kv	Miles	Status
Drum-Dutch Flat	1	110	5.5	Proposed
Dutch Flat No. 2 Tap	1	110	.5	Proposed
Chicago Park—Halsey Junction	1	110	14.0	Proposed

(3) Exhibit K drawings (FPC No. 2310–83, –85 and –90) conform to the Commission's rules and regulations and should be approved as parts of the license for the project to the extent that they show the unconstructed transmission lines.

The Commission orders:

(A) The license issued to Pacific Gas & Electric Company for Project No. 2310 is hereby amended, effective as of August 1, 1965, to include the transmission line facilities described in finding (2) above.

(B) Subparagraph (i) of Paragraph (B) of the license for the project is hereby amended to describe and include therein Exhibit K drawings (FPC Nos. 2310–83, –85 and –90) to the extent indicated in finding (3) above, and subparagraph (ii) of Paragraph (B) is hereby amended to include the following described unconstructed transmission line facilities:

Line	Number circuits	Voltage, kv	Miles
Drum-Dutch Flat	1	110	5.5
Dutch Flat No. 2 Tap	1	110	.5
Chicago Park—Halsey Junction	1	110	14.0

(C) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license amendment. In acknowledgment of the acceptance of this license amendment, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

ATLANTIC SEABOARD CORPORATION, DOCKET NO. RP65–49

ORDER ACCEPTING TARIFF SHEETS FOR FILING SUBJECT TO PROVISIONS OF PRIOR ORDER

(Issued July 30, 1965)

Atlantic Seaboard Corporation (Seaboard) on June 29, 1965, tendered for filing certain revised and original sheets to its FPC Gas Tariff, Eighth Revised

Volume No. 1, and requests that such tariff sheets be allowed to become effective as of May 16, 1965.[1] Essentially, the proposed tariff sheets would: (1) Provide a form of service agreement limited to a two-year term pursuant to provisions of the Commission's order issued herein May 13, 1965; (2) amend the provision for Determination of Minimum Commodity Charges contained in the CDS–PR–1 and CDS–PR–2 rate schedules where appropriate by providing an adjustment of the base period volumes to reflect the transfer of volumes from such CDS rate schedules to the WS rate schedule; and (3) amend the Billing Demand provision of the WS rate schedule so as to permit a 10 percent leeway in the billing demand during a two-year transitional period.

On July 21, 1965, Washington Gas Light Company (Washington) filed a letter commenting upon the tendered tariff sheets and making certain objections relating to each of the above listed changes. Washington contends that the proposed form of service agreement (referred to above in "(1)") is not limited to the interim two-year period because provision is made to continue the contract in effect from year to year thereafter unless terminated by notice. Washington also complains that upon termination of such service agreement, the contract demand shall be the Buyer's Total Daily Entitlement, or as otherwise specified. It contends that Seaboard in this manner attempts to deny the Buyer the right to Winter Service unless the Buyer gives up its right to nominate its Contract Demand and Winter Service Quantities.

Washington contends that the changes referred to in "(2)" above would increase the minimum monthly and annual volumes required to be purchased under the PR rate schedules as now in effect, and accordingly, they will have a significant effect on the billings to purchasers under PR rate schedules. Washington points out that no data required by Section 154.63(b)(3) of the Commission's Regulations have been provided, and that no justification has been advanced for waiver of the statutory thirty-day notice requirement in support of Seaboard's request that the tariff sheets be made effective as of May 16, 1965. If the Commission were to suspend the tariff sheets, Washington asserts that provision should be made for hearing the issues involved with respect to the Partial Requirements tariff sheets, as well as those filed March 31, 1965, herein, in *Atlantic Seaboard Corporation, et al.*, Docket No. G–16401, *et al.*

Additionally, although Washington does not object to the provisions of the tariff sheets referred to in "(3)" above, which provide for a transitional period billing demand ratchet in the WS rate schedule, it does state that no reason appears to justify a retroactive effective date, particularly since the billing periods affected do not begin prior to November 1, 1965.

Lynchburg Gas Company (Lynchburg) on July 27, 1965, filed a protest in which it reasserted its position that the PR rate schedule and filings are all invalidated by prior court decision and should be rejected. Lynchburg's similar protest has already been entered for our consideration in the PR proceedings in Docket No. G–16401, *et al.* and we agree with Washington that consideration should be given in that proceeding with respect to all of Seaboard's tariff filings which relate to the PR issues, except that all issues relating to rate level shall remain subject to this proceeding.

Washington's contention that the requirements of Section 154 of our Regulations require Seaboard to provide data in support of its filing appears to disregard the fact that Seaboard purportedly has recently filed such data in this proceeding. With respect to Washington's objections to the form of service agreements, we note that the Commission's order of May 13th, contrary to Washington's as-

[1] Original Sheets Nos. 48A, 63A, and 91 through 96, and First Revised Sheets Nos. 1, 19, 26, 48 and 63.

sertions, did not prescribe the requirements of such service agreements, but provided that "any service agreements filed under the proposed tariff for a longer period than two years would be suspended". We intend to treat the proposed tariff sheets in similar fashion and give considerations in hearing to the specific terms of such forms of service agreement, including the substantive contentions made herein by Washington.

We do not agree with Washington that we should deny Seaboard's request that the tendered tariff sheets be made effective as of May 16, 1965. In view of the fact that all of the tariff sheets mentioned above are offered as integral parts of Seaboard's two rate revision proposals (*i.e.*, PR rate schedules and WS rate schedules), it would be unnecessarily confusing to have these tariff sheets become effective at a later date and thereby create a gap or lag period between them and the rate schedules which they implement and complement. Since we can see no disadvantage to any party from such retroactive treatment, we shall permit the tendered tariff sheets to become effective as of May 16, 1965, subject to all the terms and provisions of our order of May 13th and to our further orders issued herein.

The Commission orders:

(A) The proposed revised and original tariff sheets specifically described above are hereby accepted for filing as amendments to the tariff filed in this docket and suspended for one day by our order issued herein May 13, 1965, to be effective as of May 16, 1965, subject to refund and to all the terms and provisions of that order.

(B) All of the tariff sheets filed herein on March 31, 1965, and on June 29, 1965, which relate to the Partial Requirements (PR) issues shall also be subject to hearing and order in the proceedings in *Atlantic Seaboard Corporation, et al.*, Docket No. G–16401, *et al.*, except issues relating to rate level, which shall remain subject to this proceeding.

(C) Seaboard shall serve upon all parties appearing in the proceeding in Docket No. G–16401, *et al.*, copies of all of its PR tariff sheets as filed subject to this proceeding.

(D) As a condition of this order, Seaboard shall execute and file in triplicate with the Secretary of this Commission, an amendatory agreement and undertaking which will provide that its obligations with respect to paragraph (D) of the order issued May 13, 1965, relates both to the tariff sheets filed on March 31, 1965 (Eighth Revised Volume No. 1), and those tariff sheets which are the subject of this order to the same extent as if such latter tariff sheets had in fact been filed on March 31, 1965. Copies of such undertaking shall be served upon all purchasers and interested State commissions.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

BROWN-NEW HAMPSHIRE, INC., PROJECT NO. 2422

ORDER ISSUING LICENSE (MAJOR)

(Issued July 30, 1965)

Application was filed on November 1, 1963, by Brown Company, of Berlin, New Hampshire, for a license under Section 4(e) of the Federal Power Act (Act) for constructed hydroelectric Project No. 2422, known as the D. C. Hydro (Sawmill) Project, located on the Androscoggin River, navigable waters of the United States, in the City of Berlin, Coos County, New Hampshire.

By its order issued April 22, 1965, in Docket No. E–7112, 33 FPC 843, the Commission authorized the sale of certain electric facilities, including all hydroelectric plants, from Brown Company to Brown-New Hampshire Inc., and such acquisition was consummated on April 30, 1965. As a consequence, Brown-New Hampshire Inc., at its request, has been substituted as the Applicant for Project No. 2422. The latter, on May 17, 1965, filed an Exhibit L drawing as a supplement to the application for license.

The original dam and powerhouse were constructed in 1897–1898, which included six 325 horsepower vertical wheels connected to three jack shafts which were in turn connected through rope drives to a sawmill. From time to time thereafter additions and replacements were made, including the installation of generators during the period from 1906 through 1914. In 1953 sections of the original timber-crib dam were replaced by concrete gravity sections which included a gated spillway. Applicant contemplates the replacement during the summer of 1965 of the remaining rock-filled timber-crib section of the dam (about 273 feet long) with a concrete gravity overflow section about 250 feet long and, in anticipation of an expected increased power demand. Applicant plans to study the rehabilitation of the project generating facilities.

For the reasons set forth in our April 25, 1962, Opinion No. 357 (27 FPC 830), the license herein granted shall have an effective date of January 1, 1953, and a termination date of December 31, 1993.

The Chief of Engineers and the Secretary of the Army have advised that the plans of the project structures affecting navigation have been approved insofar as the interests of navigation are concerned.

The Department of the Interior, in reporting on the application, recommended for inclusion in any license for the project certain conditions in the interests of fish and wildlife and recreational resources usually included in licenses for such projects.

The Department of Health, Education, and Welfare, has recommended that any license for the project include a provision for review and possible revision of flow requirements when the effects of possible future installation of adequate treatment of water in the Androscoggin River can be determined. This provision is included herein as Article 33.

The State Planning Project, State of New Hampshire, has advised that, due to water pollution, the project is not suitable for any recreational development, but that at some future date, depending upon the abatement of such pollution, there may be some limited recreational potential. No conditions were recommended for inclusion in any license for the project. By Article 31 herein we are requiring Applicant to cooperate with State and local agencies in the interest of recreation in connection with the use of project lands and waters by the public and to keep us advised at stated intervals with respect to the results of such cooperation.

While the application for license did not include any transmission lines as part of the project works, Applicant advises that a study of the feasibility of redevelopment of the powerhouse and conversion to A.C. operation is planned to be initiated by July, 1965, and completed by July 1, 1966. It is possible, therefore, that some transmission facilities should be included in this license at a later date. Accordingly, in Article 32 herein, we are reserving the right to the Commission to determine at a later date what additional transmission facilities, if any, shall be included in this license.

The Commission finds:

(1) The project is located upon navigable waters of the United States.

(2) Applicant is a corporation organized under the laws of the State of New Hampshire, and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effectuate the purposes of a license for the project.

(3) Public notice of the filing of the application has been given. No protests or petitions to intervene have been received. No conflicting application is before the Commission.

(4) The project does not affect a Government dam, nor will the issuance of a license therefor, as hereinafter provided, affect the development of any water resources for public purposes which should be undertaken by the United States.

(5) Subject to the terms and conditions hereinafter imposed, the project will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, and for other beneficial public uses, including recreational purposes.

(6) The installed horsepower capacity of the project hereinafter authorized for the purpose of computing the capacity component of the administrative annual charge is 2,900 horsepower, and the amount of annual charges, based on such capacity, to be paid under the license for the project, for the costs of administration of Part I of the Act is reasonable.

(7) The exhibits designated and described in paragraph (B) below conform to the Commission's rules and regulations and should be approved as part of this license.

The Commission orders:

(A) This license is hereby issued to Brown-New Hampshire Inc., (Licensee) under Section 4(e) of the Federal Power Act, for a period effective January 1, 1953, and terminating December 31, 1993, for the continued operation and maintenance of the Sawmill Project No. 2422, located on the Androscoggin River, a navigable water of the United States, in the State of New Hampshire, subject to the terms and conditions of the Act which is incorporated herein by reference as a part of this license, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) Project No. 2422 consists of:

(i) All lands constituting the project area and enclosed by the project boundary or the limits of which are otherwise defined, and/or interest in such lands necessary or appropriate for the purposes of the project, whether such lands or interest therein are owned or held by the Licensee or by the United States; such project area and project boundary being more specifically shown and described by a certain exhibit which formed part of the application for license and which is designated and described as follows:

Exhibit J	FPC No.	Title Sawmill Hydroelectric Development
Sheet 1 of 2	2422-1	Plan view of project area.

(ii) Projects works consisting of: (1) a dam approximately 714 feet long, including a concrete section about 328 feet long (with a floodgate section containing 5 floodgates, each 18 feet long and 13 feet deep) extending diagonally downstream from the left bank, a concrete gravity overflow section about 250 feet long extending generally downstream, and a concrete gravity section topped by steel drop flashboards (about 7.5 feet high) extending about 136 feet further downstream to the powerhouse); (2) concrete wing walls and abutments; (3) a powerhouse (adjacent to the right bank) with six 325 hp vertical turbines gear connected in pairs through horizontal jack shafts to two 500 kw D.C. generators and one 400 kw D.C. generator, and four 325 hp vertical turbines gear connected in pairs through two horizontal jack shafts which are, in turn, connected through rope drives to one 800 kw D.C. generator; and (4) appurtenant facilities; the location, nature and character of which are more specifically shown and described by the exhibit hereinbefore cited and by certain other exhibits which also formed part of the application for license and which are designated and described as follows:

Exhibit L	FPC No.	Title Sawmill Hydroelectric Development
Sheet 1 of 4 (revised)	2422-7	Plan view of station and dam.
Sheet 2 of 4	2422-4	Elevations of station and gatehouse.
Sheet 3 of 4	2422-5	Sections of station and gatehouse.
Sheet 4 of 4	2422-6	Plan view of operating floor.

Exhibit M Ten typewritten pages, "General Description of Mechanical, Electrical, and Transmission Equipment", filed in the Commission November 1, 1963.

(iii) All of the structures, fixtures, equipment or facilities used or useful in the maintenance and operation of the project and located on the project area, including such portable property as may be used or useful in connection with the project or any part thereof, whether located on or off the project area, if and to the extent that the inclusion of such property as part of the project is approved or acquiesced in by the Commission; also, all riparian or other rights, the use or possession of which is necessary or appropriate in the maintenance or operation of the project.

(C) This license is also subject to the terms and conditions set forth in Form L-3 (Revised August 1, 1964) entitled, "Terms and Conditions of License for Constructed Project Affecting Navigable Waters of the United States", 32 FPC 1114, which terms and conditions designated as Articles 1 through 29 are attached hereto and made a part hereof, except Article 25 thereof, and subject to the following special conditions set forth herein as additional articles:

Article 30. The Licensee shall pay to the United States the following annual charge, effective January 1, 1953:

For the purpose of reimbursing the United States for the costs of administration of Part I of the Act, a reasonable annual charge as determined by the Commission in accordance with the provisions of its regulations, in effect

from time to time. The authorized installed capacity for such purposes is 2,900 horsepower.

Article 31. Licensee shall cooperate with State and local agencies in the development and maintenance of access area and roads and such other facilities necessary for full recreational utilization by the public of project lands and waters, consistent with the terms of the license and the operation of the project. At the end of three (3) years from the date of issuance of this license and every fifth year, thereafter, Licensee shall advise the Commission of the results of cooperation with State and local agencies and of further recreation development at the project.

Article 32. The Commission reserves the right to determine at a later date what additional transmission facilities if any shall be included in this license.

Article 33. The Licensee shall cooperate with the appropriate Federal and State agencies in any necessary and/or desirable review and revision of flow requirements in connection with the pollution of the Androscoggin River by municipal and industrial wastes.

Article 34. On the application of any person, association, corporation, Federal agency, State or municipality, the Licensee shall, after notice and opportunity for hearing, permit such reasonable use of its reservoirs or other project works or parts thereof as may be ordered by the Commission in the interest of comprehensive development of the waterway or waterways involved and the conservation and utilization of water resources of the region for water supply for steam electric, irrigation, industrial, municipal or similar purposes, consistent with the primary objective of the project. The Licensee shall receive such reasonable compensation as may be appropriate for use of its reservoirs or other project works or parts thereof for such purposes, any such compensation to be fixed either by Commission approval of an agreement between the Licensee and the party or parties benefiting or by the Commission in the event the parties are unable to agree. Applications shall contain information in sufficient detail to afford a full understanding of the proposed use, including satisfactory evidence that the Applicant possesses necessary water rights pursuant to applicable State law, or a showing of cause why such evidence cannot be submitted, and a statement as to the relationship of the proposed use to any State or municipal plans or orders which may have been adopted with respect to the use of such waters.

Article 35. Licensee shall make a feasibility study for the rehabilitation of the Sawmill power plant. A report on this study shall be submitted to the Commission within one (1) year from the date of issuance of this license.

Article 36. The Licensee shall commence the replacement of the timber-crib section of the dam by a concrete gravity structure by August 1, 1965, and shall thereafter in good faith and with due diligence prosecute such construction and shall complete such construction within one year thereafter.

(D) The exhibits designated and described in paragraph (B) above are hereby approved as part of this license for the project.

(E) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgement of the acceptance of this license, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

PHILADELPHIA ELECTRIC COMPANY, PROJECT NO. 2355

ORDER APPROVING REVISED PROJECT EXHIBIT L DRAWINGS

(Issued August 2, 1965)

On April 29, 1965, Philadelphia Electric Company filed application for Commission approval of revised Exhibit L drawings for its proposed Muddy Run Pumped Storage Project No. 2355, located on the east bank of the Conowingo reservoir on the Susquehanna River and its tributary Muddy Run, in Lancaster and York Counties, Pennsylvania. The application was filed in compliance with Article 31 of the license, and was accompanied with reports from the licensee's board of consultants covering all proposed phases of project construction to date.

The showings on the Exhibit L drawings and the reports thereon by the licensee's consultants, together with Commission staff comments thereon, are discussed as follows:

Main Dam Across Muddy Run

The design of this dam is proposed to be changed to reflect the fact that the rock (schist) fill is of such nature that, after compaction, a drainage system and flatter surface slopes are required. Since the materials of construction might vary considerably, it is desirable that the Commission approve the general design of the dam as shown on design drawing, Exhibit L, Sheet 2 (FPC No. 2355–28) with the notation thereon that design changes may be necessary as the work progresses to maintain suitable factors of safety.

As shown on the construction drawings, the drainage system for the downstream slope underlies practically the entire downstream shell and is adequate. The upstream shell is shown as having a heavy blanket of free draining rock and hence its general design is satisfactory, except for its slope, as mentioned above.

The spillway, located on the west site of the canal about 800 feet from the tunnel intakes, will be an ungated concrete ogee structure capable of discharging the maximum flow resulting from hurricanes or from all project pumps in full operation.

Auxiliary Dam Creating Recreation Area

This proposed dam is shown as composed of rock shells with impervious core and transition filters between the core and the shells. This dam is shown as about 85 feet high with crest at elevation 530 feet, with a spillway created by excavating through the left abutment rock, capable of discharging the maximum flow resulting from hurricanes. The spillway sill is shown as set two feet below the maximum normal water surface elevation of 520 feet for the upper reservoir so that the water in the recreation pond will be partially changed each time a full cycle of pumped-storage is accomplished. The pond will also have a means of unwatering, or low level discharge, by means of a 6-foot diameter pipe and control through the auxiliary dam. Pursuant to letter-request by the licensee, filed July 26, 1965, the staff will make a notation on Exhibit L, Sheet 8 (FPC No. 2355–34) providing insofar as applicable the identical "Stability Analysis Data", "Load Conditions" and "Minimum Safety Factor Failure Plane Through Core" as are specified in Exhibit L for the main Muddy Run Dam.

Intake Canal

This proposed canal is shown as being concrete lined with an extensive system of drainage in back of the lining to prevent it from heaving when unwatered or when the water surface in the upper reservoir is low. The drainage system is shown as consisting of a network of drain openings made integral with the concrete lining where it contracts the rock with the drains feeding into a pipe system imbedded in the concrete lining of tunnel No. 3 and penstock No. 5. The lining is shown as extending about 1,000 feet above the tunnel intakes with its foundation curtain grouted at its upstream end to prevent leakage into rock seams which might endanger the powerhouse due to rock slides in the hill above the powerhouse. A system of drains in the hillside above the railroad tracks might be required, based upon exploratory wells in the field, particularly in view of the type of rock being encountered, and the exploratory wells should be observed before and after the filling of the upper reservoir. According to the report of the licensee's board of consultants, dated April 26, 1965, on file with the Commission, the hillside above the railroad tracks indicates a condition which could become unstable if the project would cause an unusual rise in ground water conditions. Accordingly, in Article 46 herein, we are requiring the licensee to have its board of consultants review the necessity of providing subsurface hillside drainage above the Muddy Run powerhouse, and provide a system of drains, if found necessary.

Powerhouse

The powerhouse is shown as being located further into the Conowingo reservoir and away from the Pennsylvania Railroad tracks to preserve, as much as possible, the natural stability of the rock hill between the powerhouse and the tracks.

The Commission finds:

The following-described Exhibit L drawings conform to the Commission's Rules and Regulations and should be approved as part of the license for the project, and Exhibit L, Sheets 1, 2, 3, 4, 5, and 6 (FPC Nos. 2355-20 through 25), which are now part of the license and which have been superseded, should be eliminated from the license:

Exhibit L	FPC No.	Title: Muddy Run Project
Sheet 1	2355-27	Plan of Development Structures.
Sheet 2	2355-28	Dam and Canal—Sections.
Sheet 3	2355-29	Tunnels—Plan and Sections.
Sheet 4	2355-30	Powerhouse Sheet No. 1.
Sheet 5	2355-31	Powerhouse Sheet No. 2.
Sheet 6	2355-32	Cofferdam and Tailrace.
Sheet 8	2355-34	Recreation Dam and Spillway.

The Commission orders:

(A) The Exhibit L drawings described in the above finding as conforming to the Commission's Rules and Regulations are hereby approved as part of the license for Project No. 2355, and the superseded Exhibit L drawings described in the same finding are hereby eliminated from the license for the project.

(B) The following articles are hereby added to the license for the project.

Article 46. The Licensee shall have its board of consultants review the necessity of providing subsurface hillside drainage above the Muddy Run powerhouse and, if found necessary by such board or by the Commission, the Licensee shall provide a system of drains approved by the Commission.

Article 47. Any changes authorized herein to provide suitable safety factors for the main Muddy Run dam and the recreation dam shall be shown on revised

Exhibit L drawings to be submitted by the Licensee for Commission approval within one year from the date of completion of the project.

(C) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this order. In acknowledgment of the acceptance of this order, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

SOUTHERN CALIFORNIA EDISON COMPANY, PROJECT NO. 120

ORDER APPROVING REVISED PROJECT EXHIBIT

(Issued August 2, 1965)

On June 7, 1965, Southern California Edison Company, licensee for major Project No. 120, filed for Commission approval a revised Exhibit K showing that the Vincent Transmission Line has been looped into the Antelope Substation located adjacent to the line. The licensee states that the loop is necessary and desirable to improve load conditions in the area and to provide line protection.

The change does not affect any lands of the United States nor the amount of annual land charges prescribed in the license.

The Commission finds:

Revised Exhibit K (FPC No. 120–231) conforms to the Commission's Rules and Regulations and should be approved as part of the license for the project, and Exhibit K (FPC 120–58), now part of the license and which has been superseded should be eliminated from the license.

The Commission orders:

Revised Exhibit K (FPC No. 120–231) is hereby approved as part of the license for Project No. 120, and superseded Exhibit K (FPC No. 120–58) is hereby eliminated from the license for the project.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

COMMUNITY PUBLIC SERVICE COMPANY, DOCKET NO. E–7231

SUPPLEMENTAL ORDER AUTHORIZING ISSUANCE OF FIRST MORTGAGE BONDS

(Issued August 4, 1965)

By order issued July 21, 1965, 34 FPC 92, in the above-entitled matter, the Commission authorized Community Public Service Company (Applicant) to issue and sell at competitive bidding $5,000,000 maximum principal amount of First Mortgage Bonds, Series H, due 1995, subject to the provisions, among others, set forth in Paragraph (B) of that order as follows:

(B) The proposed issuance and sale of Bonds at competitive bidding shall not be consummated until:

(1) Applicant shall have amended its application pursuant to the requirements of Section 34.2(g) of the Commission's Regulations under the Federal Power Act

relating to compliance with competitive bidding requirements, and Section 34.2(h) of these Regulations relating to affiliation, and shall have either filed such amendments or shall have mailed them and advised the Commission by telephone and telegram as contemplated by Section 34.9 of the Regulations;

(ii) The Commission shall have approved the price to be received by Applicant for the Bonds and the coupon rate thereof by a further order.

Applicant on August 3, 1965, filed an amendment, pursuant to the requirements of the aforementioned Commission order, setting forth, among other things, that it proposes to accept, as representing the lowest annual cost of money to it, the bid of Salomon Brothers & Hutzler to purchase the proposed issuance of Bonds at the price of 100.06 percent of principal amount, with a coupon rate of 4¾ percent per annum.

The Commission finds:

(1) Applicant has satisfactorily complied with the requirements of Paragraph (B) of the Commission's order issued July 21, 1965, in the above docket, and under the bid it proposes to accept for the Bonds, the price to be received by Applicant therefor and the coupon rate thereof are reasonable.

(2) The proposed issuance and sale of Bonds, as hereinafter authorized, will be for a lawful object, within the corporate purposes of the Applicant and compatible with the public interest, which is appropriate for and consistent with the proper performance by the Applicant of service as a public utility and which will not impair its ability to perform that service, and is reasonably appropriate for such purposes.

The Commission orders:

(A) The price to be received by Applicant for the proposed Bonds and the coupon rate thereof under the bid referred to above, are approved as reasonable.

(B) The proposed issuance and sale of Bonds referred to above, upon the terms and conditions and for the purposes specified in the application, as supplemented by the amendment referred to above, are hereby authorized, subject only to the provisions of Paragraphs (D), (E) and (F) of the Commission's order issued July 21, 1965, in the above docket.

OPINION NO. 468

AREA RATE PROCEEDING, DOCKET NO. AR61–1; CLAUDE E. AIKMAN, ET AL., DOCKET NO. G–18466, ET AL.; NORTH CENTRAL OIL CORPORATION (OPERATOR), ET AL., DOCKET NO. CI60–435, ET AL.

OPINION AND ORDER DETERMINING JUST AND REASONABLE RATES FOR NATURAL GAS PRODUCERS IN THE PERMIAN BASIN

(Issued August 5, 1965)*

Syllabus

1. Just and reasonable rates for natural gas need not be determined upon basis of cost of service of individual producer. P. 176.
2. Sections 4 and 5(a) of the Natural Gas Act provide authorization for regulation of producer rates on an area approach. P. 176.

*Initial decision appears on p. 306. Orders issued August 26, 1965 and September 10, 1965 denying stay and providing for rehearing, *infra*, p. 590 and 34 FPC 846. Opinion No. 468–A issued October 4, 1965 amended opinion and order and denied rehearing, 34 FPC 1068. See orders re stay issued November 12, 1965 and February 11, 1966, 34 FPC 1286 and 35 FPC 211. Remanded, *Skelly Oil Company, et al.* v. *F.P.C.*, 375 F. 2d 6 (CA10–1967); Affirmed, 390 U.S. 747 (1968).

3. Just and reasonable producer rates may be made upon a group or geographical area basis; neither the Constitution nor Gas Act imposes any special formula for determining just and reasonable rates—so long as a sensible result is achieved. PP. 177, 178.
4. Uniform area pricing system adopted since it is well adapted to economic facts of the industry and practical administrative problems of achieving effective price control. PP. 178, 179.
5. Administrative feasibility is a vital element in effectiveness of any method of regulation and should be given great weight in assessing validity of area approach. P. 179.
6. Cases do not support contention that just and reasonable rate fixed on basis of overall costs and profits of area producers would be constitutionally confiscatory as to any respondent able to support a higher price on individual cost of service basis. P. 179.
7. There is no constitutional infirmity in statutory authority to fix just and reasonable rates on an area basis; in group rate-making, individual costs cannot be controlling. P. 180.
8. Procedure whereby area rate would become a floor rather than ceiling would destroy area rate concept as effective means of regulation. P. 180.
9. Area approach offers regulatory method best adapted to discharge of Commission's responsibility for protecting gas consumers while providing greatest incentive to producers to continue exploration. P. 180.
10. While history of negotiated prices in area is important consideration, to simply validate producers' negotiated prices would amount to abdication by Commission of its regulatory responsibility. P. 181.
11. Case for effective competition among producers in establishing just and reasonable rates has not been made on this record—thus contract price is beginning, not end, in establishing proper criteria for determination of just and reasonable rates. P. 183.
12. Reserves to production ratio cannot be accepted as regulatory standard in setting any limitations on producer contract prices. PP. 183–185.
13. Increase in directional drilling and 2-price system adopted here establishing a higher price for gas-well gas will encourage search for new reserves at a minimum overall cost to consumers. PP. 185–188.
14. Commission fixes December 31, 1960 as division date between new gas-well gas and old gas-well gas. P. 189.
15. Within the definition of gas-well gas as gas from dry reservoirs, gas condensate reservoirs and gas cap wells, classification of wells by appropriate State agency will be accepted for pricing purposes unless shown to be unreasonable. P. 189.
16. A composite cost showing must be basic ingredient in determining area rate with Commission exercising its judgment in light of all evidence. P. 190.
17. Cost of gas-well gas is the yardstick for all prices fixed here. P. 190.
18. Cost of new gas-well gas should be determined on basis of nation-wide data. P. 191.
19. In determining ceiling for new gas-well gas, preferable approach is one geared to recent cost of finding and producing gas rather than historical costs—historical costs will not necessarily reflect current realities. P. 191.
20. In determining area rates here, cost evidence was obtained from producer questionnaires, census data and other authoritative industry sources. P. 191.
21. Commission *finds* national average cost of new gas-well gas is 16.43 cents. P. 192.

22. In determining 1960 dry hole costs, it was proper to use questionnaire data to establish trend in exploration and development costs from 1958 to 1960 and to adjust 1958 census figures in accordance therewith. P. 192.
23. Capitalization of dry hole costs and other costs associated with unproductive ventures may well be useful in succeeding cases, although not supported here. PP. 192, 193.
24. In determination of area price ceiling for new gas-well gas, it was proper to include cost of geological and geophysical expenses, lease rentals and exploratory overhead in category other than dry holes. P. 193.
25. Since exploratory and development losses are expensed in year incurred, allowance therefor should be recouped from that year's production. PP. 193, 194.
26. To bring in necessary revenues, total cost of finding necessary volumes of gas must be translated into an allowance per Mcf of gas produced. P. 194.
27. Exploratory and development allowance provided here will permit industry to recoup from current production all costs presently being incurred in satisfactory level of exploratory effort. P. 194.
28. In costing new gas-well gas Commission finds production operating expense to be 2.70 cents per Mcf. P. 195.
29. No adjustment of net to marketed production should be included in cost computation because of venting or wasting, since this is negligible. P. 195.
30. In costing new gas-well gas, revenues received by producers from entrained liquids should be credited to the cost thereof reflecting current and expected experience—here Commission finds such net liquid credits to be 2.90 cents per Mcf. PP. 195–197.
31. Regulatory expense of 0.14 cents per Mcf should be included in new gas-well gas costs since there is no disagreement and amount appears reasonable. P. 197.
32. Production investment costs including successful well costs, lease acquisition costs and cost of other production facilities are capitalized to establish rate base upon which return must be allowed. P. 197.
33. In allowing producer to recover rate base by charges for depletion, depreciation and amortization over economic life of investment, Commission converts depletion, depreciation and amortization to Mcf basis and adds element for return on production investment per Mcf. P. 197.
34. Commission finds successful well costs to be 2.88 cents per Mcf of gas found. PP. 197, 198.
35. Commission allows a lease acquisition cost of 0.76 cents per Mcf of gas found. PP. 192, 198.
36. 0.31 cents per Mcf is a reasonable allowance for cost of lease equipment, related lease facilities and apportioned overhead investment. P. 198.
37. No allowance for growth is included in production investment cost. P. 199.
38. Total production investment cost is determined to be 3.95 cents, with 10 years as reasonable period for recovery of investment. P. 199.
39. Since some production investment costs must be made before gas begins to flow, a lag of one year in addition to the period of recoupment is approved. PP. 199, 200.
40. Courts have consistently held that the rate of return must be sufficient to attract new capital, be in line with that earned by comparable industries and be determined, not through automatic application of formulae, but through informed judgment taking into account all relevant facts. P. 200.

312-270—69——14

41. Legal precedent and financial requirements dictate that if unusual risks are inherent in production, a greater return should be allowed on investment therein in absence of record support for different conclusion. P. 201.
42. Under circumstances here the "true yield" method for determining capital costs cannot be used. P. 202.
43. Earning experience of production industry used here to fix allowable rate of return. P. 203.
44. On facts of this first area rate proceeding, Commission *allows* a 12 percent rate of return on net investment. P. 204.
45. Rejecting "balance sheet formula", Commission concludes that additive factors in traditional utility formula—cyclical expenses, materials, supplies and prepayments—are justified components of working capital allowances for producing industry. P. 205.
46. Recognizing erratic nature of company lease acquisitions, etc., compensatory "lease play" return is allowed on reasonable amounts in excess of working capital allowance based on traditional utility formula. P. 205.
47. For instant purposes, Commission *allows* total return on working capital of 0.35 cent per Mcf, including 0.15 cent as lease play return. P. 206.
48. In computing cost of gas-well gas, Commission includes royalties at 12.5 percent, yielding 2.05 cents per Mcf. P. 206.
49. In determining production tax allowance of gas-well costs, reasonable local taxes are valid basis for difference in ceiling prices between areas—accordingly actual taxes incurred in Texas and New Mexico will be allowed. P. 206.
50. The prices here established are the total prices including all tax reimbursements. P. 206.
51. No income tax allowance need be included in computing new gas-well gas costs. P. 206.
52. In determining price for new gas-well gas in each area, Commission must consider relevant factors in area other than cost-finding technique used here. P. 207.
53. There is no justification for any adjustment in cost-determined ceiling prices by reason of historically lower prices in the Permian Basin or to reflect fact that much of area gas is of less than pipeline quality. P. 207.
54. Ceiling prices fixed here are for gas of pipeline quality based on prescribed standards which provide both upward and downward adjustments in ceiling price of new gas-well gas. P. 207.
55. Having determined a 16.43 cents cost, Commission fixes 16.5 cents per Mcf [including state tax] as ceiling price for Texas produced new gas-well gas [including residue] and 15.5 cents for the three New Mexico counties. PP. 207, 208.
56. Sale of casinghead gas to an interstate pipeline under a Spraberry-type percentage contract is subject to Commission jurisdiction. P. 209.
57. Regulation should utilize industry practices developed to meet its problems to extent consistent with effective regulation. P. 209.
58. Volume and effect of casinghead sales in area [other than percentage or Spraberry contracts] has too small an impact on consumer prices to warrant a separate casinghead price. PP. 209, 210.
59. Ceiling price for new gas-well gas will be applicable to residue gas derived from new gas-well gas; ceiling price for all other gas will apply to residue gas derived from casinghead gas or old gas-well gas. P. 211.
60. No realistic cost of casinghead gas or residue gas derived therefrom can be established here. Casinghead gas, residue gas derived therefrom, and old gas-well gas should be similarly priced. P. 211.

61. It would be contrary to good conservation practice and good economics for price regulation to interfere with normal operation of market forces where these forces tend to provide greatest possible benefits to economy as a whole. P. 211.
62. Revenues from flowing gas should be based on composite historical costs, including fair allowance for exploration and development; price should also reflect producers' need for revenues from present sales to support future discoveries. P. 212.
63. Composite 1960 historical cost-of-service provides most solid basis in record for determining just and reasonable price of old gas-well gas and is used here as a basis for such price. P. 212.
64. Touchstone for flowing gas is the historical cost of gas produced in the area in 1960. P. 213.
65. Exclusion of small producer responses was proper since data provided by major producers was fully representative of area costs. P. 214.
66. Price for flowing gas is based upon two principal categories; production costs and exploration and development costs. P. 214.
67. Commission used relative cost method to divide joint production cost between liquids and gas in computing production operating cost allowance for flowing gas-well gas. P. 215.
68. A 12 percent rate of return is considered appropriate for flowing gas. PP. 215, 216.
69. Employing relative cost method Commission determines production cost for flowing gas to be 9.16 cents per Mcf. P. 216.
70. Exploration and development allowance for flowing gas should be computed on nation-wide basis. P. 216.
71. In determining exploration and development costs for flowing gas, Commission uses modified Btu method adopted in *Phillips* to allocate such expenditures between gas and liquids. P. 216.
72. In allocating total exploration and development expenses, Commission concludes that economic factor of 3.5 should be applied to Btu's of crude oil and condensate liquids production as compared to economic factor of 1.0 for Btu's of all gas. P. 218.
73. Economic weighting should be applied to national rather than to area production of hydrocarbons. P. 218.
74. Exploration and development costs for flowing gas-well gas determined to be 4.08 cents per Mcf. P. 218.
75. Total cost of flowing gas found to be 14.39 cents per Mcf. P. 218.
76. Commission fixes 14.5 cents per Mcf including tax as ceiling price for flowing gas in Permian Basin of Texas and 13.5 cents for the three New Mexico counties [plus applicable production tax]. P. 220.
77. Area ceiling prices for new gas-well gas and flowing gas must be adjusted for departures from pipeline quality standards. P. 221.
78. Commission discusses quality standards for sulphur, water, carbon dioxide content and other impurities. PP. 221–223.
79. Under present circumstances there is no need to establish any standard Btu content for flowing gas in Permian Basin. P. 223.
80. Commission provides for future proportional upward Btu adjustment for new gas-well gas from a base of 1050 Btu per cubic ft. and downward adjustment from a base of 1000 Btu's. P. 223.
81. Commission adopts 800 pounds pressure standard for Permian Basin. P. 224.
82. Commission sets forth principles and procedures for governing downward price adjustments where gas deviates from pipeline quality standards. P. 225.

83. No pipeline may include in cost of service any amounts paid for gas in excess of applicable ceiling price as adjusted by prescribed standards. P. 225.
84. Normally, it would not be in the public interest to certificate future gas sales [including gas flowing under temporary] above ceiling prices; producers will be afforded opportunity to show special circumstances warranting an exception. P. 226.
85. Commission discusses general guidelines for petitions seeking special relief from area price maximums, including questions of confiscation and abandonment of unprofitable sales. PP. 225–227.
86. Commission applies moratorium on increased rate filings above applicable area ceiling prices for a 2½-year period. P. 228.
87. Commission orders under Section 5(a) of the Act do not automatically have effect of tolling availability of Section 4 filings. P. 230.
88. Under Sections 5(a) and 16 of the Gas Act, Commission may impose reasonable moratorium on increased rate filings under Section 4, which are inconsistent with rates found to be just and reasonable. P. 230.
89. Policy will be to certificate new sales of gas at initial prices no higher than applicable area rate and upon condition that no higher rate be filed before January 1, 1968, unless instant proceeding is reopened to consider whether a different area rate should be adopted. PP. 230, 231.
90. Commission establishes a 9 cents per Mcf minimum price for Permian Basin; such rate may be filed without purchaser approval. PP. 231, 232.
91. Commission discusses refund question and prescribes requirements therefor. PP. 232, 233.
92. It is neither necessary nor desirable to provide outright exemptions for small producers. P. 234.
93. Existing favored-nation and spiral escalation clauses should not be denied effect insofar as they permit filings up to applicable area prices. PP. 236, 237.
94. Area rates established here shall apply prospectively for all jurisdictional sales being made under respondents' rate schedules whether they were being made when proceeding was instituted or begun subsequent thereto. P. 237.
95. For producers receiving certificates after proceeding was instituted and are not respondents here, separate proceedings will be instituted requiring them to show cause why area rates should not be applied to them. P. 237.
96. Refund obligations resulting from rate increases filed after institution of this proceeding will be subject to show cause order to determine why rates fixed here should not be used in determining refund obligations. PP. 237, 238.
97. It was proper for Presiding Examiner to call his own witness since he has authority—as a court does—to make sure that all necessary evidence is adduced. P. 238.
98. In landmark area rate proceeding arising under Section 5 of the Natural Gas Act, Commission *determines* just and reasonable rates for natural gas producers in Permian Basin.

Commissioners O'Connor and Ross *concurring* and *dissenting*.

Commissioner Black *concurring*.

Commissioner Bagge *not participating*.

Lynn Adams for Kerr McGee Oil Industries, Inc.

Jerome M. Alper, Guy H. Woodward and *George Otey, Jr.*, for Samedan Oil Corporation.

J. Evans Attwell for S. W. Richardson, d/b/a Richardson & Bass, and North Central Oil Corporation.

Arthur L. Brown, Jr. for Drilling and Exploration Company, Inc.

Bruce R. Merrill, Tom Burton, Robert C. Hawley and *Joseph C. Johnson* for Continental Oil Company.

Thomas J. Caldwell, Jr., Jerome M. Alper and *M. R. Lents* for Reef Corporation.

R. M. Coleman for Southland Royalty Company.

Warren J. Collins, Roy E. Pitts, Manuel J. Edling, Jr. and *E. A. Brown* for Lone Star Producing Company.

Louis Crouch and *E. C. Sargent* for Louis Crouch.

Angus A. Davidson, Francis O'H. Searle, W. L. Minturn, Charles E. McGee and *James T. McKinney, Jr.* for Sinclair Oil & Gas Company.

Kenneth A. Swanson for Aztec Oil & Gas Company.

John C. Dawson for Western Natural Gas Company; Pecos County El Paso Natural Gas Products Company; Barnhart Hydrocarbon Company.

Alfred C. DeCrane, Jr., James J. Flood, Jr., Paul F. Schlicher, and *W. N. Sands* for Texaco Seaboard, Inc.

E. J. Kremer, Jr., Stuart Scott, W. R. Dotson, Bernard A. Foster, Jr. and *Sherman S. Poland* for The Atlantic Refining Company.

N. C. Drayisic for Joseph I. O'Neill, Jr., et al.

Albert J. Feigen and *J. A. Warren* for James G. Brown & Associates.

Bert Fields and *Mark D. Jackman* for Bert Fields.

Robert D. Fitting for Craig & Willets.

Frank J. Duffy for Northern Natural Gas Producing Company.

Patrick Flynn and *Newton Rayzor* for W. H. Black; DST Exploration Corporation; C. E. Marsh, II; J. H. Vandenberk (Operator); Wolfson Oil Company; G. D. Putnam (Operator); Grace Marjorie Moran Parrish; Ralph Lowe; Limpia Royalties, Inc.; J. E. Jones Drilling Company; Haynes & V. T. Drilling Company; J. P. Gibbins; L. D. Crumly, Jr.; Brown & Key, Inc.; and Henry Black Drilling Company, Inc. (Operator).

Bernard A. Foster, Jr. for The British American Oil Producing Company; Honolulu Oil Corporation; Southland Royalty Company; Westates Petroleum Company; and Western Petroleum Company.

J. M. Fullinwider for A. W. Cherry and Cherry Brothers.

Randall F. Montgomery and *Albert Gackle* for Albert Gackle.

Douglas C. Gregg and *George D. Horning, Jr.* for Union Oil Company of California.

J. P. Greve for Sunray Mid-Continent Oil Company.

William J. Grove and *Carroll L. Gilliam* for Slade, Inc., et al.

Pat S. Holloway and *Sherman S. Poland* for Scott Hammonds.

Peck Hardee, Jr. for Felmont Oil Corporation.

Robert W. Henderson, Thomas G. Crouch and *Richard F. Generelly* for Hunt Oil Company; H. L. Hunt; Estate of Lyda Bunker Hunt, Deceased; Secure Trusts, W. H. Hunt, N. B. Hunt, Lamar Hunt, Caroline Hunt Sands and Loyd B. Sands; Caroline Hunt Trust Estate.

Richard F. Generelly and *Paul Hicks* for Placid Oil Company.

W. L. Hixon for Anderson-Prichard Oil Corporation.

Leo J. Hoffman, R. L. Donalson and *Leland Carter* for Delhi-Taylor Oil Corporation.

Pat S. Holloway and *G. Scott Hammonds* for George S. Hammonds.

Pat S. Holloway and *E. R. Barry* for Hanley Company.

H. K. Hudson, Kenneth Heady, John R. Rebman and *James G. Williams, Jr.* for Phillips Petroleum Company.

Homer D. Johnson and *Boyd Taylor* for Cabot Corporation.

H. W. Varner, Homer J. Penn and *F. P. Jones, Jr.* for Superior Oil Company.

Clyde E. Willbern and *Jack D. Jones* for Getty Oil Company and Tidewater Oil Company.

T. C. McCorkle, Clifford O. Stone, Jr., John F. Jones, William J. Grove, Carroll L. Gilliam and *J. P. Hammond* for Pan American Petroleum Corporation.

John C. Snodgrass for The Pure Oil Company.

Ivan V. Kerno and *Royal W. King, Jr.*, for Benedum-Trees Oil Company and Hiawatha Oil & Gas Company.

A. S. Grenier, Will A. Knight, A. M. Wiederkehr and *David Nicol* for Southern Union Gas Company.

W. T. LaGrone for Jake L. Hamon.

Frank Jones and *Gentry Lee* for Cities Service Producing Company, Cities Service Production Company, and Cities Service Oil Company.

Paul A. Lockhart, Jr. for E. Constantin, Jr.

Jesse P. Luton, Jr., John E. Thomason and *Arthur F. Whitt*, for Gulf Oil Corporation.

R. A. Lynch for Murphy H. Baxter; Leland Davison; S. T. Constantine; John L. Cox; Ed E. Watts; Curtis R. Inman; H. L. (Sonny) Brown; Claude E. Aikman, and Joseph S. Gruss.

G. E. McDaniel for J. P. Gibbins.

C. D. Ice and *Hamilton E. McRae* for W. P. Luse, et al. (C. O. Ice and Jack L. Burrell).

Steve Boone and *Hamilton E. McRae* for J. C. Barnes (Operator), et al.

Hamilton E. McRae for Jeanne E. Krebs; John W. Starr and Willetts & Craig; James L. Greene, Jr.; Thomas M. Sloan; Dekalb Agricultural Association, Inc. (Petroleum Division); J. N. Bartley, et al.; Abel & Bancroft; Carl J. Westland, Inc.; Texas Crude Oil Company; The Midland National Bank, Trustee, John I. Moore, Gladys Lomax (Mrs. W. L. (Pete) Lomax), Hazel Greene, Ethel W. Bird, et al. (Charles Allen Bird), Gordon Street, Inc. and Gordon P. Street, M. W. J. Producing Company and Martin, Williams & Judson.

W. E. Bakke, Jr. for W. E. Bakke.

R. Ken Williams for Gordon Street, Inc.; Gordon P. Street; M. W. J. Producing Company and Martin, Williams & Judson.

Jesse Foster, G. H. Lawrence and *A. C. McClain* for Humble Oil & Refining Company.

Charles L. Morgan, Jr. for Signal Oil and Gas Company.

Dixon Morgan and *William K. Tell, Jr.* for Sohio Petroleum Company.

E. Dale Morgan for R. L. Foree.

R. M. Moran for Marjorie Moran Parrish, et al.

Joseph W. Morris and *Edwin S. Nail* for Amerada Petroleum Corporation.

Lewis G. Mosburg, Jr. for American Liberty Oil Company; Sharples Oil Corporation, and Ashland Oil & Refining Co.

J. A. Moss, L. M. Thompson and *H. C. Stipp* for Cosden Petroleum Corporation.

Cecil E. Munn, Fred C. Higginbotham and *Conway Lammers* for General American Oil Company of Texas.

Cecil E. Munn, Stanley F. Davis, Jr. and *R. Daniel Settle* for Texas Pacific Coal & Oil Co.

Clayton L. Orn and *Joseph F. Diver* for Ohio Oil Company (Marathon).

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H. Bryce Parker for Argo Oil Corporation.

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Homer J. Penn for Republic Natural Gas Company.

Claude Proctor and *Justin R. Wolf* for Standard Oil Company of Texas.

Bryce Rea, Jr. for Miami Petroleum Co., Inc. and C. A. McClintic.

N. Randolph Reese for Johnson and French Oil Company.

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Bradford Ross, Hawley C. Kerr and *David M. Cook* for Skelly Oil Company.

H. Y. Rowe for Murphy Corporation.

William Scheurich, Robert A. Huffman, and *John L. Arrington, Jr.* for Schermerhorn Oil Corporation.

A. C. DeCrane, Jr., James C. Flood, Jr., Paul F. Schlicher, and *W. N. Sands* for Texaco Inc.

P. C. Shands for Barron Kidd.

John Ben Sheppard and *William W. Blanton* for Inland Natural Gasoline; Odessa Natural Gasoline Co.; E. G. Rodman; Rodman-Noel Oil Corporation; E. G. Rodman & W. G. Noel; Rodman, Tate & Noel; West Texas Gathering Company; L. R. French, Jr. and Earl Vest, et al.

Warren M. Sparks and *Arthur F. Whitt* for Warren Petroleum Corporation.

J. R. Stimmel for B. T. A. Oil Producers.

Oliver L. Stone, Joseph C. Spalding, Thomas G. Johnson and *W. T. Wise* for Shell Oil Company.

John R. Thompson for Westbrook-Thompson Holding Corporation.

Gus Vletas for French M. Robertson (Operator), et al.

John A. Ward, III, Philip D. Endon, Granville Dutton, Porter E. Noble, J. Colbert Peurifoy, Stanley M. Morley, Robert E. May, Louis Flax, John T. Ketcham and *Gene P. Bond* for Sun Oil Company.

K. B. Watson, W. N. Lampe and *Charles E. McGee* for Pioneer Production Corporation.

Chester L. Wheless and *C. C. Small, Jr.* for Santa Rosa Gas Company.

James L. White and *James R. Townsend* for TXL Oil Corporation.

M. B. Wilson for Great Western Drilling Company.

H. J. Rucker for George T. Abell; R. Searle McGrath and Pomeroy Smith, d/b/a McGrath & Smith.

D. E. Cooper for Rutter & Wilbanks, et al.

J. C. Crain, Jr. for Two States Oil Company.

E. H. Holcomb for Western Drilling Co.

R. A. Lynch for Herd Oil & Gas Company; Redfern Oil Company and Louis Crouch.

G. E. McDaniel for J. P. Gibbins.

James S. Robertson for Pauley Petroleum, Inc. and E. E. Fogelson.

Richard F. Generelly and *Gaston C. Jones* for F. A. Callery, Inc.

Cecil E. Munn for Texas Pacific Coal and Oil Company and General American Oil Corporation of Texas.

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Alan G. Campbell and *Robert W. Russell* for The City of Los Angeles.

J. D. Duncan for Delfern Oil Company.

Malcolm H. Furbush and *John S. Cooper* for Pacific Gas & Electric Company.

Earl E. Hartley, William O. Jordan, Oliver E. Payne and *E. S. Johnny Walker* for the State of New Mexico.

Allen R. Grambling and *E. G. Najaiko* for El Paso Natural Gas Company.

George C. Mastor for Minneapolis Gas Company; Iowa Electric Light & Power Company; and Iowa Public Service Company.

James A. Gammon and *John A. McGrath* for Fuels Research Council, Inc.

Edwin L. Miller, Jr. for the City of San Diego, California.

John W. Scott and *Louis L. DaPra* for Minnesota Valley Natural Gas Company.

Morton Simon for Philadelphia Electric Company.

William I. Powell for Independent Petroleum Association of America.

Sam L. Robertson, Kirk Jordan and *William N. Tindell* for West Central Texas Oil & Gas Association.

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William M. Bennett, J. Calvin Simpson, Sheldon Rosenthal and *Walter G. Linstedt* for the People of the State of California and Public Utilities Commission of the State of California.

Raybourne Thompson, T. G. McGreevy and *James W. McCartney* for Transwestern Pipeline Company.

William E. Torkelson, John W. Reynolds, Roy G. Tulane and *N. S. Hefferman* for the State of Wisconsin and Public Service Commission of Wisconsin.

Honorable John B. Connally, Linward Shivers, Will Wilson, James N. Ludlum, Richard Saxe and *Houghton Brownlee, Jr.* for the State of Texas.

Trent H. Zeppa for Delta Drilling Company.

Vincent J. Roach, Richard J. Connor, Frank J. Duffy, Jack C. Osborne and *Walter B. Gallagher* for Northern Natural Gas Company.

Lewis G. Mosburg, Jr. for King-Stevenson Oil Company, Inc., Service Drilling Company and Big Chief Drilling Company.

F. H. Pannill for Abel and Bancroft.

John Davenport and *William J. Grove* for Texas Independent Producers and Royalty Owners Association.

Thomas M. O'Connor and *Orville I. Wright* for the City and County of San Francisco.

David J. Bardin, Alan J. Roth and *Lawrence A. Gollomp* for the Staff of the Federal Power Commission.

TABLE OF CONTENTS

	Page
Introduction	171
Summary of Examiner's Decision	172
The Natural Gas Industry and its Activities in the Permian Basin	172
History of the Development of the Area Approach to Producer Regulation	174
Legal Basis for Area Rates	176
Contract Prices as a Basis for Regulation	180
Reserves to Production Ratio as a Regulatory Standard	183
The Two-Price System	185
The Date of Division Between New Gas-Well Gas and Old Gas-Well Gas	188
Basic Standard for New Gas-Well Gas Ceiling Price	189
The Cost of New Gas-Well Gas	191
Exploration and Development Costs	192
Dry Hole Costs	192
Other Exploratory Costs	193
Adjustment for Exploration in Excess of Current Production	193
Summary of Exploration and Development Costs	194
Production Operating Expense	194
Adjustment of Net Production to Marketed Production	195
Net Liquid Credit	195
Regulatory Expense	197
Depletion, Depreciation, and Amortization of Production and Investment Costs	197
Successful Well Costs	197
Lease Acquisition Costs	198
Cost of Other Production Facilities	198
Allowance for Growth in Investment	198
Period of Recovery of Investment	199
Lag	199
Return Allowance	200
Rate of Return	200
Return on Working Capital	204
Royalties	206
Production Taxes	206
Income Taxes	206
The Rate for New Gas-Well Gas	207
Rationale for a Uniform Ceiling Price for Flowing Gas	208
Casinghead Gas	208
Residue Gas	210
The Rate for Flowing Gas	212
Basic Approach	212
Preliminary Questions	213
The Composition of Costs	214
Production Costs	214
Allocation of Production Costs by the Relative Cost Method	214
Rate of Return	215

Page

The Rate for Flowing Gas—Continued
Summary of Production Costs 216
Exploration and Development Costs 216
Summary of the Cost of Flowing Gas 218
Comparison With Examiner's Computation of Cost of Old Gas-Well Gas 218
The Price of Flowing Gas 220
Price Adjustments to Reflect Quality Differentials 221
Quality Standards 221
Sulphur 221
Water 222
Carbon Dioxide 222
Other Impurities 222
Btu Content 223
Pressure 224
The Amount of Price Adjustment 224
Procedure 225
Petitions for Special Exemption From the Area Rates 225
Changes in the Area Rate 227
Minimum Rates 231
Refunds 232
Small Producer Problem 234
Miscellaneous Issues 236
Favored-Nation and Spiral Escalation Clauses 236
Application of the Order 237
Examiner's Witness Frazier 238
Findings 238
Order 239
Parties and Proceedings Consolidated ..... Appendix A
Excerpts Adopted From the Examiner's Initial Decision ..... Appendix B
Detailed Issues in Computing the Cost of Old Gas-Well Gas ..... Appendix C
Rate Schedule—Quality Statement ..... Appendix D
Application for Small Producer Certificate ..... Appendix E

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

INTRODUCTION

SWIDLER, *Chairman:*

This is the first area proceeding to determine just and reasonable rates for natural gas producers. It is the culmination of an effort initiated more than 4½ years ago, and which has been carried forward with the greatest sense of urgency on the part of all concerned. The area is the Permian Basin, one of the Nation's great oil and gas provinces, comprising the counties of Chaves, Eddy, and Lea, New Mexico, and Texas Railroad Commission Districts No. 7–C and No. 8.

Pursuant to Section 5 of the Natural Gas Act we here establish the future rates for jurisdictional sales of gas by producers in the area.[1] Also consolidated in this area proceeding are a large number of increased rate filings suspended under Section 4 of the Act and a limited number of applications for certificates of public convenience and necessity pursuant to Section 7 which are disposed of in a separate order issued this date.

The Commission initiated the proceeding by order of December 23, 1960 (24 FPC 1121). Prehearing conferences were held in Midland, Texas, beginning March 6, 1961, and in Washington on April 27, 1961. Forty-seven petitions to intervene were granted. The number of parties in the proceeding total 384, including 336 gas producers who are respondents.

The Commission prescribed questionnaires for the major producer respondents to obtain information with respect to Permian Basin and nationwide cost and operating experience. 26 FPC 247, 514, 531 (1961). A special form was prescribed for the small producers. 27 FPC 20 (1962). (The dividing line between major and small producers was determined by the level of nationwide jurisdictional sales, 10 million Mcf in calendar year 1960.) A significant early ruling in this proceeding was the Commission's order of May 14, 1962, holding that individual company cost-of-service evidence would not be received in evidence but that composite cost studies would be admissible. 27 FPC 943 (1962).

The hearings extended over a period of almost two years beginning on October 11, 1961, and closing on September 12, 1963. The examiner rendered his decision on September 17, 1964.

Fourteen individual and joint briefs on exceptions were filed on behalf of 111 respondents and numerous other interested persons, not parties, who joined with them. Most of the producers adopted the briefs on exceptions of Continental Oil Company (Major Producer Group).[2] Separate briefs were filed by the Commission staff, by the numerous interveners and as *amici curiae* by several groups with a substantial interest in the general problem.[3]

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[1] The respondents are listed in Appendix A to this opinion.

[2] Respondents filing independent or supplemental briefs on exceptions included Amerada Petroleum Corporation (Amerada); Humble Oil & Refining Company (Humble); Hunt Oil Company, *et al.* (Hunt); Perry R. Bass (Operator), *et al.* (Bass); Phillips Petroleum Company (Phillips); Placid Oil Company (Placid); Standard Oil Company of Texas, a Division of California Oil Company (Standard); Sun Oil Company (Sun); Superior Oil Company (Superior); and Warren Petroleum Corporation (Warren).

[3] Interveners filing briefs on exceptions included Northern Natural Gas Company (Northern); King-Stevenson Oil Company, Inc., *et al.* (Oklahoma Interveners); the State of California and the Public Utilities Commission of California (jointly referred to as Cal-PUC); a group of California distributors (California Distributors); the City and County of San Francisco (San Francisco); the City of San Diego (San Diego); the State

Footnotes continued on following page.

Oral argument lasting three days was held beginning February 8, 1965, and the proceedings are now before us for decision.

SUMMARY OF EXAMINER'S DECISION

We acknowledge at the outset our indebtedness to Examiner Wenner for his penetrating analysis of the basic economics of the industry and his constructive proposals for a pricing system in harmony with the realities of the industry and the Commission's responsibilities under the Natural Gas Act. We must acknowledge also the helpful and constructive role of the parties to the proceeding. The cooperation of the respondents and the interveners with the Commission has been instrumental in achieving what the examiner has described as a breakthrough in reaching a workable method of producer regulation.

The examiner's decision would establish ceiling prices to apply, with certain exceptions, to all the sales being considered in this proceeding. These proposed ceilings were, in the case of rate schedules filed with this Commission on or after December 23, 1960, 16.75 cents per Mcf for gas-well gas, 15 cents per Mcf for residue gas, and 11 cents per Mcf for oil-well gas. In the case of rate schedules filed before December 23, 1960, the proposed ceilings were 13.5 cents per Mcf for gas-well gas and residue gas and 10 cents per Mcf for casinghead gas. The presiding examiner found, however, that the rates of producer-respondents making jurisdictional sales of less than 10,000,000 Mcf annually were just and reasonable and did not apply the proposed ceilings to any such respondents. Operators of processing plants, even if selling less than 10,000,000 Mcf annually, would have their rates limited by the proposed ceilings.

In the case of Section 4(e) proceedings consolidated herein, the examiner would order certain refunds which were to be computed for separate years and categories of gas on the basis of whether the industry had realized more than the proper revenue as well as on the basis of the individual rates collected. Deficiencies in one category would be used to offset excessive revenues in other categories each year. The presiding examiner further stated that since the record does not contain information needed to determine the actual or proper revenue for years other than 1960, for such years the parties within 90 days of the initial decision should submit draft orders with requests for information and with specific proposals regarding refunds.

The presiding examiner declared most favored-nation clauses and spiral escalation clauses in existing contracts to be inoperative and of no legal effect, and would allow no future change in rate resulting from any such clause to take effect. He fixed a minimum price of 9 cents per Mcf for residue and gas-well gas and 7 cents per Mcf for casinghead gas, and would allow rate increases to these levels to be filed with the consent of the buyer.

THE NATURAL GAS INDUSTRY AND ITS ACTIVITIES IN THE PERMIAN BASIN

The major known deposits of natural gas in the United States are located primarily in the States of Texas, Louisiana, Oklahoma, New Mexico, and Kansas. In addition, there are substantial reserves in the off-shore area Louisiana and Texas. More than 70 percent of all the natural gas produced for marketing in

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Footnotes continued from previous page.
of Texas jointly with Texas Independent Producers and Royalty Owners and West Central Texas Oil and Gas Association (Texas-TIPRO–WCTOGA); and the Independent Petroleum Association of America (IPAA). Briefs on exceptions as *amici curiae* were filed by Philadelphia Electric Company (Philadelphia); Associated Gas Distributors (AGD) (a group of approximately seventy major distributors) and the Oklahoma Independent Petroleum Association (OIPA).

the United States is sold in interstate commerce subject to the jurisdiction of the Commission. The Permian Basin alone accounts for about 11 percent of all the gas moving into the interstate market.

Natural gas and crude oil are both hydrocarbons, and they are often found in common reservoirs. As a result gas and oil production are interrelated. Our responsibility is confined to regulating the sales of natural gas. In his opinion (*infra*, p. 322) the examiner classified natural gas as "oil well gas" or "gas well gas", depending upon the conditions of production. He used the term "residue gas" to describe oil-well gas or gas-well gas after it has been processed and the liquids removed.

The natural gas industry is divided into three distinct segments. First there are the producers. Jurisdiction under the Natural Gas Act attaches when the gas is sold for resale in interstate commerce. The intermediate segment of the industry consists of the interstate pipeline companies which transmit the gas from the producing fields through large diameter pipelines as much as a thousand miles or more to centers of distribution throughout the nation. The third segment of the industry comprises the distributors of the gas in thousands of communities throughout the nation who are under state or local regulation exclusively, but who rely on this Commission to regulate the price at which they purchase gas at wholesale from the interstate pipelines. It should be noted that there is some overlapping in these categories. Some pipeline companies produce a share of their own natural gas and sell gas to other pipelines; others engage in distribution operations. Also, some producers perform gathering or transportation services and some distributors engage in production and transmission activities.

The Permian Basin is a major geological formation underlying much of western Texas and southeastern New Mexico. It is rich in oil and gas deposits, and is one of the major hydrocarbon producing areas in the Western Hemisphere.

About two-thirds of the gas produced in the Permian Basin is oil-well gas, that is, gas produced in conjunction with oil. By contrast, oil-well gas represents only about one-third of the total gas production in the continental United States. Oil-well gas is limited as to the hours of availability in a month since it is governed by the allowable oil production, which is subject to state regulation. The gas must be produced as the oil is produced, and it is not produced at any other time. It is produced on such a basis as will maximize the production of oil, for which it is the lifting agent. In these respects it contrasts unfavorably with gas-well gas, which while subject to state prorationing authority on a field basis, can be produced on a demand schedule. Oil-well gas is also produced at lower pressures than those common to gas-well gas. Production at less than 50 pounds pressure is not unusual in the case of oil-well gas. Since pipelines require pressures approaching one thousand pounds, low-pressure gas must be compressed before it can be taken into a pipeline stream. Processing of such gas will include one, two, three or more stages of compression.

In the Permian Basin, most oil-well gas is "sour" gas before processing.[4] Some of the gas from the Permian Basin also has an unusually high carbon dioxide content, ranging in some instances as high as 50 percent. Carbon dioxide is non-flammable and is presently useless to the petrochemical industry. When present in significant quantities it must be removed, entailing both processing costs and reduction in the volume of gas which remains for use.

[4] "Sour" gas is considered to be gas containing 10 or more grains of hydrogen sulphide or 200 or more grains of total sulphur per Mcf. The sulphur content of Permian Basin oil-well gas is generally higher than that of gas from any other area in the United States.

Historically, prices for gas in the Permian Basin have been lower than prices in most other areas. For many years oil-well gas was vented or flared, because there was no market for it. Three interstate pipelines, however, now make substantial purchases of gas in this area, and venting or flaring has been reduced to very low levels. El Paso Natural Gas Company (El Paso) began purchasing Permian Basin gas in 1945 for interstate transmission in connection with construction of the first natural gas pipeline from Texas to California. It was the sole interstate purchaser until 1954. In that year Northern Natural Gas Company (Northern) made its first purchase in the Permian Basin through Permian Basin Pipeline Company. In 1958 Transwestern Pipeline Company (Transwestern) began its purchases in the Permian Basin to supply the second pipeline from that area to California.

In 1961 El Paso purchased 73 percent of the Permian gas moving in interstate commerce; Northern accounted for 18 percent, and Transwestern for 9 percent. It is estimated that 85 percent of the gas moving in interstate commerce from the Permian Basin goes to California, an area of rapidly expanding demand by both industrial and residential consumers. The gas-producing wells in the Permian Basin, therefore, are some 900 to 1,300 miles from the principal points of use for the gas.

HISTORY OF THE DEVELOPMENT OF THE AREA APPROACH TO PRODUCER REGULATION

The Federal Power Commission's regulation of the rates of electric utilities and natural gas pipeline companies under the Federal Power Act and Natural Gas Act had uniformly been conducted on an individual cost-of-service basis at the time of the Supreme Court's *Phillips* decision on June 7, 1954,[5] which held that the Commission had jurisdiction over the regulation of wellhead gas prices, a jurisdiction the Commission had theretofore questioned. Faced with the novel problem of regulating thousands of gas producers, the Commission's first guarded attempts at producer regulation were on an individual company basis.[6] A few of the first rate increase filings were approved on the basis of cost evidence.[7] In other cases where the producer failed to submit evidence founded on the conventional rate base method of regulation, the Commission dismissed the rate increase[8] on the assumption that in the absence of such cost support it was bound to do so by *City of Detroit* v. *F.P.C.*, 230 F. 2d 810 (CADC–1955), certiorari denied 352 U.S. 829 (1956), a case dealing with a pipeline's own gas production. On review of these rate increase dismissals the Court of Appeals for the Fifth Circuit agreed that evidence as to field prices coupled with opinion testimony as to the need for an incentive price to induce adequate exploratory and development activity was not enough to demonstrate the rates were just and reasonable but held the Commission should have given the producers further opportunity to present evidence. The Court also indicated that the Commission need not require conventional rate base evidence if other cost evidence was available to insure that consumers were not paying more than a just and reasonable price, and need not fix separate rates for each producer if it found a uniform rate for the field desirable.[9]

The area concept also had its origin in proceedings under Section 7 of the Act upon applications for certificates of public convenience and necessity by gas

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[5] *Phillips Petroleum Co.* v. *Wisconsin*, 347 U.S. 672 (1954).

[6] Ross, W.W., "The Area Rate Proceedings," 18 S.W.L.J. 165, 170 (1964); note, "F.P.C. Regulation of Independent Producers of Natural Gas," 75 Harv. L. Rev. 549 (1962).

[7] See *e.g.*, *Davidor & Davidor*, 15 FPC 1236 (1956).

[8] See *e.g.*, *Union Oil Co. of California*, 16 FPC 100, 110 (1956).

[9] *Bel Oil* v. *F.P.C.*, 255 F. 2d 548 (CA5–1958), certiorari denied 358 U.S. 804 (1958); See also *Forest Oil Corp.* v. *F.P.C.*, 263 F. 2d 622 (CA5–1959).

producers. As early as November 28, 1955, in *Cities Service Gas Co., et al.*, 14 FPC 134 (1955), affirmed as *Signal Oil & Gas Co.* v. *F.P.C.*, 238 F. 2d 771 (CA3–1956), certiorari denied 353 U.S. 923 (1957), the Commission conditioned a producer certificate to the price level prevalent in the area (14 FPC at pp. 147–148). In some later cases the Commission failed to impose a condition on the initial price, the important example being the *CATCO* case,[10] relating to the off-shore Louisiana area. As a result the Commission was reversed by the Supreme Court, which held that the Commission must impose a condition when the price was "out of line" in the area of production.[11] The area price concept was further developed in other cases remanding Commission orders granting unconditioned certificates.[12]

In the 1956–1959 period, a number of producer cases were initiated as investigations under Section 5(a) of the Gas Act. The first major case to reach the Commission on the merits was the original *Phillips* case,[13] on remand from the Supreme Court. The Permian case is a direct outgrowth of *Phillips*. In that case the Commission first considered the numerous questions relating to Phillips' cost-of-service, including the difficult allocation of costs between Phillips' oil production and its gas production. While utilizing individual company cost-of-service to pass upon a limited number of increased rate filings, the Commission concluded that such an approach was not appropriate for fixing just and reasonable producer rates for the future. Accordingly, the Commission refused to fix Phillips' rates for the future on this basis. The Commission spelled out in detail the many reasons why the individual company cost-of-service approach did not offer a reasonable basis for determining the just and reasonable prices for sales of gas by producers in interstate commerce. It also pointed out that the administrative burdens of literally thousands of separate proceedings in itself demonstrated the complete infeasibility of attempting to achieve effective regulation on an individual company basis.

On the same day, September 28, 1960, that it issued its *Phillips* opinion the Commission issued its Statement of General Policy No. 61–1 (24 FPC 818 (1960)) initiating the area rate approach by establishing guideline ceiling prices for the various producing areas. Separate levels were listed by the Commission for the initial prices at which it would certificate new sales of gas and for accepting without suspension price increases under existing rate schedules.

The Commission in prescribing guideline prices attempted to take into account all of the relevant information available to the Commission at the time. These guideline prices did not purport to be the just and reasonable rates, but rather the interim guides the Commission would follow in issuing certificates and in deciding whether to suspend rate increases until just and reasonable rates could be determined after hearing in area rate proceedings. As a result of the guideline price policy, in a practical sense the area rate approach has been in effect on an interim basis for the past 4 years.

On review, the *Phillips* opinion was affirmed by the Court of Appeals and by the Supreme Court.[14] The courts upheld the Commission in going forward with the area method of regulation. The Supreme Court said (p. 310):

> We respect the Commission's considered judgment, backed by sound and persuasive reasoning, that the individual company cost-of-service method is not a feasible or suitable one for regulating the rates of independent pro-

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[10] *Continental Oil Co., et al.*, 17 FPC 880 (1957).
[11] *Atlantic Refining Co.* v. *P.S.C. of New York*, 360 U.S. 378, 391 (1959).
[12] See for example *United Gas Improvement Co.* v. *F.P.C.*, 283 F. 2d 817 (CA9–1960), certiorari denied 365 U.S. 881 (1961).
[13] *Phillips Petroleum Co.*, 24 FPC 537 (1960).
[14] *Wisconsin* v. *F.P.C.*, 303 F. 2d 380 (CADC–1961) affirmed 373 U.S. 294 (1963).

ducers. We share the Commission's hopes that the area approach may prove to be the ultimate solution.

The Commission has proceeded with its program to implement the area rate approach. In addition to the present proceeding, Docket No. AR61–1, for the Permian Basin, a proceeding was begun on May 10, 1961, to determine area rates for the Southern Louisiana area, Docket No. AR61–2, 25 FPC 942 (1961), and on November 27, 1963, area rate proceedings were instituted for the Hugoton-Anadarko Area, Docket No. AR64–1, and for the Texas Gulf Coast Area, Docket No. AR64–2, 30 FPC 1354 (1963). These four proceedings, which are all under way, have as their purpose the fixing of just and reasonable rates for about 75 percent of the gas flowing in interstate commerce.

LEGAL BASIS FOR AREA RATES

In the second *Phillips* case (*Wisconsin* v. *F.P.C.*, 373 U.S. 294 (1963)) the Supreme Court, in holding that the Commission had not abused its discretion by rejecting the individual company approach, stated (pp. 308–309):

> * * * If we believed that such a departure from present concepts had little, if any, chance of being sustained, we would be hard pressed to say that the Commission had not abused its discretion in terminating this § 5(a) proceeding while undertaking the area experiment. For if area regulation were almost sure to fail, and if the individual company cost-of-service method of determining the reasonableness of rates had been abandoned, then there would be virtually no foreseeable prospect of effective regulation. * * *
>
> But to declare that a particular method of rate regulation is so sanctified as to make it highly unlikely that any other method could be sustained would be wholly out of keeping with this Court's consistent and clearly articulated approach to the question of the Commission's powers to regulate rates * * *.
>
> More specifically, the Court has never held that the individual company cost-of-service method is a *sine qua non* of natural gas regulation.

A number of producers contend nevertheless that we are pursuing an inherently illegal method of regulating the field price of natural gas. Sun, in particular, has been vigorous in asserting that the Natural Gas Act precludes us from fixing maximum area prices at a level lower than a producer could justify on an individual cost-of-service basis.

Sections 4 and 5(a) of the Natural Gas Act provide the authority for regulating the rates of the producers upon which the area rate order is based, but the breadth of the statutory scheme is evidenced also by the other provisions of the Act which confer broad regulatory authority over sales for resale by gas producers in interstate commerce. For example, Section 7 of the Act requires every producer to obtain a certificate of public convenience and necessity prior to commencing any interstate sale and also requires Commission approval before abandonment of any gas which has been dedicated to the interstate market. Section 16 of the Act empowers the Commission "to perform any and all acts and to prescribe, issue, make, amend and rescind such orders, rules and regulations as it may find necessary or appropriate to carry out the provisions of this Act."

This area rate proceeding includes numerous individual rate increase filings in the Permian Basin which have been suspended. The rates specified in the filings have been collected subject to refund under the provisions of Section 4 of the Act, requiring that all rates shall be "just and reasonable." The area rate

order will also apply under Section 5(a) of the Act to those sales of the respondents in the Permian Basin which are not being collected subject to refund. Section 5(a) contains the statutory standard for fixing the future rates for the sales in the area since its provisions are also applicable to rates fixed under Section 4. Section 5(a) provides that:

> Whenever the Commission, after a hearing had upon its own motion or upon complaint of any State, municipality, State commission, or gas distributing company, shall find that any rate, charge, or classification demanded, observed, charged, or collected by any natural-gas company in connection with any transportation or sale of natural gas, subject to the jurisdiction of the Commission, or that any rule, regulation, practice, or contract affecting such rate, charge, or classification is unjust, unreasonable, unduly discriminatory, or preferential, the Commission shall determine the just and reasonable rate, charge, classification, rule, regulation, practice, or contract to be thereafter observed and in force, and shall fix the same by order: PROVIDED, HOWEVER, That the Commission shall have no power to order any increase in any rate contained in the currently effective schedule of such natural-gas company on file with the Commission, unless such increase is in accordance with a new schedule filed by such natural-gas company; but the Commission may order a decrease where existing rates are unjust, unduly discriminatory, preferential, otherwise unlawful, or are not the lowest reasonable rates.

While Section 4 of the Act prescribes that "all rates and charges" by *any* natural gas company shall be "just and reasonable", there is nothing in the Act which states or suggests that the justness and reasonableness of a particular company's rates cannot be determined on a group or area basis, rather than in a separate proceeding for each company. Operating under a statute with virtually the same rate-making provisions as the Natural Gas Act, the Secretary of Agriculture, with the approval of the United States Supreme Court, has long fixed maximum just and reasonable rates for all stockyard marketing agencies of a particular yard, based on stockyard-wide data, rather than individual rates based on the cost of individual agencies. See *Tagg Bros.* v. *United States*, 280 U.S. 420 (1930); *Acker* v. *United States*, 298 U.S. 426 (1936); *United States* v. *Corrick*, 298 U.S. 435 (1936). The Federal Communications Commission, also operating under similar statutory commands, has for a number of years fixed the maximum just and reasonable rates for the competing international telegraph common carriers on a "bellwether" basis, refusing, in the interests of its statutory mandate of providing the public with "adequate facilities at reasonable charges" (47 U.S.C. 151), to fix the rates "so that all carriers engaged therein may earn a fair return on the fair value of their property devoted to that service or even make some profit on their operations." *Postal Telegraph-Cable Co., et al.*, 5 FCC 524, 527 (1938). See also *The Western Union Telegraph Co.*, 25 FCC 535, 577–580 (1958).

Another example is action fixing a uniform price for milk in a milkshed, a form of regulation which was upheld in the landmark case of *Nebbia* v. *New York*, 291 U.S. 502 (1934). See *United States* v. *Rock Royal Co-op.*, 307 U.S. 533 (1939) (upholding Federal milk marketing orders under the Agricultural Marketing Agreement Act of 1937, 50 Stat. 246); *Sunshine Anthracite Coal Co.* v. *Adkins*, 310 U.S. 381 (1940) (upholding Bituminous Coal Act of 1937, 49 Stat. 991, authorizing Bituminous Coal Commission to impose maximum and minimum prices on an area basis). For the regulation of railroad charges the Interstate Commerce Commission has employed territorial classifications and group

rates. *New York* v. *United States*, 331 U.S. 284 (1947); see also *Ayrshire Collieries Corp.* v. *United States*, 335 U.S. 573 (1949).

It is thus well established that governmental price regulation of services and commodities can be lawfully exercised over industries providing commodities or services on a group or geographical area basis. Many different regulating authorities with jurisdiction over an entire industry or common group have been upheld in exercising their rate-making authority on a group basis rather than conducting separate proceedings for each individual company. Moreover, with special reference to rate regulation under the Natural Gas Act, the Supreme Court has long held that neither the Constitution (see *F.P.C.* v. *Natural Gas Pipeline Co.*, 315 U.S. 575, 586 (1942)) nor the Act itself imposes any special "formula by which the 'just and reasonable rate' is to be determined." *F.P.C.* v. *Hope Natural Gas Co.*, 320 U.S. 591, 600 (1944). See also *Colorado Interstate Gas Co.* v. *F.P.C.*, 324 U.S. 581 (1945).

The argument to the contrary stems primarily from a brief dictum in *Bowles* v. *Willingham*, 321 U.S. 503 (1944) in which the Court, in the course of upholding the lawfulness of war-time rent control legislation authorizing the Price Administration to fix, without advance hearing, maximum rents that were "generally fair and equitable", referred to the then recent *Hope* case for the proposition that "under other price-fixing statutes such as the Natural Gas Act * * * Congress has provided for the fixing of rates which are just and reasonable in their application to particular persons or companies" (*id.* at 517). It is significant that this statement predates the first *Phillips* case and its determination of the existence of Commission authority over producer rates. At the time of the Court's statement in the *Bowles* case the Commission had not yet undertaken a program for producer regulation and was, as it still is, regulating pipelines under individual company cost-of-service procedures. The Court's dictum contrasting group regulation under the rent control statute with the individual company regulation of pipelines cannot be interpreted to suggest that the latter would be the sole appropriate method of determining rates under the Act for producers whose business involves entirely different economic and administrative problems. On the contrary, the Court went on to state that "considerations of feasibility and practicality are certainly germane to the constitutional issue [of group versus individual company pricing]" (*id.*), that *Hope* had indicated that "price control, the same as other forms of regulation, may reduce the value of the property regulated" (*id.*), and that though "high cost operators may be more seriously affected by price control than others * * * it has never been thought that price-fixing, otherwise valid, was improper because it was on a class rather than an individual basis" (*id.* at 518).

Both the constitutional and the statutory questions, in other words, are not to be decided abstractly, but rather in the light of the nature of the specific ratemaking problem involved, and of what is required to achieve a sensible result. The necessity for accommodating the system of regulation to the circumstances of the industry being regulated was recognized by the Supreme Court in the *Nebbia* case, *supra*, in which it was held that due process under the Fifth and Fourteenth Amendments demand only that government regulation "shall not be unreasonable, arbitrary or capricious, and that the means selected shall have a real and substantial relation to the object sought to be attained" (p. 525). In the words of the Supreme Court in *Hope*, *supra*, at p. 602, "Under the statutory standard of 'just and reasonable' it is the result reached not the method employed which is controlling."

We believe the area approach should be adopted because it is well adapted to the economic facts of the industry and the practical administrative problems

of carrying out the primary purpose of the Act, which is to achieve effective price control. We remain of the view, originally set forth in our *Phillips* decision in 1960 (24 FPC at 547), that the area approach will enable us to carry out our ultimate objective of setting prices in all producing areas.

Basic to this determination is the fact that objective cost standards for fixing just and reasonable rates for producer sales can best be developed by examining overall producer experience. An individual producer may find only dry holes or marginal wells or his search for gas may result in finding a huge new gas field. A price fixed by his individual cost experience could thus either be too high for consumers in relation to other available supplies or too low to be fair to the producer, considering his risks. However, on a group basis, costs and rates can be developed which will be fair to all concerned. A uniform ceiling price for the area will provide a fair relationship between the aggregate price the consumer pays and the aggregate costs that the producers incur.

A uniform area pricing system is adapted to the economics of the natural gas industry. The producer who finds large reserves will achieve greater profits than the producer whose exploration efforts result in dry holes or marginal wells. Likewise, the producer whose enterprise is conducted with efficiency and economy will make more money than the producer who runs his business poorly. There is a strong incentive in area pricing to prudence and economy which does not exist in individual company cost-plus pricing in an industry where individual cost norms are difficult to determine and apply. True, individual returns will vary greatly, but this is as it should be, provided that profits in the aggregate are at a reasonable level.

The area regulatory pattern thus conforms to the characteristics of an industry which, as much as any, is one where there is scope for greater or lesser reward as dictated by the results of exploratory efforts. The area price will give producers the incentive they need to explore to meet the nation's increasing demand for natural gas and yet give consumers the protection which the Act intended.

An obvious advantage of the area rate approach which is of great importance is that it enables the Commission to determine in a single proceeding rates which would otherwise require hundreds of individual rate cases. It will thus eliminate the administrative bottleneck of company-by-company determinations. As we have noted, the four area proceedings now under way will complete the task for 75 percent of the gas flowing in interstate commerce in the entire nation.

The individual company approach would also result in a wide variety of rates in a single field, and even for the sales by co-owners from a single well, depending on their varying company-wide costs. Such a system would raise staggering burdens of administration. Administrative feasibility is a vital element in the effectiveness of any method of regulation and our experience dictates that it should be given great weight in assessing the validity of the area approach.

The cases do not support the producers' contention that a just and reasonable rate fixed on the basis of the overall costs and profits of the producers in the area would be constitutionally confiscatory as to any respondent who could support a higher price on an individual company cost-of-service basis. The Supreme Court in *Acker* v. *United States*, 298 U.S. 426 (1936) rejected the argument that the pricing orders of the Secretary of Agriculture, fixed on a group basis under the Packers and Stockyards Act, were confiscatory as to a particular market agency, concluding that "in ascertaining a reasonable unit cost as the basis of a uniform rate the Secretary was not bound to, and indeed he could not, adopt any one [market] agency's costs" (*id.* at 429) and that "regulation cannot be

frustrated by a requirement that the rate be made to compensate extravagant or unnecessary costs" (*id.* 431). See also *Tagg Bros.* v. *United States*, 29 F. 2d 750, affirmed *Tagg Bros.* v. *United States*, 280 U.S. 420 ("It is not incumbent upon the Secretary to fix the rates so high that all agencies in the business would make money whether they did a substantial business or not."); *Bowles* v. *Willingham*, *supra*; and *Aetna Insurance Co.* v. *Hyde*, 275 U.S. 440 (1928).

In the *Aetna* case rates of all the stock fire insurance companies doing business in Missouri had been reduced by the superintendent of insurance under a statute authorizing him to limit the rates charged so that the "aggregate collections" by all the companies would not exceed a reasonable rate. The superintendent reduced the rates uniformly and on appeal by the companies involved the Supreme Court concluded that the Fourteenth Amendment was not violated merely because the aggregate collections were not sufficient "to yield a reasonable profit or just compensation to all companies that happen to be engaged in the affected business" (p. 447).

Even in situations where it is appropriate to fix rates on an individual company basis, the courts have held that a company's rates may be fixed at a level below that which would be justified on a normal cost-of-service basis, where the low rates result from self-imposed contractual limitations. (See *F.P.C.* v. *Sierra Pacific Power Co.*, 350 U.S. 348 (1955)). In an analogous situation, it was early held that a turnpike was not entitled to higher tolls on the basis of cost-of-service evidence where the real problem was the low volume of traffic (*Covington & Lexington Turnpike Road Company* v. *Sandford*, 164 U.S. 518 (1896).

These cases make clear that there is no constitutional infirmity in the statutory authority to fix just and reasonable rates on an area basis, and argue persuasively that in group ratemaking individual costs cannot be controlling. To hold otherwise would convert a proceeding to control prices into one that merely established a minimum rate above which every producer would be free to justify an above-ceiling rate in an individual company determination. A procedure under which the area rate would become a floor rather than a ceiling would destroy the area rate concept as an effective means of regulation. Such an approach to our consumer protection responsibilities under the Natural Gas Act would be neither just nor reasonable.

While we will not permit a back-door approach to individual cost-of-service under the guise of avoiding confiscation, there may well be circumstances in which a producer would be entitled to relief from his obligation to continue to render service to the public at the area rate or to make refunds for past periods. Accordingly we shall provide an opportunity for producers to petition for special relief from the area rate as set forth in detail at pp. 225–227. We cannot here visualize all of the circumstances which may serve as the basis for such relief, and will provide adequate flexibility to consider claims to such entitlement, but it is obvious that more must be shown than that the individual producer's costs exceed composite costs.

We believe the record in this case, judged in light of our experience in administering the Natural Gas Act, clearly supports the conclusion that the area approach offers a regulatory method which is best adapted to the discharge of our responsibilities for protecting natural gas consumers while providing the greatest incentive to producers to continue their search for needed additions to our gas supply.

CONTRACT PRICES AS A BASIS FOR REGULATION

In considering the appropriate guidelines for regulating producer rates on an area basis, we must dispose of one threshold argument. Certain of the producers contend that their contract prices should be approved as meeting statutory re-

quirements because they have been reached as a result of what is termed effective competition. IPAA contends that the examiner erred in not adopting as the standard for determining area prices the "market value" as established by natural gas purchase contracts negotiated at arm's length. A number of other producers propose a slightly more sophisticated version of this argument under which the contract rates negotiated at arm's length would be allowed to govern as long as the ratio of proven reserves to production did not become inordinately high.

We recognize that the history of negotiated prices in the area is an important element to be considered in reaching our decision. However, the producers' contention that the Commission should simply validate their negotiated prices, if accepted, would amount to an abdication of our regulatory responsibility.

The essential difficulty with the contract price argument is that there is nothing in this record which would justify a conclusion that reliance on contract prices unrelated to cost will "afford consumers a complete, permanent and effective bond of protection from excessive rates and charges," which is the purpose of the Act in prescribing that the rates and charges to consumers of natural gas should be just and reasonable. *Atlantic Refining Co.* v. *Public Service Commission of New York (CATCO)*, 360 U.S. 378, 388 (1959). See *Wisconsin* v. *Federal Power Commission*, 373 U.S. 294, 309–310 (1963). *Phillips Petroleum Co.* v. *Wisconsin*, 347 U.S. 672, 685 (1954). There are admittedly many producers selling gas to the interstate pipelines both in the nation as a whole and the Permian Basin in particular, but nothing in this record suggests that any competition among them in making sales to the pipelines is in any way adequate to assure that the public will secure gas at just and reasonable prices in the absence of regulation.

The history of price negotiations in the Permian Basin area is relevant to this issue. When El Paso was granted a certificate to supply natural gas to the California market on May 31, 1946, 5 FPC 115 (1946), it had entered into contracts with Phillips, Gulf, Shell, and Warren for a supply of gas in the Permian Basin. El Paso was to pay Phillips 3.5 cents per Mcf, Shell and Warren 3.0 cents, and Gulf 4.0 cents. These prices were subject to escalation by one cent every few years and to spiral escalation clauses by which they would be adjusted upward if El Paso's resale rates increased at the California border. Later, the spiral escalation clauses were deleted and indefinite favored-nation escalation clauses were substituted, except in the case of Phillips.[15]

In 1953, the Commission certificated Permian Basin Pipeline Company (a subsidiary of Northern Natural, and since merged into it).[16] The initial price amounted to approximately ten cents per Mcf for pipeline quality gas and was subject to escalation of one cent every five years.

In 1959, Transwestern Pipeline Company, 22 FPC 391 (1959), obtained a certificate to build a new pipeline from the Panhandle-Hugoton area of Texas and Oklahoma and from the Permian Basin to California. For the producers supplying gas to the pipeline the Commission authorized 16-cent prices and one 18-cent price, but the contracts called for prices as high as 21.8 cents in the West Texas-Permian area and 23.0 cents in the Panhandle-Hugoton area.

The escalation clauses in the contracts and the urgent pipeline requirements for large volume gas reserves contributed to a continuous rise in Permian Basin

[15] A favored-nation clause in a contract generally provides that the contract price shall be increased to equal higher prices paid others in a given area. There are numerous variations of the basic concept. Spiral escalation clauses are also indefinite in amount and provide for increases in producer rates in proportion to increases in the rates of the pipelines that are purchasing the gas from the producer.

[16] *Permian Basin Pipeline Co.*, 12 FPC 85 (1953).

prices. As a result of these escalation clauses and the expanding need for gas the 2.8-cent per Mcf average price paid by El Paso in 1947, its first full year of purchases, increased to 9.0 cents in 1954, the year of the first *Phillips* case, and reached 13.8 cents per Mcf in 1960. In that year, El Paso renegotiated most of its Permian contracts to eliminate the indefinite price clauses but was required to agree to price increases. The new prices ranged from 13.5 cents per Mcf to 17 cents per Mcf for gas of high quality.

We do not suggest that this historical pricing pattern in and of itself demonstrates the invalidity of the contract prices now in effect in the Permian Basin. On the contrary, it is obvious that the extremely low prices prevalent during the earlier period of large oil-associated supply and small demand bear no relationship to the cost of exploring for and producing gas even in that period, to say nothing of the present. However, while the record indicates that the costs of the various producers in the field differ markedly, there is no evidence that any significant volumes of gas of similar quality have ever been offered for sale at prices which reflect these cost differences.

The pipelines are far from being in a bargaining position which would validate the theory that a market price will necessarily be a just and reasonable price. On the contrary, the entire history of pipeline purchasing activity, since the end of the El Paso monopoly in the Permian Basin, has been characterized by the overriding needs of the pipelines to contract for the large blocks of uncommitted reserves essential to maintain their competitive position in developing markets (see *United States* v. *El Paso Natural Gas Co.*, 376 U.S. 651 (1964)) and their inability to accomplish this objective except as ever increasing prices. The abstention of the pipelines from these proceedings does not indicate that any significant change can be expected in the future. The fact that many pipelines are themselves producers with an interest in generally higher producer prices also cannot be overlooked.

There is no basis for concluding that there would be any effective producer price competition even if the pipelines were in a position to encourage it actively. On the contrary, until action was taken by this Commission, the entire pattern of producer contracts in Permian was on a basis of favored-nation and spiral escalation contracts calculated to assure that all producers would be treated alike and receive the highest going price both at the time of the contract and in the future. Typically, where a large producer has been able to command a higher price for a big block of gas needed by a pipeline entering the market or preparing for a major expansion, this has had the effect of raising the price to all other purchasers by all other sellers big and small, and regardless of their costs or profit ratios. Moreover it is obvious that a key factual question in determining whether there is effective competition is the amount of uncommitted reserves controlled by the large producers. The pattern of sales and annual deliveries in the Permian Basin strongly suggests that a limited number of producers control a large percentage of the gas reserves,[17] and it is significant that the producers in the exclusive possession of the facts have made no showing to rebut this conclusion.

In *United Gas Improvement Co.* v. *F.P.C.*, 290 F. 2d 133, 135 (CA5–1961), certiorari denied 368 U.S. 823 (1961), it was said that the supply of gas controlled by the producers is so restricted in relation to demand that they have economic power to bargain for prices that will be injurious to the public. The Court held that the Commission in exercising its authority may not act merely

[17] The record reveals that 5 producers account for about one-half of the jurisdictional sales in the Permian Basin and 15 producers make about three-fourths of all the sales of gas in the area.

upon proof that the prices in question were arrived at as a result of arm's-length negotiation, but must look behind the negotiated price. See also *P.S.C. of New York* v. *F.P.C.*, 287 F. 2d 146 (CADC–1961), *United Gas Improvement Co.* v. *F.P.C.*, 287 F. 2d 159 (CA10–1960). In so holding the court was reiterating the position it had taken in a series of cases involving just and reasonable rates for independent producers under Section 4 of the Act in which it had concluded that:

> * * * evidence of unregulated prices in the field is not sufficient to warrant a finding by the Commission that a price comparable to them is just and reasonable within the intendment of the Natural Gas Act. Neither is evidence of the field price when coupled with the opinion of experts that the price must be high enough to provide an incentive for exploration and development of new sources of supply.[18]

If there is a case to be made for effective competition among producers in establishing just and reasonable rates it has not been made on this record. There is no evidence of competition between producers to make new sales by offering lower prices. On the contrary the primary competition revealed by the record was among the pipelines to secure new gas supplies at higher prices. Whatever the degree of competition which may exist among producers it has not been effective to afford gas consumers the protection to which they are entitled under the Natural Gas Act. Under these circumstances, there is no basis for assuming that prices which "have leaped from one plateau to the higher levels of another" will constitute a level which will be "the lowest possible reasonable rate consistent with the maintenance of adequate service in the public interest." *Catco*, *supra*, at pages 391, 388.[19]

It is thus clear that our examination of the contract prices of the gas producers is only the beginning and not the end of our task in establishing the proper criteria for determining just and reasonable rates.

RESERVES TO PRODUCTION RATIO AS A REGULATORY STANDARD

The producers contend that the gas supply situation is so critical that any significant limitation on contract prices would necessarily result in a dampening of essential exploration and development activity. In major part this argument revolves around the controversy as to the declining reserves to production ratio (R/P ratio) in the gas industry. This ratio has been as high as 32.5 to 1 in 1946 and it has steadily declined to about 18.7 to 1 in 1963, based upon the reserve figures provided by the American Gas Association and the American Petroleum Institute.[20]

The producers suggest that the reserves to production ratio should be the barometer by which the Commission is guided in setting any limitations upon the producers' contract prices and specifically that no such limitation should be imposed if the R/P ratio is not at least 20 to 1. Alternatively, they argue that, even

[18] *Bel Oil Corp.* v. *F.P.C.*, 255 F. 2d 548, 553 (CA5–1958) certiorari denied, 358 U.S. 804. See *Forest Oil Corp.* v. *F.P.C.*, 263 F. 2d 622 (CA5–1959); *cf. City of Detroit, supra.* As the court indicated in the *Bel Oil* case the expert testimony purported to show that petitioners "did not possess any dominating position in the industry, that natural gas is competitive with other non-regulated fuels, that the proposed prices were comparable with unregulated prices for local consumption; that maintenance of such a price is necessary to provide appropriate incentives for exploration and production of natural gas in Louisiana" (p. 551).

[19] As the Supreme Court pointed out in the *Catco* case, *supra* (at p. 388, footnote 7), this "declaration of which stems from the original version of Section 7 of the Act, was not intended to be changed by the 1942 amendment to the Act, which omitted that provision.

[20] The 1964 statistics available after the record was closed revise the R/P ratio for 1963 to 19.0 to 1 and reveal that the ratio in 1964 was 18.3 to 1.

if the Commission were to adopt the 17.5 to 1 ratio which the examiner believed was a reasonable target for 1970, present trends indicate that a lower ratio will be reached by that date; and they argue further that fixing area ceilings below existing contract prices would act as a brake on producer investment in gas exploration and development, and would therefore be contrary to the public interest.

In evaluating the producers' argument we must first analyze the forces which have determined the overall level of exploration and development by producers in the Permian Basin and elsewhere. The overwhelming fact which emerges from this record is that the vast increase in exploration and development of gas supplies which has taken place in the last two decades has resulted from the development of a system of interstate pipelines which has created an ever increasing nationwide market for gas. In short, the producers have stepped up their exploration and development activity because a market had been created for their product, even though during most of this period the prices have been far lower than fully allocated costs as determined herein.

We agree with the examiner that the emergence of directionality, *i.e.*, the ability of producers to direct their drilling activities toward either oil or gas brings into being for the first time an opportunity for price to play a significant role in increasing the supply of gas-well gas available to the interstate market. We have reflected this fact in the system of ceiling prices which we are adopting, because, in our opinion, the true benefits of directionality can be best achieved through a two-price system which, though based on costs, by its very nature provides a special inducement for exploration for gas-well gas. Such a system should permit price to play its full role in eliciting needed gas supplies. To permit still higher prices would only create windfalls for the producers with no assurance of any concomitant consumer benefits.

We agree that a strong exploration program which will discover and develop gas reserves in ample time to meet the increasing demands for gas is vital. Any method of fixing just and reasonable prices must take this into account. However, there is no reason to assume that there is a direct relationship between any calculated R/P ratio and the price of gas. On the contrary, the R/P ratio went steadily down during the periods in which gas prices were staging their most spectacular increases. It seems clear that even an exploratory program which will continue to add substantially more reserves annually than are produced is almost certain to fall short of preventing a further decline in R/P ratios.

As long ago as 1957, the AGA in "Gas Facts," 1957 edition, page 6, stated that the industry should not be preoccupied with a "hypothetical" reserves to production ratio, but should focus its concern on finding sufficient gas to replace that consumed each year. There is considerable doubt that it is desirable, from the point of view of the public or the industry, to require or encourage a high level of proven reserves many years in advance of their probable use. It is an extremely costly matter to find and hold reserves beyond those which are needed to assure ample supplies to consumers. The Commission's recent action in allowing exceptions to the 12-year minimum deliverability rule was a limited step in recognition of this fact.[21]

[21] Order No. 279, 18 CFR 2.61, 260.7; issued March 31, 1964, 31 FPC 750, prescribing the filing of annual reports by pipelines to furnish information with respect to total gas supply and deliverability stated. " * * * information from the reports will make it possible to relax the Commission's 12-year deliverability life requirement where the information supplied by the pipeline company indicates it has an active procurement program, its system extends into production areas with continuous exploration and the results thereof indicate continuing ability to meet gas requirements."

There is also serious question as to the reliance to be placed on the available R/P ratio figures. The proven reserve figures are admittedly conservative. The amount of proven gas reserves added each year depends more upon revisions of former reserve estimates which have varied widely than upon new findings. The true ratio of reserves to production is undoubtedly higher at the present time than would appear from available statistics.

For all these reasons, we believe it would be doubtful wisdom for this Commission to attempt here to fix the minimum appropriate level of reserves for the industry, and particularly we think that it would be unwise as well as futile for us to attempt to gear our pricing policies toward maintaining a reserves to production ratio of 17.5 to 1 or higher. The ratio has already declined very close to that point, and it will probably decline further regardless of the price of gas set by this Commission. Such a decline is the inevitable result of increases in consumption on the scale that we have witnessed in the past decade. Under these circumstances, any attempt to maintain a specific ratio of reserves to production by permitting interstate prices to reach their maximum contract level would be much more likely to affect adversely the market for gas than to induce substantially greater supplies.

The impracticability for the long term of attempting to maintain indefinitely a 17.5 to 1 ratio may be demonstrated by some simple figures. It is estimated that by 1980 natural gas use, already more than 15 trillion cubic feet a year, will have grown to 25 or more trillion and by the year 2,000 annual use can be expected to exceed 30 trillion. This level of use at the specified ratio would require reserves of 525 trillion cubic feet. By that date we shall have used some 900 trillion cubic feet of gas now in the ground, which would mean a total of some 1,400 trillion cubic feet would have been found. This is in the middle of the range of responsible estimates of the total gas found and to be found in the United States.

That the reserves ratio will decline is not necessarily a cause for concern for many years to come. The high ratios of the past were not a result of design or of business prudence, but resulted rather from lack of a market for the immense reserves discovered in the search for oil. In such circumstances the imposing reserve ratios of the past have little significance. With the intensive post-war development of the natural gas market we are witnessing an adjustment of the reserve ratio to economic levels.

While the adequacy of reserves is an important factor in our determination here, and will continue to be an important factor in reviewing area rates in the future, we cannot accept the producers' position that the maintenance of a particular R/P ratio justifies the existing and future contract prices, whatever they may be.

THE TWO-PRICE SYSTEM

The presiding examiner at *infra*, pp. 311–337 of his opinion presents a persuasive discussion of the "Economic and Institutional Factors Which Govern the Method of Establishing Area Rates."

The touchstone of the presiding examiner's decision is his conclusion that the industry is increasingly becoming able to direct its exploration efforts toward finding new gas-well gas as distinguished from finding gas as a byproduct in the search for oil. This newly documented ability of the industry to channel its exploration investment toward either gas or oil serves as the basis for a pricing system, which we here adopt, that will make use of the economic drive of the industry in order to bring needed gas supplies to consumers at the lowest reasonable price.

The Commission's staff and some of the interveners argue that even if some companies can effectively direct their exploratory activities toward gas, it has not been shown that all of the Permian Basin producers can do so. In making this argument special reliance is placed upon testimony to the effect that small producers do not have the resources necessary for effective directional exploration.

We have considered the evidence presented and we conclude, as did the examiner, that the larger producers in the industry have shown an increasing ability to direct their drilling activities toward either gas or oil, as they desire. Large producers maintain geological staffs and extensive files of geological information upon which the necessary predictions can be based. While small producers may lack the capital to maintain the organizations necessary for effective prediction, they often drill on lands obtained on farmouts from larger producers and thereby obtain the benefit of the geological knowledge required for directional drilling. To this extent it appears that even small producers are often able to drill with some assurance as to what they may expect to find.

In agreeing with the examiner's finding on directional drilling we do not mean to suggest that all exploration and development activity by producers is based upon reliable predictions as to what if anything will be found. What we do say is that on this record a major portion of the industry operating in the Permian Basin in recent years has demonstrated the ability by directional drilling to increase the known supply of gas, provided that the regulated price and the demand for gas justifies such an investment. Looking to the future we are establishing a pricing system that will encourage the industry to expand and perfect its ability to drill directionally so that revenues from gas consumers can increasingly be devoted to finding additional gas reserves.

In referring to the incentive provided by the ceiling for "new" gas-well gas we are not providing any special, isolated amount as a separately designated incentive. The inducement to be found in the "new" gas price is of an inherent nature and is not represented by any sum earmarked for that purpose. The incentive is built into the two-price system. It provides a price for the future related to current and future costs and payable only to producers who discover gas-well gas and dedicate their discoveries to the interstate market.

A single price based on an average of historical and current costs could not provide the same incentive to explore for gas in the future even if it yielded the same revenue. A single price based on future costs will result in windfalls to those producers who acquired and sold gas under lower cost conditions. The two-price system thus holds out a reward to encourage producers to engage in further exploration and development while preventing excess and unnecessary revenues from the sale of gas developed at a period when there was no special exploratory activity directed to gas discovery.

The producers favor a single price and the arguments they make are aimed at obtaining the "new" gas price as the one price to be applied to all gas. We disagree. If a one-price system were to be adopted, average historical costs—not the higher current costs—would necessarily serve as its foundation, and we have no assurance that such a price would elicit the investments at current cost levels which are needed to bring forth adequate new supplies of gas-well gas.

The producers support a contention for a single price based on current costs with the argument that current revenues provide financial support for current exploration and development. Assuming *arguendo* the factual basis for the argument, this is not an acceptable reason for "flowing gas" [22] being the bene-

[22] The term "flowing gas" in this opinion will be used to include old gas-well gas, oil-well gas and residue gas as explained in detail at *infra*, pp. 212–218.

ficiary of "new" gas-well gas prices. The producers' inducement to engage in further exploration and development directed toward gas comes from the knowledge that future gas supplies will receive a price which provides adequate compensation. Of course the availability of funds to seek new sources of supply is a factor to be considered in the fixing of all prices, and we have not overlooked this factor in the determination of the "flowing" gas price. It does not follow that a single price for all gas is required. On the contrary, as already stated, if such a ceiling were fixed high enough to elicit new gas-well gas supplies it would result in windfall profits for all other gas and if fixed low enough to reflect costs for old gas it would not assure adequate supplies for the future.

The record in this case was augmented by the econometric studies introduced by the staff and a rebuttal showing by the producers. These studies are, as the examiner stated, truly pioneering endeavors. The studies were not designed to support a specific rate recommendation or rate design but served to focus attention upon the important role of market demand among the considerations relevant to our decision. The studies indicate that advanced statistical and mathematical techniques can be useful in understanding the interaction of the price of gas at the wellhead and the demand in the marketplace.

The econometric studies in this case were based on the assumption of a one-price system and as noted by the examiner, "on a non-directional hypothesis." The quantitative results of the studies therefore cannot be relied upon in this case although the studies tend to support our conclusion that a two-price system is necessary and desirable to make positive use of the interaction of price and gas supply.

It has been suggested that providing a separate ceiling for new gas-well gas may retard the search for gas by inhibiting demand, on the theory that high prices may price gas out of some markets. This argument may have some merit as an abstract proposition but it misses the mark when applied to the facts of this case. We are not here fixing a ceiling that will increase prices but rather one to reduce unreasonably high prices and stabilize field prices generally. Furthermore while fixing a higher ceiling for new gas-well gas (including residue gas derived therefrom) we are also fixing a lower ceiling for all other gas. Certainly the ceiling prices fixed herein which will stabilize gas prices that have been increasing in the past cannot be a basis for predicting a declining market.

Some who opposed the examiner's price structure also argue that no need to encourage a stepped-up search for additional reserves at this time has been shown. It is pointed out that on a nationwide basis the AGA figures on proven reserves show that more gas has been found each year than was consumed, even though the reserve ratio as computed by AGA has been declining. It is also argued that we must take into account increasing discoveries of gas in Canada and Mexico as well as the possibility that technology may make new sources of energy available to supplement gas long before present reserves are exhausted.

It is beyond dispute that continuing exploration and development of new gas reserves is necessary in the public interest. The only question is the proper scale of the necessary effort. In the absence of a regulatory pattern which offers encouragement for the search for gas there is no guarantee that the present generally satisfactory pace of exploration will continue, much less increase to meet growing demands. New gas discoveries are the life-blood of the industry and are also essential to consumers who are tied to natural gas. This Commission cannot discharge its responsibilities to the public by relying on unsupported suggestions that gas supplies from distant sources or other forms of energy will suffice to meet an obvious need for new gas supplies to serve the needs of the

pipelines and of their consumers who are tied to the use of this fuel by large investments in gas utilization equipment.

In the past the greater part of the gas in the Permian Basin was found in the course of searching for oil but, as the examiner found, in recent years there has been a decline in drilling for oil. The future needs of the gas market can no longer be satisfied by the incidental discoveries in the search for oil. Accordingly, there will be a greater dependence on exploring for gas wells to bring forth needed gas supplies in the future and this fact supports our conclusion to fix a higher ceiling for new gas-well gas which will encourage exploration at deeper horizons directed toward finding gas.

The separate price we fix herein for new gas-well gas in the Permian Basin should serve to furnish a practical test of whether in fact it will result in bringing forth additional supplies. In order to assure that every effort will be made by producers to bring in new gas-well gas we also state our conviction that the ceiling set in this proceeding should continue to apply to all such new gas dedicated within the ceiling fixed herein even if in any later review of the area rate for the Permian Basin the evidence indicates that a lower price would be justified for future discoveries. We cannot bind the Commission for the future, but we state our view that any lower ceiling should apply only to new gas dedicated after the ceiling price may have been subsequently reduced.

On the basis of the record made in this proceeding and after careful consideration of the arguments against the examiner's findings on these points we conclude that there is substantial support for pricing new gas-well gas at a higher level in order to encourage the search for new gas reserves at minimum overall cost to consumers.

THE DATE OF DIVISION BETWEEN NEW GAS-WELL GAS AND OLD GAS-WELL GAS

The presiding examiner fixed December 23, 1960, the date this proceeding was initiated, as the date dividing new gas-well gas from old gas-well gas. Gas moving under contracts filed with the Commission before December 23, 1960, would be classified as old gas; gas moving under contracts filed on or after that date would be new gas. Staff has advocated a division date of January 1, 1961, which would offer the administrative convenience of making the division at the beginning of the calendar year. The California Distributors urge that the new gas price should be effective only as to gas moving under contracts filed after the conclusion of this proceeding. They argue that any incentive element included in a higher price for new gas can fulfill its purpose only with respect to gas dedicated to interstate commerce after the conclusion of this proceeding. The Major Producer Group, on the other hand, would apply the new gas price to all gas moving under contracts dated after June 7, 1954, the date when regulation of natural gas producers commenced.

The argument that a two-price system should have a 1954 breaking date is weak. The essential justification for the dual price system is that with the recent development of directionality there is for the first time a basis for believing that gas exploration and development activities may be responsive to price. To apply a price based upon the present cost of finding and developing gas-well gas to such gas (to say nothing of casinghead and residue gas derived therefrom) developed before the era of directionality would be inconsistent with the rationale of our decision and bestow a windfall on the producers.

There is more plausibility to intervener's argument that the cut-off date between new gas and old gas should be the effective date of this decision. We agree with the examiner, however, that the proper breaking point should be

at or near the end of 1960. As indicated *infra*, our price for flowing gas including old gas-well gas is being fixed primarily on the historical cost-of-service for this case as derived from the respondents' cost data supplied in response to the Commission inquiry. The test year for such data is 1960. Moreover, while the new gas-well gas ceiling is based on current rather than historical costs, the record indicates that directionality upon which the two-price system is based first became significant about 1960, and that costs have remained constant since that time.

There is another reason why we believe that a date approximating that fixed by the examiner is in the public interest. In effect, the two-price system which we have now prescribed was established for Permian and many other pricing areas in the adoption of our dual guideline ceilings by the September 28, 1960, Statement of Policy. Our pricing policy has given different treatment to gas dedicated since that date than to older gas. The expectations of producers which would presumably result from this policy of the Commission are thus consistent with the cost considerations referred to above.

The specific date for distinguishing between old and new gas-well gas presents, we believe, primarily an administrative problem. The examiner suggested December 23, 1960, the date of the institution of the Permian proceeding, but this would imply that the old gas/new gas breaking point in the various areas should depend upon when the particular area case was initiated—a date which has no necessary relationship to any of the considerations referred to above. It has been suggested that the September 28, 1960, date on which we issued the *Phillips* decision and the Statement of Policy should be utilized. However, our decision therein could hardly have had any such instant effect upon contract negotiations, to say nothing of the effect upon exploratory activity. Moreover, using September 28, 1960, as the dividing point would mean that some of the gas sold in the test year and used for determining old gas mixes would receive new gas treatment. We think that, all things considered, it would make more sense to set the dividing line as of the end of the 1960 test year. Accordingly, the new gas ceiling will be made effective for contracts entered into on or after January 1, 1961.

BASIC STANDARD FOR NEW GAS-WELL GAS CEILING PRICE

It becomes necessary at this point to define gas-well gas with more particularity. By gas-well gas we mean so-called nonassociated gas, that is, gas from dry gas reservoirs and gas condensate reservoirs, and gas from gas-cap wells.[22] Within these definitions the classification of gas wells by the appropriate state agency will be accepted for purposes of this decision in the absence of a showing that it is not a reasonable classification for pricing purposes. The definition of all other gas will be discussed *infra* at pp. 208 and 210.

Except for those parties who advocate existing contract prices as the primary regulatory standard, all parties recognize that costs must be a major factor in determining the area price. If the area rate approach is to rest on a solid foundation there must be an objective test by which the industry, the consumers and the courts can appraise the fairness of the price we fix. We are convinced that a composite cost determination is the bedrock on which a regulated price

[22] Gas-cap gas is a special category of gas from an oil reservoir that can be produced free from the influence of oil production. As a practical matter state classification of the small amount of gas in this category in the Permian Basin makes it reasonable to include gas-cap gas in the category of gas-well gas. If production of gas-cap is governed by allowables set for oil by the state agency, it will not be considered gas-well gas.

must be established. The issue is thus narrowed to one of the weight to be given cost evidence and the particular cost-finding technique we are here to adopt.

The Supreme Court in the second *Phillips* case, in upholding the Commission's abandonment of individual company cost-of-service and sanctioning the Commission's efforts to proceed with the area rate approach, observed with approval that the Commission had stated that area rates would be based on the " 'reasonable financial requirements of the industry' in each production area" and that "composite cost of service data will be considered in the area rate proceedings" (376 U.S. at 310).

Accordingly, we conclude that a composite cost showing must be the basic ingredient in determining the area rate. This does not mean that other factors should not be considered. The Commission must exercise its judgment and determine a rate in light of all the evidence in the record. For one thing, the rate must be one that the evidence indicates will elicit a level of exploration activity adequate to provide the increased gas supplies required by consumers in the future. There is also a need to exercise judgment in the design of the rates to avoid unnecessarily sharp and abrupt departures from existing pricing patterns and the business and community dislocations which could result. Of course, in fixing the rate of return, a key element in the cost determination, the Commission has wide discretion to consider these factors, so that to a considerable degree they can be accommodated within the framework of composite cost pricing. Nevertheless, we make clear that we do not confine ourselves to a cost calculation in determining just and reasonable rates.

Basic to our determination of the guidelines for the price of new gas-well gas is the selection of the method of cost finding to be adopted. We shall discuss later in this opinion the cost basis for all other gas but it may be helpful here to say that we shall use the cost of gas-well gas as the yardstick for all prices we fix in this proceeding. We do so for two reasons. First, the record reveals that casinghead gas and other associated gas are found largely as a by-product of the search for oil. Historically, casinghead gas has not been priced on a cost basis and any cost-finding technique is unrealistic which assigns large sums for exploration and development to casinghead gas. A second and related reason is that gas-well gas costs are much more meaningful because they are far less dependent upon allocations between gas and oil than are the costs of casinghead and other associated gas.

The parties suggested three basically different methods for determining the cost of new gas-well gas. The main producer presentation is an estimate of the cost of financing new supplies of gas-well gas on an industry basis in which all exploration and development (E&D) expenses are capitalized and a discount rate of return utilized. The California Distributors also presented a gas-well gas cost study based on published national statistics and the answers by respondent producers to the Commission's cost questionnaire but instead of capitalizing E&D costs, expensed them, and utilized a conventional rate of return. Both methods provide a nationwide cost for gas-well gas keyed to the cost of finding and producing new gas supplies. The third cost approach, presented by the Commission's staff, is a composite presentation patterned after the individual company cost-of-service approach in which there is determined the historical cost per Mcf of gas-well gas production. The staff also presented a similar composite presentation limited to Permian Basin area costs.

A preliminary question in determining the methodology of cost finding is whether costs are to be determined on an area or a national basis. As the ex-

aminer pointed out, the question is not whether a national price should be established but whether national or area costs should be used as the basic standard for fixing the future price of new gas-well gas in the Permian Basin. All parties agree that exploration and development operations are conducted by the industry on a national basis because it is impossible to isolate E&D by areas. Without adopting all of the reasons advanced by the examiner at *infra*, p. 339, *et seq.* of his opinion we agree with the conclusion that the cost of new gas-well gas should be determined on a national basis. Perhaps most persuasive is the fact that we are fixing a price based upon current cost of finding an Mcf of gas and that much, if not most, of the relevant information is available only on a national basis. It may be that in some areas production costs may vary sufficiently from the national average to warrant a different treatment but on the record in this case we agree that cost of new gas-well gas should be determined on the basis of nationwide data.

The examiner adopted, with modifications, the cost presentation of the California Distributors. We agree with the examiner that in determining a ceiling for new gas-well gas which is to serve as an incentive to search for additional gas the preferable approach is the one that is geared to the recent cost of finding and producing an Mcf of gas rather than the historical cost based on production volumes. Historical costs will not necessarily reflect current realities.

A price based on the current cost of finding and producing an Mcf of gas-well gas, on the other hand, should provide the economic incentives to find and sell gas under prevailing conditions at rates which are keyed to industry needs and at the same time protect the interests of consumers.

We believe that the method of costing we have adopted in this proceeding is required on the basis of the record before us and that it provides a sound basis for our decision. We emphasize, however, that our conclusions herein should not be construed as necessarily constituting the final solution of this intricate problem. Other methods of estimating the new gas cost may be given further consideration in succeeding cases if adequately supported.

THE COST OF NEW GAS-WELL GAS

We shall now proceed with an examination of the presiding examiner's determination of the cost of new gas, and of the exceptions thereto, in our determination of the area price ceiling of new gas-well gas.

A word of explanation is in order as to the variety of data sources utilized for determining the costs of gas in this proceeding. The natural gas producers, unlike electric power companies and natural gas pipelines, have not as yet been required to conform their books to a uniform system of accounts. The petroleum producers typically do not reveal their cost experience or accounting treatment in depth. When this proceeding was initiated there were no statistics available based on a uniform set of accounts to provide the necessary information for making the cost determinations in this proceeding. The cost questionnaire promulgated by the Commission was designed to fill this information gap in part and the responses have supplied a vital source of information for determining costs in this proceeding. In addition Census data and other well-recognized and authoritative industry data sources were utilized by various witnesses in the proceeding. The record is thus built upon a variety of sources which we believe in combination provide an adequate basis for the costs we have found.

The presiding examiner found that the national average cost of an Mcf of new gas-well gas was 16.88 cents. His computation and our modifications thereof may be summarized as follows:

	Cost in cents per Mcf	
	Examiner	Commission
Exploration and development costs:		
Dry holes	1.42	1.42
Other exploratory costs	1.59	1.59
Adjustment for exploration in excess of production	1.11	1.11
Production operating expense	2.88	2.70
Net liquid credit	(2.68)	(3.10)
Regulatory expense	.14	.14
Depletion, depreciation, and amortization of production investment costs:		
Successful well costs	2.88	2.88
Lease acquisition costs	.76	.76
Cost of other production facilities	.31	.31
Return on production investment (at 12 percent)	5.21	5.21
Return on working capital	.20	.35
Subtotal	13.82	13.37
Royalty at 12½ percent	2.11	2.05
Production taxes [24]	.95	1.01
Total	16.88	16.43

[24] Texas production taxes of 7 percent have been used in the Commission's computation. New Mexico taxes are lower, and both cost computations and the ceiling price should be reduced accordingly for gas produced in New Mexico. The amount of production taxes does not include taxes on the royalty payments which are chargeable to the royalty owner.

EXPLORATION AND DEVELOPMENT COSTS

Dry Hole Costs

Adopting the California Distributors' presentation, the presiding examiner derived a dry hole cost of 1.42 cents per Mcf principally on the basis of data published by the United States Bureau of Census, Census of Mineral Industries for 1958 (1958 Census), with respect to drilling costs per foot. Since there were no such census costs available for 1960, he established a trend for such costs by comparing 1958 and 1960 cost data obtained, in response to the questionnaire circulated by this Commission, from producers of more than 10 million Mcf annually, producing in the Permian Basin.[25] He then adjusted the 1958 Census figures in accordance with the trend established from the questionnaire data to establish the 1960 costs.

The Major Producer Group objects to the examiner's use of questionnaire data to establish a trend in E&D cost from 1958 to 1960 and adjusting the 1958 Census figures on the basis of the trend established. We think the examiner was correct in determining that the questionnaire data are valid for purposes of establishing a trend in the entire industry. We adopt the reasoning of the initial decision upon this point, and the 1.42 cents per Mcf cost, as set forth in Appendix B, pp. 291, 292.

As we have already noted, other methods of computing dry hole costs were suggested in the record. Of particular interest is the alternative method of cost determination, advocated by the Major Producer Group, often called the project method, which capitalizes the total cash outlays to acquire a capital asset (*i.e.*, project) and allows a return on that investment over its productive life. Under this method, dry hole costs and other costs associated with un-

[25] The questionnaire data includes costs from a few producers of less than 10,000,000 Mcf annually who also responded to the questionnaire. However, the inclusion of this data does not affect the results.

productive ventures would be capitalized along with the cost of productive ventures. We find that this alternative method which would constitute a departure from our treatment of E&D in prior proceedings as well as a departure from present industry accounting practices is not adequately supported in the record. The inadequacy is especially notable with respect to the cost of capital for establishing the fair rate of return to be allowed on the computed investment base. However, capitalization of E&D may well be a useful approach and we do not foreclose in succeeding cases further consideration of this alternative method of costing or of improvements in the cost-finding techniques herein employed.

Other Exploratory Costs

In a category for exploratory costs other than dry holes, the examiner included geological and geophysical expenses, lease rentals, and exploratory overhead. These costs were the subject of testimony by Witness Roseman for the California Distributors and Witness Park for Texaco Inc. Roseman estimated the cost of geological and geophysical expenses and lease rentals on the basis of their relationship to lease acquisition costs as shown by the Chase Manhattan Bank's Annual Analysis of the Petroleum Industry for 1961. Since the purpose and result of the outlays for geological and geophysical activities and lease rentals is the purchase of leases, there is a direct relationship involved. The Chase survey shows that geological and geophysical expenses and lease rentals averaged 138 percent of lease acquisition costs in the period 1957 through 1960, the same period Roseman used in computing lease acquisition costs. Having determined that the lease acquisition costs for that period were 0.76 cent per Mcf (see *infra*, p. 198), Roseman accordingly computed the geological, geophysical, and lease rental costs at 1.05 cents per Mcf.

Exploratory and developmental overhead were calculated by Roseman on the basis of their relationship to total finding and developmental costs. The 1958 Joint Association Survey, the only published source of such data, established overhead costs as being 8.4 percent of total finding and developmental costs, or 0.54 cent per Mcf. (Total finding and developmental costs were 6.42 cents per Mcf, this being the total of 1.05 cents for geological and geophysical expenses and lease rentals, 1.42 cents for dry holes, 2.88 cents for successful well costs, 0.76 cent for lease acquisition costs, and 0.31 cent for cost of other production facilities.) Adding 0.54 to the 1.05 cents per Mcf costs for geological, geophysical, and lease rental costs, results in a total of 1.59 cents for the category of Other Exploratory Costs.

Witness Park used a different method. He combined geological and geophysical expenses, lease rentals, and overhead into a single item. He then found that the ratio of this item to dry hole exploratory expense, based on the Joint Association Survey, was 1 to 1. His result is 1.56 cents.

We believe that Witness Roseman's approach which computes each of these items of cost on the basis of comparisons with items to which they are functionally related is preferable. In any event the difference between the two witnesses is *de minimis* and no exceptions were taken to the examiner's determination of 1.59 cents per Mcf based upon Roseman's testimony. We therefore adopt the examiner's finding as supported in the record.

Adjustment for Exploration in Excess of Current Production

The record establishes that additions to proved reserves of natural gas in the United States have exceeded production in each year. We believe it essential to encourage a level of exploratory effort which will continue to provide for findings in excess of production. Since exploration and development losses

are expensed by the industry in the year incurred, and are so treated here (but see our discussion of the possible use in the future of the project method, *supra*, pp. 192, 193), the allowance for such losses should be recouped from production during that year. The total cost of finding the necessary volumes of gas must be translated into an allowance per Mcf of gas produced so as to bring in the necessary revenues. To this end a conversion factor is necessary to adjust the per Mcf cost of unsuccessful E&D efforts from the volume of reserves discovered to the volume of gas produced during the year.

The ratio of findings to production vary from year to year. These ratios for gas-well gas were 122 percent in 1960, 155 percent in 1961, 180 percent in 1962 and 122 percent in 1963, while the weighted average of findings of all gas was 127 percent of production for the years 1960 through 1964. The appropriate ratio for these purposes is a matter for careful judgment rather than scientific formula.

We recognize that what the industry has been spending is not necessarily the desirable expenditure in the public interest. We believe, however, that the level of recent expenditures represents an appropriate basis for determining the ratio which should be adopted. In applying judgment we conclude that the ratios for gas-well gas are the more significant, but they must be discounted in view of atypical results for 1962. If the 1962 figure is brought down to the level for 1961, the four-year average becomes 138 percent. These figures point to an adjustment figure in the range of 35 to 40 percent. In these circumstances we shall utilize the 37 percent figure adopted by the examiner with which all parties have concurred. We believe such a ratio provides a necessary adjustment of the allowance for E&D for new gas-well gas to permit a level of findings reasonably in excess of production. Applying this ratio to the 3.01 cents per Mcf for E&D results in an additional 1.11 cents per Mcf allowance.

The examiner reached a similar result although he associated his allowance, which he termed an "allowance for growth", with a precise reserve-production ratio for the future, a rationale which we cannot accept. However, as we have explained, we are satisfied that his conversion factor approximately represents the recent history of findings and is an appropriate conversion factor to permit the recovery of the cost of exploration and development during the year incurred.

The Major Producer Group's exception on this point, which is based on a contention that the ratio of reserves to production should be increased to 20 to 1, is denied. See *supra*, pp. 183 to 185.

Summary of Exploration and Development Costs

The exploration and development allowance which we here provide as a component of the cost of new gas-well gas will permit the industry to recoup from current production all costs presently being incurred in a satisfactory level of exploratory effort. In effect we have found that the industry is now spending approximately 4.12¢/Mcf for exploration and development computed on the basis of the total production of new gas-well gas. Our allowance for E&D provides the industry with the funds to continue the same ratio of E&D in relation to volumes produced.

PRODUCTION OPERATING EXPENSE

On the basis of testimony by Witness Roseman on behalf of the California Distributors, the examiner found that a cost of 2.88 cents per Mcf was proper for production operating expense. Witness Park, presented on behalf of Texaco Inc., testified that the amount should be 2.62 cents per Mcf, or 0.26 cent lower. Both Park and Roseman derived their figures from the data on nationwide production costs received by this Commission in response to the questionnaire circulated to Permian Basin producers.

The basic differences between Roseman's and Park's results are two-fold. The first is that in the allocation of overhead expenses Roseman used direct lease cost and expenses, including depletion, depreciation and amortization (DD&A). Park, on the other hand, used direct lease costs and expenses, but excluded DD&A. We find that Park's exclusion of DD&A was proper for the reasons set forth in discussing this issue in connection with flowing gas in Appendix C, p. 296.

The second difference is that Roseman made an adjustment of the production operating cost to reflect national production of condensate and gas, rather than relying strictly on the questionnaire data for production of condensate and gas. His justification for such adjustment, which the examiner adopted, was that the respondents filing questionnaire data produced a disproportionately large amount of lease condensate in relation to their gas production. (They produce one-half of the national lease condensate but only one-third of the national gas-well gas.) Park did not make such an adjustment. We agree with Roseman that this adjustment should be made because of the disproportionate production of condensate. We adopt Roseman's production operating expense allowance but modify it to reflect the proper overhead allocation. Making this modification, the production operating cost is 2.70 cents per Mcf.

ADJUSTMENT OF NET PRODUCTION TO MARKETED PRODUCTION

The examiner included no special item in his cost computation to reflect the costs of gas produced but not sold. Witness Park included a 5-percent adjustment which he said was to compensate for waste, for venting, and for gas consumed on the producing property. The Major Producer Group contends that there should be at least a 2-percent adjustment. The annual reports of the Texas Railroad Commission and the Louisiana State Conservation Commission for 1960 show that in these states, which produce 75 percent of the nation's gas-well gas, less than one-tenth of one percent of the gas was vented and wasted.

We agree with the examiner for the reasons stated at pp. 384, 385 of his opinion that there is no justification for making any allowance for the negligible amount of gas vented or wasted.

NET LIQUID CREDIT

When gas is produced some of the entrained liquids may condense while the gas is being lifted or shortly thereafter, and some of the liquids may be extracted by processing operations. The producers often receive substantial revenues from the sale of the liquids independently of the price they receive upon sale of the gas, and such liquids are an important item of commerce. Witness Roseman, on behalf of California Distributors, and Witness Park, on behalf of Texaco Inc., both credited the revenues received by gas producers from the liquids contained in the gas to the cost of finding and producing the gas. The Major Producer Group now contends that no liquid credit should be adopted. Staff, on the other hand, has excepted to the examiner's determination that the proper amount of the liquid credit is 2.68 cents per Mcf, net, after royalties and production taxes are deducted, and contends that the proper amount for new gas-well gas is 3.27 cents per Mcf.

As to the basic issue whether it is appropriate to credit the cost of gas with the liquid revenues, we adopt the examiner's views as follows:

> The logic of crediting the revenues from the liquids is that the producer can reasonably expect that, from a proposed expenditure in the generally directional search for and production of gas-well gas, he will receive revenue from the liquids as well as from the gas. Thus he may count against his prospective total cost the expected revenues from the liquids. The remainder

represents the revenues to be derived from the gas if the total costs are to be met, and is the cost burden that has to be borne by the gas. Since the price of lease condensate has been relatively stable in recent years[11] and since the credit amounts to only sixteen percent of the price for new gas-well gas adopted herein, it is not likely that changes in the price of condensate will produce significant swings in the price of gas. In these circumstances, crediting the liquids is reasonable for the purpose used here. (Initial Decision, Appendix B, pp. 387, 388.)

[11] Average prices for lease condensate were: 1954, $3.01 per barrel Census; 1958 $3.05, Census; 1960 $3.03, Appendix B.

The producers' argument to the contrary is essentially that since the Commission does not regulate the sale of liquids it is improper to credit revenues. This is equivalent to saying that oil-well gas should be priced at the total cost for both oil and gas because we do not regulate oil prices. The argument has been rejected by the courts with respect to crediting of liquid revenues extracted by pipelines.[20]

Witness Roseman's testimony and the presiding examiner's determination as to the amount of the liquid credit were based upon published statistics of the American Petroleum Institute (API) and the "Oil and Gas Journal." The gross credit is derived by multiplying the condensate production from gas-well gas by the price received for the liquids and dividing this amount by the total gas-well gas production for the year in question. Using the "Oil and Gas Journal" production figures, the examiner concluded that 3 cents per Mcf is a reasonable estimate for the gross lease liquids credit from which he deducted royalty of 12.5 percent and production tax to obtain a net credit of 2.48 cents, exclusive of plant liquids revenue which we shall treat separately.

All of the statistical series point to the conclusion that there has been an increase in condensate production from gas-well gas since 1960, a rate of increase which is greater than the rate of increase in finding and producing gas. The fact that the increase in condensate products has outstripped the increase in gas-well gas production reflects the richer content of liquids in the new gas-well gas which is being discovered and the improved separation techniques developed by the industry. The examiner by basing his credit exclusively on the liquid to gas ratio in current production has not taken into account this trend in condensate production. Since we are here concerned with a ceiling price to apply to new gas-well gas, the liquid credit we allow must reflect current and expected experience. We believe that a figure based upon the respondents' responses to the Commission's questionnaire is more nearly representative of current trends. Witness Park determined a gross credit of 3.71 but as was explained with regard to production operating expenses (*supra*, p. 194) we agree with the examiner and Witness Roseman that the questionnaire data from which this figure was derived by Witness Park was not fully representative of industrywide production. The questionnaire data reflects a larger production of condensate on a unit basis than do the nationwide statistics. Accordingly, in our judgment, the 3.71 cents per Mcf gross liquid credit should be adjusted downward to reflect this distortion. We believe that taking all facts into consideration the proper gross liquid credit should be 3.50 cents per Mcf. This credit is based upon production which is well within the range of published statistics for 1960 and is in line with the trend in later years toward increased realization of condensate per Mcf of gas.

[20] *Panhandle Eastern Pipe Line Co.* v. *F.P.C.*, 324 U.S. 635, 646 (1945); *Cities Service Gas Co.* v. *F.P.C.*, 155 F. 2d 694, 703 (CA10–1946); *Panhandle Eastern Pipe Line Co.* v. *F.P.C.*, 305 F. 2d 763, 767–768 (CADC–1962), cert. denied, 372 U.S. 916.

The gross figure of 3.50 cents after deduction of production taxes and royalties leaves a net liquid credit of 2.90 cents, not including plant liquids, which we here adopt.

In addition to liquids extracted at the well, gas-well gas is also processed at stripping plants. Producers usually share in the revenues from these plant liquids on a percentage basis. Witness Roseman testified that if the producer receives only 20 percent of the liquid revenues it would amount to 0.4 cent per Mcf of gas-well gas produced. The California Distributors and Texaco, who sponsored Witness Park, stipulated that for purposes of this case a credit for plant liquids in the range of 0.1 cent to 0.2 cent per Mcf of gas-well gas produced could be used. In light of Witness Roseman's analysis and the trend of richer liquid content which the record reveals we shall adopt the examiner's conclusion that the upper range of the stipulation, 0.2 cent per Mcf, should be accepted as an appropriate plant liquid credit.

The addition of 0.20 cent per Mcf to the 2.90 cents per Mcf net liquid credit gives a total liquid credit of 3.10 cents per Mcf.

REGULATORY EXPENSE

Neither Witness Roseman, for the California Distributors, nor Witness Park, for the Major Producer Group, included in the computation of costs any amount for regulatory expense. The presiding examiner, however, included in his computation an item of 0.14 cent per Mcf for regulatory expense, based on data derived from answers to the questionnaire. Since it appears to be a reasonable estimate and no participant disputes its inclusion, it will be accepted.

DEPLETION, DEPRECIATION, AND AMORTIZATION OF PRODUCTION AND INVESTMENT COSTS

Production investment costs include successful well costs, lease acquisition costs and cost of other production facilities. These items were capitalized by the presiding examiner, and we agree. The total of these items will establish the rate base on which a return must be allowed. The amount of the rate base itself must be recovered by the producers by charges for depletion, depreciation and amortization over the period of the economic life of the investment. The procedure we use is to convert DD&A to an Mcf basis and to add an element for return on the production investment per Mcf. We shall discuss separately each item involved in the calculation.

Successful Well Costs

The examiner found that successful well costs amounted to 2.88 cents per Mcf of gas found. He determined this amount by dividing the cost per foot of successful wells drilled in 1960 by the average of gas reserves added per foot of drilling in a year. The drilling cost per foot was derived from data in the U.S. Bureau of Census, Census of Mineral Industries for 1958, adjusted to 1960 on the basis of the questionnaire data. The total reserves added were derived from the AGA proven reserve statistics.[27]

The Major Producer Group first argues that the Joint Association Survey (JAS)[28] cost per foot of well drilling should be used in place of the 1958 Census data as trended to 1960. In the alternative, they urge that if the 1958 Census

[27] Identified in this proceeding as Bureau of Mines "Minerals Yearbook," Vol. II (which is a reprint of the AGA data). The footage used with this data was obtained from "World Oil" magazine.

[28] The JAS is a survey by three industry trade groups and is based on a questionnaire mailed by these groups to all their member companies.

cost is used, this cost should not be adjusted downward on the basis of the questionnaire data to arrive at the 1960 cost. They conclude that the successful well drilling cost should be computed at 3.10 cents per Mcf of gas reserves added, rather than 2.88 cents as computed by the presiding examiner.

We agree with the presiding examiner that the JAS statistics should not be used to decide this issue. The presiding examiner has pointed out that the companies included in the JAS were not selected on a random basis, and that filling out and returning the JAS questionnaire was voluntary. The results thus reflect a considerable amount of self-selection. Due to the method of selection there is no assurance that the sample is characteristic of the industry as a whole and it should not be used in preference to the 1958 Census, even though cost based upon the 1958 Census was adjusted by trending to determine the comparable 1960 cost.

In our discussion of dry-hole costs we have already dealt with the question whether cost derived from the 1958 Census may properly be trended on the basis of questionnaire data to determine comparable 1960 costs, and affirmed the examiner on this point. We believe it is not only appropriate but necessary to make the same adjustment in this connection. The exceptions in this regard will therefore be denied.

Lease Acquisition Costs

Witness Roseman, on behalf of California Distributors, computed lease acquisition costs at 0.76 cent per Mcf for gas found. In common with all other witnesses on this subject, he determined the cost per Mcf of lease acquisitions on the basis that such cost is directly related to successful well drilling cost. He found that the appropriate figure was 26.4 percent on the basis of data collected in a survey by the Chase Manhattan Bank and data contained in the 1958 Census.

The presiding examiner accepted Roseman's computation of 0.76 cent per Mcf. The Major Producer Group excepts to this finding, and contends that Witness Park's computation of 1.15 cents per Mcf should be used. Park computed his figure on the basis that lease acquisition cost is 40 percent of successful well cost per Mcf.

We agree with and adopt the presiding examiner's analysis of this question set forth in Appendix B to the initial decision, pp. 379–382. The adopted portion, together with an additional analysis reinforcing our conclusion here, is set forth in Appendix B to this opinion.

Cost of Other Production Facilities

The examiner approved 0.31 cent per Mcf for this item which includes lease equipment, related lease facilities and apportioned overhead investment. The 0.31 cent figure is supported by the testimony of Witnesses Roseman and Park, but for different reasons. Witness Park's recommendation was an integral part of a broader presentation which we have not accepted and for that reason we rely on the testimony of Witness Roseman. In substance, Witness Roseman's testimony is that the respondent's gross investment in these items approximates 8½ percent of the gross investment in leases and wells attributable to nonassociated gas, and that a comparable percentage of the previously determined lease and well costs should be allowed for these items. We find the amount to be reasonable and we shall affirm the examiner's finding on this point.

Allowance for Growth in Investment

The Major Producer Group contends that in his computation of production investment costs the presiding examiner should have included an allowance to reflect future increases in investment. We believe the examiner correctly excluded such an adjustment. Production investment costs are capitalized and

recouped, with a return realized from the sale of gas over the period of the life of the investment. This investment is stated in terms of an amount per Mcf of gas found. While the total investment may grow, there is nothing in this record to support a conclusion that there will be an increase in the amount invested per Mcf of gas found. Accordingly, we believe there is no basis for any additional amount as an allowance for growth in production investment costs.

Period of Recovery of Investment

A return must be allowed upon the investment for the average period of recoupment. Having determined the total production investment cost to be 3.95 cents per Mcf, the presiding examiner then estimated that the average period required for return of each dollar of that investment will be 10 years after the resulting gas begins to flow. He reached this conclusion by assuming that the gas will be totally depleted in 20 years, the normal life of a contract, and that the depletion will take place in an equal amount each year. The Major Producer Group and The Superior Oil Company contend that the true period of depletion is at least 22 years, and that this period rather than 20 years should be the basis of calculation.

These respondents are correct in pointing out that the period of well depletion is somewhat longer than 20 years. More than offsetting, however, is the fact that wells are not depleted uniformly over their producing life. They produce a greater output of gas and condensate during the first years of depletion. Production usually begins to decline some 7 to 12 years after the well begins to flow until, during the last years of depletion, the well is producing only a fraction of its flow in earlier years. While exact figures are not available, it appears that the additional years of minimal production, not included in the examiner's computation, are more than offset by his computing depletion at an even rate rather than taking into account the higher production in early years and the greatly lowered production at the end of the period. Accordingly, the exceptions on this point will be denied.

Lag

Some of the production investment costs must be made in advance of the time that gas begins to flow. Lease acquisitions are often made a substantial time in advance. Expenses for successful wells must be incurred before any gas can be produced. To allow for this lag between investment and first realization of revenue from sale of the resulting gas, the presiding examiner allowed 1 year of so-called "lag time" in addition to the 10-year period in which the average dollar of investment will be recouped after production begins.

The California Distributors urge that no lag period be included. They contend that the investment of funds before gas begins to flow is more than offset by the fact that some of the investment is not made until after gas has been in production for some time. They refer to this as "negative lag."

The Major Producer Group, on the other hand, contends that the lag should be from 3 to 5 years, and that the 1-year period allowed by the examiner is insufficient.

While it is generally conceded that a time gap does exist between the outlays for some productive investment and the initial receipt of income, the evidence in the record is general and vague insofar as it concerns a specific time period. Moreover, this general testimony is offset to a certain extent by the evidence of investment which does not take place until gas has been in production and evidence that some items will be used for only part of the time in which a return will be allowed. There is no precise computation of the average amount of expenditures involved in either the lag or the "negative lag," or of the amounts

of time by which these expenditures precede or follow the date when gas begins to flow.

Geological and geophysical expenses and exploratory overhead, both of which may be expended several years before a well begins to produce, are not ordinarily accounted for as part of production investment costs. They are part of exploration and development costs which are treated as expenses by the producers in the year in which they are incurred. Successful well drilling costs are approximately 73 percent of the production investment costs. These would ordinarily be incurred within the one-year lag before gas begins to flow which the examiner has allowed. Lease acquisition costs may occur earlier, but these are little more than 19 percent of the total production investment costs. The cost of other production facilities, which is approximately 8 percent of the total production investment cost, as here determined, would be incurred largely within the one-year lag period.

Taking into consideration the evidence of both the positive and negative lag, we believe that the presiding examiner's determination on this point should be upheld.

RETURN ALLOWANCE

Rate of Return

Respondents urge the adoption of a rate of return in the range of 16–18 percent on average net investment. In support, they refer to returns previously allowed in producer and pipeline litigation and to the traditional and current earnings experience of numerous industrial and utility categories. Respondents' principal argument is that the risks inherent in exploration are voluntarily incurred and extraordinary and they must be recompensed in the rate-making process. They also argue that the discounted cash-flow analysis is the keystone to the producer return issue. The producers also stress the time lag between investment of funds and receipt of income.

Staff, joined by the California interests, presses for a 9½ percent return on average net investment which translates into 10½ percent on common equity. Staff offered extensive testimony which focuses heavily on the earnings experience of integrated producers, who supply the bulk of the natural gas production. Staff supports its reliance on the experience of the integrated producers partly by claiming there is no proof that their nonproduction departments are less risky than their production departments. Staff recognizes the geological risks inherent in exploration but considers them to a degree offset because of the producers' alleged ability to avoid income taxes, their low-debt capital structure, and the opportunity, implicit in group regulation, for low-cost producers to achieve higher than average returns. For these reasons, Staff concludes that a return must be set in this proceeding which is somewhat lower than that which would be deemed appropriate in the context of individual regulation.

In determining an appropriate rate of return, the Commission must operate within long-accepted judicial guidelines. Many of them, although established in the context of individual company regulation, apply with equal validity to the *en masse* regulation we have adopted herein. Simply stated, the courts have consistently held that the return must be sufficient to attract new capital, be in line with that earned by comparable industries, *e.g.*, *F.P.C.* v. *Hope Natural Gas Co.*, 320 U.S. 591 (1944); *Bluefield Water Works and Improvement Co.* v. *F.P.C.*, 262 U.S. 679 (1923), and most significantly, be determined, not through the automatic application of formulae, but through informed judgment taking into account all relevant facts, *e.g.*, *State Corp. Commission of Kansas* v. *F.P.C.*, 206 F. 2d 690 (CA8–1953), cert. denied, 346 U.S. 922 (1954); *Washington Gas Light Co.* v. *Baker*, 188 F. 2d 11 (CADC–1950), cert. denied, 340 U.S. 952 (1951).

As a starting point in our analysis, we turn to the financial requirements and experience of a sector of the gas industry with which years of regulation have made us familiar, the natural gas pipelines. The transmission sector is an immediate adjunct of production, and the two have evolved contemporaneously. An examination of recent transmission company rate proceedings indicates that representative companies are currently being allowed returns on net investment in the 6.0–6.5 percent range, with the preponderance between 6.25–6.5 percent. While we have recently been emphasizing the overall return, it is instructive that a 6.25–6.5 percent return on transmission net investment translates, considering current capitalization patterns, into a yield on equity of from 10.0 to 12.0 percent. Although this yield is by no means dispositive of the issue before us, it places the issue of an appropriate rate of return for gas production in a more meaningful context, especially in view of the fact that producers generally are 85 percent equity companies. In addition, production operations inherently involve a greater degree of risk than the transportation of gas.

The difference in the degree of risk is highlighted by the fact that the construction and operation of transmission lines are authorized only upon the issuance of certificates of public convenience and necessity, and these, in turn, require a showing of economic feasibility. *Northern Natural Gas Co.*, 28 FPC 1155 (1962). By contrast a producer who is exploring for new gas is relying largely on the law of averages, especially under the area rate approach.

Transmission companies generally have assured sources of supply, traditionally under at least twenty-year contracts. They are generally able to shift to their purchasers the burden of their costs, and they have a minimal labor problem. Considering these factors, together with the projected continuation of a 3.5 percent growth in consumer demand, the 6.25–6.5 percent overall return and the 10 to 12 percent yield on equity for pipelines can be considered as applying to a relatively safe investment, at least by comparison with gas production.

In comparing the allowable returns on production with the returns previously allowed in transmission proceedings legal precedent and financial requirements dictate that if unusual risks are inherent in production, a greater return should be allowed on investments therein in the absence of record evidence to support a different conclusion. See, *e.g.*, *F.P.C.* v. *Hope Natural Gas Co.*, *supra*; *F.P.C.* v. *Natural Gas Pipeline Co.*, 315 U.S. 575 (1942); *Bluefield Water Works and Improvement Co.* v. *F.P.C.*, *supra*; *Wilcox* v. *Consolidated Gas Co.*, 212 U.S. 19 (1909). It is beyond question that the business of exploring for natural gas and, to a lesser extent, its production, is fraught with uncertainties foreign to its transmission. Justice Jackson pointedly expressed this fact in his oft-quoted dissenting statement in the *Hope* case, and the Commission has repeatedly recognized it. Thus, we said in *Phillips:*

> Is is clear that the risks of this business [exploration and development] are greater than those of an electric utility or natural gas pipeline. 24 FPC at 572.

We have also noted the special risks involved in production operations:

> The producer must invest his funds prior to ascertaining whether he will have anything to sell or whether, if he does, he will have an adequate market. *Id.* at 543.

And later in *CATCO:*

> We are fully cognizant of the risks of drilling for gas and the need to encourage continued exploration and production. 27 FPC at 106.

And still later in *Southern Natural Gas Co.*, 29 FPC 323, 336 (1963):

> It is well recognized that a series of dry holes or even a single dry hole may bankrupt an independent producer, and it is equally well recognized

that an independent producer who has the misfortune to discover high-cost gas may very easily find it impossible to dispose of such gas at a price which returns more than a small fraction of his costs of discovery and development.

The principal uncertainty lies in finding gas in commercial quantities, and is emphasized by the record evidence that producers, while seemingly able to a degree to direct their searches for particular hydrocarbons, have no assurance that any hydrocarbon will be found. The risk of a dry hole—or noncommercial well—is one that has characterized the production activity since its inception. That the risk is not merely theoretical is borne out by the questionnaire data compiled in Staff exhibit 142 which reveals that Permian respondents in 1960 spent approximately $212,342,000 on geological and geophysical expenses, $114,284,000 on lease rentals and $271,576,000 on dry holes. While it is true that in the aggregate we allow these costs as an operating expense, the uncertainty whether productivity will meet the industry average nevertheless remains as a risk for each individual producer and it must be recognized in the rate-making process.

There is another risk in the production operations which our allowance for rate of return in this proceeding must reflect—the risk of finding gas of less than pipeline quality. The record reveals that the greater percentage of the gas in the Permian Basin does not fully meet the pipeline quality standards prescribed herein. The details respecting quality adjustments are discussed *infra*, at pp. 221–225. While we have provided upward adjustments for new gas-well gas with above average Btu content, nevertheless there remains the risk that any gas found can be sold only at an adjusted ceiling price which involves a substantial discount from the ceiling prices for gas of pipeline quality prescribed herein. Such risk is a special factor that must be considered in establishing the rate of return for the Permian Basin.

Agreeing that production operations involve risks which must be recognized in our allowance for rate of return, yet we conclude that the risks are not as great as the producers claim. The producers' case for a 16–18 percent rate of return ignores the fact that there is a degree of predictability to production operations as evidenced by the fact that the industry as a whole has maintained over extended periods a consistent record of new discoveries and added reserves. The producers statistical support for a 16 to 18 percent return rests on data that contain conspicuous infirmities. As pointed out by the examiner, Witness Morton's statistical presentation contains only one instance of an 18 percent rate of return on capitalization. We affirm the examiner's conclusion that Morton's sample is unrepresentative.

The return producers seek is greatly in excess of the recent earnings experience of even the nonintegrated producers. It is three-fold the return allowed on transmission investments and it would produce a yield on common equity of approximately 20 percent. Such a return is neither typical nor necessary, and must be rejected.

We have already discussed the "true yield" method for determining capital cost which expresses the discount rate equating the value of a stream of future revenue with the cost of the initial investment generating that stream. It is employed herein by the producers to demonstrate the earnings rate disparity between it and the conventional method which allows a return on net investment. The witness advancing this unconventional approach has merely urged that the disparity between book yield and "true yield" be recognized in a larger return allowance and provided little in the way of support for the application of his alternative method. In these circumstances, his approach cannot be used in resolving the rate of return issue in this case.

We now turn to the earning experience of the production industry to fix the return to be allowed in this proceeding. Staff witness Shaffner's Exhibit 176 analyzed in Schedules 11 and 12 the 1957–1961 rates earned by two classes of producers: those that were principally engaged in production, and those that were also engaged in refining and marketing. The schedules, based on "Moody's Industrials and Annual Reports to Stockholders," were limited to companies with interstate sale to pipelines in excess of 2,000,000 Mcf annually, with actively traded common equity, and with a policy of making periodic reports of their earnings posture.

The staff Exhibit 176, Schedule 11, reveals that the average returns for nine companies confined to production functions in each of the years 1957–1961 were, respectively, 13.9, 10.9 (including an .8 percent return for one company), 12.4, 11.6, and 13.2 percent, which produced an average of 12.4 percent, and a five-year median of 10.9 percent. When only the experience of the seven Permian producers is reflected, the returns for the same years are as follows: 15.0, 12.4, 13.9, 12.5 and 13.4 percent, making an average of 13.4 and a median of 11.3 (Exhibit 176, Schedule 12). These staff figures are consistent with respondent witness Morton's Exhibit 220, showing that 13 producers engaged solely in production, including six not covered by Exhibit 176, earned for these years 16.4, 13.7, 15.0, 13.0 and 14.4 percent over the same period. This produced an average return of 14.5 and a slightly lower median of 14.4 percent.

Both the staff exhibits and the presentation of Witness Morton were limited in the number of individual companies covered; the latter also employed subjective considerations in selection and was forced to report on a less comparable basis. Nevertheless they are the best record indication of what the production function traditionally returns. We conclude that they are entitled to heavy consideration in the decisional process in this case.

Witness Shaffner's second category was comprised of 26 integrated producers. The average return experience for these companies was 10.0, 7.9, 8.1, 8.2, and 8.2 percent for the indicated years, which gave a five-year average of 8.5 percent and a median of 8.1. When limited to the 24 integrated Permian producers, the figures decreased slightly: 9.9, 7.8, 8.0, 8.0, and 7.8 percent, for a five-year average and median of 8.3 and 8.1 percent, respectively. On a general average basis, the resulting return was 9.5 percent for both the national and Permian producers. On an average weighted by capitalization basis, both national and Permian-only, the resulting return was 9.3 percent, reflecting that the total capitalization for the 26 integrated companies was over 40 times that of the nine nonintegrated companies.

The Shaffner study of the returns of integrated producers standing alone fails to make a persuasive showing that the results are the best evidence of the financial needs of the gas operations of the companies involved. It covers the most widely diversified segment of the industry, those whose revenues were derived from the sale of petrochemicals, fertilizers, plastics, and gasoline, as well as from transmission, distribution, real estate, and manufacturing enterprises. The exhibits in the record, and the sources upon which they are based, offer no ratio of the integrated company oil and gas production revenues to total revenues, although they do reveal that revenues generated by natural gas sales to pipelines accounted for but 2.22 percent of total revenues. Without a departmental segregation of costs and revenues, it is impossible to calculate production department returns. It may be that on a different record the returns of integrated producers may be shown to be highly relevant but without any assurance that production returns approximate overall returns, we cannot automatically attribute the latter to the former. Accordingly, while we are

persuaded that integrated producer returns are relevant to the instant issue, we are not persuaded that the Shaffner exhibit sufficiently weights production operations in his recommended return of 9.5 percent.

After weighing all the evidence on the issue we believe a return of 12 percent is appropriate in light of the considerations previously discussed and the presentations in this case, particularly the testimony of witnesses Shaffner and Morton with respect to the returns by nonintegrated producers in the Permian Basin. A return of 12 percent on production activities protects gas consumers against excessive prices but it is not so low that it fails to respond to the needs of the industry. It also considers the needs of the smaller independent who traditionally drills much of the Permian exploratory footage and has limited resources to weather even a brief series of unproductive expenditures. It may be that another result may be reached on a different record but in this first area rate proceeding we believe the record points to a return of 12 percent and it is therefore adopted.

The presiding examiner, having determined that the total production investment would be recouped over an average period of 10 years beginning an average of 1 year after investment, correctly concluded that the total return to be allowed on each Mcf of gas should be based on an investment base that is 11 times the production investment per Mcf found. As the production investment was found to be 3.95 cents per Mcf, the investment base here is 43.45 cents. The annual return per Mcf should be computed by multiplying 43.45 cents by the 12 percent rate of return, producing a figure of 5.21 cents per Mcf.

Return on Working Capital

To the return on net investment must be added the return on a working capital allowance. While in this proceeding the return on the allowance is a small item, it raises a policy question for decision.

Distributor witness Roseman presented a working capital computation in Exhibit 224 which follows the traditional utility formula of allowing in the rate base for a 45-day lag in collections; that is, a return is allowed on the sum of one-eighth of annual production operating expenses, one-eighth of annual exploration expenses, and amounts invested in supplies, materials and prepayments allocated to the exploration and production functions. The resulting allowance is 1.63 cents per Mcf which, at a 9½ percent rate of return, gives a 0.16 cent return. The presiding examiner accepted the method but, substituting 12 percent, allowed a 0.20 cent return.

The producers contend that the utility formula is inappropriate for the producing industry because it excludes funds that must be kept available for lease plays, drilling failures and exploration. They point out that their ratio of net plant to total capitalization is far smaller than in the transmission industry, and consequently, recurring cash needs, which are not covered by the return on net investment, become more significant. The producers advocate a "balance sheet formula" which would allow a full return on the current net assets. They conclude that a representative allowance would be either 23 percent of total capitalization, which is the ratio of actual working capital to total capitalization for the thirteen non-integrated producers covered in their Exhibit 220, or 17 percent, which purportedly represents the ratio found in the Chase Manhattan Bank 1960 study of the actual cash portion of current net assets to net plant for the integrated companies. The Staff reply brief, however, correctly points out that the actual cash portion is but 6.7 percent, the other 10.3 percent representing marketable securities.

Staff and the distributors attack the balance sheet formula. They contend that it inappropriately allows a return on such items as total cash on hand,

marketable and capitalized securities, accounts and notes receivable, and—in the case of the integrated producer—current assets applicable to refining and marketing. They argue that because net current assets have no reasonable relationship to the function of the working capital allowance, the balance sheet formula has been uniformly rejected by this Commission and the Courts. Staff concludes that the Commission has regularly employed the utility formula for producers and that other sources assure the availability of sufficient funds. Consequently, no further allowance is appropriate.

The Commission was first presented with a balance sheet approach in *Cities Service Gas Company*, 3 FPC 459 (1943), where it rejected the method as being "* * * unsound and inherently fallacious for ratemaking purposes." 3 FPC at 478. The case was affirmed, 155 F. 2d 694 (CA10), cert. denied, 329 U.S. 773 (1946). The Commission reaffirmed this conclusion in *Northern Natural Gas Co.*, 11 FPC 123 (1952) and the reaffirmance was specifically upheld in *Corp. Comm'n of Kansas* v. *F.P.C.*, 206 F. 2d 690 (CA8–1953), cert. denied, 346 U.S. 922 (1954). The method was also rejected in *Panhandle Eastern Pipe Line Co.*, 13 FPC 53 (1954), rev'd on other grounds, *City of Detroit* v. *F.P.C.*, 230 F. 2d 810 (D.C. Cir. 1955). The balance sheet approach now urged upon the Commission incorporates the same flaws as found in the previous versions of this method. As herein presented, it is insufficiently refined and meaningful to be a legitimate regulatory formula, and we see no reason to depart from the sound reasoning of the *Cities Service* decision.

We are convinced that the balance sheet approach must be rejected and conclude that the four additive factors in the utility formula—cyclical expenses, materials, supplies and prepayments—are justified components of a working capital allowance for the producing industry, and that the formula is appropriate for calculating these factors. We appreciate, however, that the erratic nature of individual company lease acquisitions, the competition among producers for attractive leaseholds, and the established practice of the industry to generate its own capital, demand that additional liquid sums be kept available. Accordingly, a compensatory "lease play" return must be allowed on reasonable amounts in excess of the working capital allowance based on the traditional utility formula.

Such funds in reasonable amounts are not idle or dormant in a meaningful sense. They are being employed as the exigencies of the business demand: in ready reserve for expenditures upon which the contribution of the industry depends. Such funds are not surplus, because they could not be dissipated without adverse effect on the exploratory effort. Moreover, there is no likelihood that they will be retained merely to inflate rate bases. Producers are relatively assured of receiving a return on funds invested in securities, and they have a fair opportunity of receiving a return on funds invested in the producing industry. Perhaps the most persuasive reason why excess sums are unlikely to be retained is that producers reduce their tax liabilities by a continued investment in the industry; the depletion allowance, by law, can offset no more than 50 percent of net income from a productive lease. This immediate tax benefit accruing from reinvestment far outweighs any incentive to mere accumulation.

We find that the producers must be given a return on the funds retained for lease play in addition to the 0.20 cent per Mcf return allowance computed under the traditional utility formula. An exact amount for this additional allowance is difficult to determine from the present record. Presuming that the producers should be allowed a return on liquid funds on hand equivalent to one and one-half times their per Mcf expenditures for lease acquisitions,

return on the allowance for lease play would be approximately 0.15 cent per Mcf.[29] Future proceedings may elicit a more precise method for computing this amount.

For the purposes of this case, 0.15 cent per Mcf will be added to working capital as a lease play return allowance, making the total return on working capital 0.35 cent per Mcf.

ROYALTIES

Both Witness Roseman and Witness Park included royalties at the rate of 12.5 percent in their computations of cost. The presiding examiner accepted this figure and no participant demurs to the inclusion of such an item or to the 12.5 percentage. The examiner's figure of 2.11 cents per Mcf will be adjusted to 2.05 cents per Mcf to reflect the changes in the total amount on which the 12.5 percent royalty is computed.

PRODUCTION TAXES

The present Texas production tax is at the rate of 7 percent of lease revenues. Production taxes in New Mexico are somewhat lower than in Texas. The presiding examiner used a weighted average of Texas and New Mexico production taxes, which he computed to be 6.42 percent after taking into account the latest increase in New Mexico taxes.

We think that reasonable local taxes are a valid basis for a difference in ceiling prices between one area and another and if reasonable the tax applicable in each state should be applied to the gas produced in that state. The 7 percent tax in Texas is at approximately the maximum level of taxes which we have allowed to be passed on by the producer to the purchaser. Accordingly, the full amount of taxes actually incurred either in Texas or New Mexico will be allowed as a component of the total price per Mcf of gas. Since the greater part of gas produced within the Permian Basin is subject to the jurisdiction of the State of Texas, all ceiling prices set forth in this opinion will be stated in amounts applicable to gas produced within the taxing jurisdiction of that state. However, the ceiling price for sales in New Mexico will reflect the applicable tax in that state and will, accordingly, be at lower levels.

In the event of any increase in taxes in Texas or New Mexico, the Commission will consider whether ceiling prices shall be increased and, if so, to what extent.

The ceiling price here established will be the total amount to be paid by the buyer of gas, including all tax reimbursements provided by contract.

INCOME TAXES

Respondents presented no evidence that any income tax allowance should be included in the computation of cost of new gas-well gas. Their witnesses, Park and Keane, included no such allowance. As stated by the examiner, the testimony of Staff Witness Lyon shows that if the industry's growth is considered, there will be no Federal income tax liability at any return up to 15 percent. The Major Producer Group argues that 0.6 cent per Mcf should be included in the cost computation, representing income tax liability upon a return at the rate of 12.5 percent based on testimony by Witness Roseman. However, Roseman qualified his calculation by stating that many major companies in the past have been found to pay no income taxes, and that there is no evidence that taxes would in

[29] As determined herein, the annual lease acquisition cost per Mcf is 0.76 cent. A lease play allowance based on a 12 percent rate of return on one and one-half times this 0.76 cent per Mcf amount would be .137 cents per Mcf.

fact be paid. He further indicated that his computations should be revised in the light of additional data which was never introduced into the record.

In these circumstances we think the analysis of Witness Lyon was properly accepted by the examiner and we affirm his conclusion on this issue.

THE RATE FOR NEW GAS-WELL GAS

As we have stated the basic standard for determining the price of new gas-well gas is the cost-finding technique we have employed herein. However, in determining the price for each particular area the Commission must, of course, consider other relevant factors in the area. The factors which are commonly considered in the design of rates include the impact of the prescribed rate on existing rate structures, the quality of the gas in the area, the historical prices in the area and other such factors.

The presiding examiner made two adjustments from his cost base on account of such factors in designing his ceiling price for the Permian Basin. Both were of major size. One was a downward adjustment of 1.25 cents in the ceiling price for new gas-well gas (his so-called "location factor") to reflect the fact that historically the average initial price for new gas in the Permian Basin has been lower than the comparable price in the 7 southwestern states.[20] The second adjustment was in the other direction and consisted of an addition of 1.0 cent as a so-called "gold standard" to reflect the fact that much of the gas in the Permian Basin was of less than pipeline quality and his view that such a premium should be permitted for pipeline quality gas.

We do not believe that either of these adjustments is appropriate. Rates should of course be designed so as to minimize any disturbances of existing pricing patterns to the extent possible consisting with the basic regulatory standards. However, nothing in the record in this case suggests that the ceiling prices we are prescribing for the Permian Basin require any such adjustments. No adjustment for "location factor," whatever that vague concept may mean, is required or is appropriate in this proceeding, either in the amount prescribed by the examiner or in any other amount.

As to the "gold standard" adjustment, we have made clear that the ceiling prices prescribed herein apply as true ceilings for gas of pipeline quality and we have accordingly prescribed standards of pipeline quality. These standards provide for both upward and downward adjustments in the ceiling price for new gas-well gas. The record is deficient as to the overall financial impact of these adjustments but in our determination of rate of return we have recognized that producers in the Permian Basin incur the risk that the gas they find and produce may not command the ceiling price. The absence of any definitive record support for a "gold standard" adjustment coupled with our reflection of the quality problem in fixing the rate of return satisfies us that area revenue requirements will be met.

In summary, when all of these factors are considered there is no justification in this area for any adjustment of a cost-determined ceiling price. We state again that the ceiling price we are here establishing is for the Permian Basin and that it is entirely possible that in other areas non-cost considerations may require adjustment of the cost figures in establishing the ceiling prices. We hold only that no such adjustments are required in the Permian Basin on the basis of this record. Accordingly we shall round off the cost determined price of 16.43 cents and prescribe a ceiling price for new gas-well gas of pipeline

[20] He used the seven southwestern states because figures for continental United States were not available.

quality in the Permian Basin at 16.5 cents per Mcf at 14.65 psia for gas produced and sold in Texas. The ceiling in Texas includes a production tax of 1.01 cents, which we round off to 1.0 cent, leaving a rate less production taxes of 15.5 cents. For gas produced and sold in the three New Mexico counties, Chavez, Lea and Eddy, the ceiling price shall therefore be 15.5 cents at 14.65 psia plus the applicable production taxes in effect as of the date of this opinion. These prices will apply to residue gas derived from new gas-well gas (see discussion, *infra*, pp. 210–212).

RATIONALE FOR A UNIFORM CEILING PRICE FOR FLOWING GAS

Casinghead Gas

Casinghead gas is the common name for gas produced from oil wells in conjunction with the production of oil. For purposes of the application of our ceiling prices herein, we shall follow the existing classification of casinghead gas by the appropriate State agency. Casinghead gas is often higher in Btu content than either residue or gas-well gas, and usually contains valuable liquids which are extracted before the gas is delivered to a pipeline. Casinghead gas is often delivered at low pressures, sometimes as low as 5 psig. Since oil wells in the Permian Basin are subject to restraints imposed by State regulation upon the amount of oil produced, casinghead gas can be obtained from a given well only for the period each month that oil is under State oil production controls. Correspondingly, since oil is the major product of an oil well, taking the casinghead gas cannot be deferred for any length of time for the buyer's convenience; it must be taken at the time the oil is produced, and the amount of gas is related to the oil production. Accordingly casinghead gas is not subject to the exclusive control of the buyer as to time of delivery. Ordinarily, however, processing plants will schedule deliveries from the various wells which they service in such manner as to maintain a substantially even output, so that irregularities in deliveries from particular wells are overcome to some extent for the pipeline purchasers from the processing plants. Nevertheless, this limitation on the deliverability of casinghead sometimes requires the pipelines to draw on additional gas-well gas to meet their commitments, and gas-well gas sources therefore provide a valuable flexibility in meeting the peak requirements of the pipelines.

Most of the casinghead gas sold in the Permian Basin is sold to processing plants under percentage contracts, which provide that the processors shall pay to the producers a stipulated percentage of the price which the processors receive upon sale of the residue gas plus an agreed percentage of the proceeds of sale of the extracted liquids. Under these arrangements, the price paid by the processor is immaterial to the consumer so long as the price of the residue gas conforms with the ceiling price established for such gas in this proceeding. The processor is controlled by certificate and rate schedule filings and producers who sell casinghead gas under such percentage contracts are not permitted to file rate schedules with this Commission (Regulations Under the Natural Gas Act, Sec. 154.91(e)). So far as such producers are concerned, any separate ceiling price for casinghead gas would have no application.

The second major type of contract under which casinghead gas is sold in the Permian Basin is the so-called Spraberry or El Paso contract. These contracts provide for the purchase of casinghead gas by a pipeline which processes the gas, pays the producer a percentage of the proceeds from the sale of the extracted liquids, plus a fixed price for the residue gas delivered to the pipeline. The examiner held that the payment arrangements provided for in the Spraberry contracts must be discontinued. He fixed ceiling prices of 10 cents per Mcf for

old casinghead gas and 11 cents per Mcf for new casinghead gas, to be paid for the raw stream (including liquids) without any additional compensation to the producers in the form of a percentage of the liquids or of the price received for them. In effect, he outlawed the Spraberry contracts and declared that only a flat amount, limited by the separate casinghead gas ceilings, could be paid for casinghead gas purchased under the Spraberry contracts.

The Major Producer Group has taken strong exception to this ruling, contending that pipelines will not be able to purchase casinghead gas if the presiding examiner's proposal is implemented, because producers would then prefer to sell to the processors under percentage contracts. They also assert that the Commission has no jurisdiction over the division of the extracted liquids.

We believe the presiding examiner was correct in holding that the sale of the casinghead gas to the pipeline under the Spraberry type contract is subject to Commission jurisdiction, and that this Commission has the power to regulate the price for the raw gas purchased even though it may include the heavier molecules which can easily be liquefied. The form of the contract provides for the transfer of title to the gas as casinghead or raw stream gas but the method of payment is based upon a specified price per Mcf for the residue volumes of gas and a percentage payment of liquid revenues. The Commission has no jurisdiction over the price at which liquids are sold but if payment for the raw stream is made in whole or in part on the basis of a percentage of liquids or liquid revenues, the Commission may still consider the liquid credits in controlling the amount of the payment for the gas.

The fact that the transaction is subject to our jurisdiction does not mean, however, that we must reject a common form of contract which has been found useful in the industry. We believe that regulation should utilize industry practices developed by the parties to meet industry problems to the extent consistent with maintaining effective regulation. The Spraberry contracts govern approximately 20 percent of the gas sold in the Permian Basin, and we do not think they should be discarded unless it can be shown that they give rise to abuses or evasions, or result in unjust and unreasonable prices to consumers. So long as the cost to the pipelines for residue gas under the Spraberry contracts does not exceed the applicable ceiling price for gas of similar quality, we see no reason to require the elimination of the Spraberry contracts.

There is no evidence in this proceeding that the pipelines' cost of gathering and processing the casinghead gas purchased under Spraberry contracts is greater than the revenues realized by the pipeline from the liquids extracted. As long as the liquid revenues to the pipeline equal or exceed the processing and gathering costs the consumer will be adequately protected by the ceiling here established for residue gas. If the cost of gathering and processing exceeds the pipelines' liquid revenues by an amount which, if added to the price paid for the residue gas, would exceed the ceiling price applicable to residue gas of similar quality, and appropriate reductions of the price cannot be negotiated, the purchasing pipeline may petition the Commission for relief pursuant to Section 5(a) of the Act by ordering an appropriate reduction in the price the pipeline pays for such residue gas.

Aside from gas sold under percentage contracts and Spraberry type contracts, only a negligible amount of casinghead gas is sold in the Permian Basin. In 1960, only three such contracts involved sales in interstate commerce of Permian Basin casinghead gas to pipelines. These contracts involved total revenues of less than $200,000 in 1960. The impact of these contracts upon prices to be paid by the ultimate consumer is *de minimis*. The contract prices were all under 14 cents. Additional reductions in price for quality deficiencies would reduce the

actually realized prices still further. The effect of these contracts is too small to warrant the establishment of a separate ceiling price for casinghead gas.

Aside from percentage contracts, there are also few contracts for sales in interstate commerce of casinghead gas to producer-owned processing plants in the Permian Basin. These contacts will have no direct effect upon the cost to the pipelines and the ultimate cost to the consumer, since the resulting residue gas sold by the processing plants will be subject to the ceiling price herein established for residue gas derived from casinghead. In the event it should be determined that these contracts have a sufficient effect upon the cost of the processing plants so that the latter must seek relief before this Commission, we may then consider whether the prices under such contracts must be subjected to additional regulation. The record in this proceeding does not reveal the need for any such regulation. In general, the prices under such contracts are at sufficiently low levels so that the processors should be sufficiently protected. We establish herein a ceiling price for all gas (except new gas-well gas and residue derived therefrom) which will be applicable, of course, to such contracts.

We believe it is of great importance to simplify the system of area rate ceilings to the extent practicable consistent with an effective system of price controls. In this light we conclude that there is no need for a separate casinghead gas ceiling in the Permian Basin at this time. In the future, should the lack of such a ceiling be found to encourage evasions of the general price ceiling, a separate ceiling price for casinghead gas may be established. With respect to the Spraberry contracts and all other contracts which, in addition to a payment for residue gas, call for payment for a percentage of liquids or turning over a percentage of the liquids to the producer, any alteration in the price paid for the residue gas or the percentage of the liquids due to the producer will be considered a rate change which must be filed with this Commission and the right to make such rate changes will be subject to the moratorium on rate increases imposed herein. Future contracts embodying such provisions are to be certificated only where the liquid percentage to be retained by the processor or the pipeline equals or exceeds the cost of gathering and processing performed by the processor or pipeline, or where the price to be paid for the residue gas is reduced below the applicable ceiling sufficiently to offset processing and gathering costs in excess of the value of the liquids retained by the processor or pipeline. In the absence of a contrary showing, percentages similar to those now in effect will be assumed to be compensatory and will be approved in future contracts for comparable gas under comparable circumstances.

Residue Gas

Residue gas is the gas remaining after casinghead gas or gas-well gas has been processed to remove liquids present in the raw gas stream in the form of vapor or droplets. Only three to four percent of the residue gas produced in the Permian Basin is derived from gas-well gas; between 96 and 97 percent comes from casinghead gas.

Residue gas in the Permian Basin is delivered at somewhat lower pressures, on the whole, than is gas-well gas. Most residue gas is delivered at pressures below 800 pounds, but deliveries of gas-well gas at pressures of 1,000 pounds and up are not uncommon. The cost of raising the pressure of gas to a given point is not proportionate to the added pressure, but is determined by the number of stages of compression (and the compression ratio) necessary to create the desired pressure. To raise the pressure of gas from 600 pounds to 800 pounds

will normally cost little more than to raise it from 700 pounds to 800, since in each case only one stage of compression will be necessary.

For purposes of applying the area prices prescribed herein, the ceiling price for new gas-well gas will be applicable to residue gas which is derived from new gas-well gas and the ceiling price for all other gas will be applicable to residue gas derived from casinghead gas or old gas-well gas.

We regard our determination that all gas should be priced on the same basis as old gas-well gas (except for the top ceiling we have established to encourage the search for new gas-well gas which is applicable to such gas whether or not it has been processed) as an important step toward simplified and realistic area price regulation. It is apparent, on this record, that no realistic cost of oil-well gas either as casinghead gas or residue gas can be established and that the various apportionments of the joint costs of gas and oil, or gas and liquids, do not yield results which may be accepted as reliable guides. The evidence in this case and the practical administration of area prices dictates that casinghead gas, residue gas derived therefrom, and old gas-well gas, should be similarly priced. Unlike new gas-well gas, there is no basis on this record for differentiation because of the incentive effect, or otherwise.

The examiner would provide separate ceiling prices for old residue gas and new residue gas. We do not believe such a complication of the area pricing structure is necessary or desirable. We have already made clear that the higher ceiling price for new gas-well gas will apply in the case of residue gas derived therefrom. However, over 96 percent of the residue gas produced in the Permian Basin is derived from oil wells, not gas wells. It results from the search for oil, which will not be stimulated appreciably by a higher price for gas. There is thus little to be expected in the way of increased gas supplies from providing a higher price for such residue gas. All residue gas derived from oil-well gas, therefore, will be subject to the same ceiling price as old gas-well gas.

As stated above, we adopt the presiding examiner's finding that residue gas derived from new gas-well gas is to be subject to the new gas-well gas ceiling. If this were not the case, producers of new gas-well gas would be deterred from selling such gas to a processor from whom they were unable to obtain new gas-well gas prices. With equal prices, gas-well gas will be sold to a processing plant whenever the sum received for the liquids exceeds the cost of processing. This is as it should be for it would be contrary both to good conservation practice and good economics for price regulation to interfere with the normal operation of market forces where these forces tend to provide the greatest possible benefits to the economy as a whole.

Hunt urges that residue gas must be priced higher than gas-well gas so that a processor selling residue gas can cover his processing costs plus a return on his investment in addition to the price of the gas-well gas he purchases. This reasoning ignores the fact that saleable liquid hydrocarbons are derived from the gas that is processed. The principal purpose of such processing is the removal of these liquids so that revenue may be realized from them. There is every reason to believe that the value of the liquids will be sufficient to justify gasoline plant processing of new gas-well gas. If not, there is no apparent economic reason to encourage the processing at gasoline plants.

We therefore reject the argument that the price of residue gas derived from gas-well gas should exceed that of gas-well gas. For the future, if processors of gas-well gas cannot buy gas-well gas at a price which enables them to make a profit on their operations at the ceiling prices we prescribe, we assume that

such gas will not be processed by the producers. As to presently existing contracts by processors for the purchase of gas-well gas, if proper price relationships cannot be negotiated relief may be afforded in a proper case under the special relief provisions set forth later in this opinion. There should be very few of such cases, in view of the extremely small percentage of residue gas derived from gas-well gas.

THE RATE FOR FLOWING GAS [21]

Basic Approach

In the previous section we explained why a separate ceiling is not appropriate for casinghead gas or for residue gas derived therefrom and why the cost of old gas-well gas may appropriately constitute the basic yardstick for establishing a single ceiling price applicable to all gas other than new gas-well gas. We proceed with a determination of the cost of old gas-well gas.

The examiner determined the cost of old gas-well gas by employing virtually the same method he used to establish the price of new gas-well gas, with certain cost components adjusted by trending to approximate cost levels in the prior years when the old gas-well gas entered the interstate market. The State of California and the Public Utilities Commission of California have urged that the historical composite cost-of-service for the Permian Basin area based on questionnaire data be used to determine the price of old gas-well gas. Staff's basic case consisted of a composite historical cost-of-service presentation which California Distributors and Staff in its reply brief suggest should be used as a check on the examiner's method of computation of the cost of old gas-well gas.

As we have previously found, the examiner's method which is designed to approximate needed expenditures for finding and producing future gas-well gas supplies is the proper one for fixing the price of new gas-well gas. However, flowing gas is in a different category. Changes in the price cannot increase substantially the total amounts of gas which are already dedicated to interstate commerce [22] nor can they materially affect the supply of oil-well gas which is discovered as a by-product of the search for oil, although they could to some extent affect the amount dedicated to interstate commerce in the future. The revenues received from flowing gas, should, therefore, be based on composite historical costs, including a fair allowance for expenditures for E&D. The price for flowing gas must also reflect the producers' need for revenues from their present sales to support future discoveries.

We believe that the most solid basis in the record for determining the just and reasonable price of old gas-well gas is the composite cost-of-service presentation for the Permian Basin made by the Commission's Staff. The presentation uses 1960 as a test year to determine the cost of old gas-well gas. An approach based on historical costs for flowing gas enables us to draw on the cost finding techniques applied in previous producer cases on an individual company basis. We shall, therefore, use the composite historical cost-of-service for old gas-well gas, for the 1960 test year, as the basis for the flowing gas price. While we place primary reliance on Staff's cost-of-service presentation, we shall later show that the examiner's method of trending back the new gas-well gas cost yields approximately the same cost and thus serves as a useful verification of our result.

It should be noted that we are utilizing a different cost-finding approach for flowing gas than that used in calculating the cost of new gas-well gas. The cost

[21] The term "flowing gas" in this section will be used to include all gas other than new gas-well gas or residue gas derived therefrom. It includes old gas-well gas, all casinghead gas, and residue gas derived from old gas-well gas or casinghead gas.

[22] To a small extent the price might affect the stage at which wells are abandoned because the proceeds of operation do not defray out-of-pocket costs.

of new gas-well gas was geared to the cost of finding and producing future gas supplies and as such was built up primarily from nationally published statistics and the questionnaire data which to a large extent identified costs that could be related to gas-well gas. We were thereby enabled to minimize the need for allocations. However, with regard to flowing gas our touchstone is the historical cost of the gas being produced in the Permian Basin in 1960. The primary data includes joint product lease costs and joint E&D expenditures, whereas for new gas-well gas the parties developed cost-finding techniques that minimized the allocation problems. In deriving the cost of the flowing gas-well gas, therefore, it is necessary to utilize allocations to a greater degree than for new gas-well gas (although to a much less extent than with casinghead gas) and for this reason the details of the cost computations of new gas and flowing gas will not be comparable.

The basic evidence utilized in Staff's composite cost presentation was collected for 1960. In addition, certain trend information was obtained for prior years. These and related data reveal that the 1960 level of costs is fairly representative of the costs during the three year period ending in 1960. While unit costs were somewhat lower in the earlier years, they leveled off in 1958 and so far as the evidence shows have never since exceeded this level. The 1960 test year is, therefore, typical of current and future costs of the flowing gas and it is also more than fair to the producers as a basis for just and reasonable prices for the prior years when costs were slightly lower. The alternative of a separate cost study for each of the years prior to 1960 would have presented an almost impossible task. At best it would have prolonged this proceeding greatly. Such an effort was not justified since little gas was selling in the 1954–1957 period at prices even approaching our ceiling as established herein.

Preliminary Questions

An initial question in using the composite cost-of-service approach for determining the rate for flowing gas is whether production costs should be determined on the basis of nationwide costs incurred by the producers operating in the Permian Basin or whether their Permian costs alone should be used. While the staff presented its evidence derived from the questionnaires to show costs both ways, it argued that the emphasis should be on the Permian Basin cost experience. The producers, on the other hand, argue that the nationwide basis should be used.

Other than for E&D, the data is available in the record to determine the costs incurred in the Permian Basin. The ceiling price we fix herein is an area rate for flowing gas in the Permian Basin, not a national price, and in our opinion should be based primarily on area costs.

The Major Producer Group argues that if area costs are used the demand for gas would tend to concentrate in the lower cost and lower priced areas at the same time that the lower prices would tend to discourage exploration and restrict supply in the area. This argument, if valid at all, would apply only to new gas-well gas where the price we fix could materially affect future discoveries, and there we rely on national data. We are here determining costs and rates for flowing gas in the Permian Basin and for such gas we shall, therefore, use Permian costs to the extent feasible.

While the principle is important the issue is not a major one in this area because the difference between national and area production costs is approximately 0.25 cents per Mcf in Staff's presentation.

A further preliminary question arises as to the use of the questionnaire data from Appendix C, the simplified form designed for producers with less than

10,000,000 Mcf of annual jurisdictional sales in 1960. The Commission's Appendix B is a comprehensive questionnaire designed for the major producers, those with 1960 jurisdictional sales in excess of 10,000,000 Mcf. Replies to the major questionnaire (Appendix B) were received in complete form from 67 respondents in the area. These respondents included 42 major producers [23] and 25 producers of less than 10,000,000 Mcf who voluntarily completed the form.[24] Appendix C questionnaires were mailed to all of the over 350 small producers in the area but responses were filed by only 105 of them. Of these only 60 were sufficiently complete to be compiled. The Commission's staff computed the results of the responses to Appendix C separately but included the Appendix C data in its composite cost of service.

The examiner concluded that the data provided by the major producers with respect to their Permian production was fully representative of area costs, but that the response from the small producers in the Appendix C group could not be used because the percentage coverage of the small producers was not large nor was the sample random.

We agree with the reasoning of the examiner. The issue is of a *de minimis* nature in any event because the percentage of gas produced in the Permian Basin by such producers is so small that the results could not be affected appreciably. The unit cost of gas in this proceeding would be increased by less than 0.07 cents per Mcf even if Appendix C returns were included. In these circumstances we shall rely exclusively on the Appendix B cost data.

The Composition of Costs

The total costs upon which the price for flowing gas is to be based may be divided into two principal categories: (1) production costs, which include operating expenses and DD&A (depreciation, depletion and amortization), as well as a return on the production investment and (2) exploration and developments costs (E&D), which includes an allowance for the expenses incurred in the search for gas. We are not concerned with the gasoline plant costs which the staff considered and treated at some length because, as already explained, in this area we are determining a price based on the cost of gas-well gas which will also apply to residue gas from other than new gas-well gas.

Production Costs

The compilation of the production costs by the staff is essentially the task of compositing by type of lease the items reported by the producers in response to the Commission's questionnaire and allocating the costs between gas and other products. The allocation problems which we shall discuss herein are the principal difficulties, but there are a number of other issues which must be resolved. They include the treatment of combination leases, corporate common costs, reinjected volumes, the development of oil and gas legs for allocation of production costs, and lease play allowance. These somewhat technical issues are discussed in Appendix C to this opinion. Otherwise the computation of the composite unit costs of production operating expenses, the composite rate base and the allowance for DD&A, simply involve the arithmetic of compiling the appropriate data. The results are shown in the summary at *infra*, page 216.

Allocation of Production Costs by the Relative Cost Method

There is of course no allocation problem in computing the production costs of dry gas-well gas. However allocations are necessary for the gas from gas

[23] This total includes all the major producers in the area, except one who did not fill out the questionnaire in a usable manner, although given ample opportunity to do so.

[24] The returns from these 25 producers do not affect the cost computations to an extent that would change the results.

condensate reservoirs. In computing the production operating costs for flowing gas-well gas we shall utilize the relative cost method to divide the joint production costs between the liquids and the gas on the gas condensate leases with lease separation.[35] The basic rationale of the relative cost method is that joint production costs should be allocated in relation to the separate production costs of oil and gas. This method is analogous to the allocation procedure used by United States agencies and approved by this Commission to allocate the cost of a multi-purpose hydroelectric dam between power, flood control and other beneficial uses.[36] The cost of the portions of a dam used for more than one purpose is allocated in accordance with the relative cost of a separate dam or other required facility for each purpose. Here the relative cost of each co-product, gas and oil, is used as the basis of allocating the cost of producing the two products jointly.

The first step in the relative cost method is to determine the unit cost of oil from leases producing oil only (the "oil leg") and the unit cost of gas from leases producing gas only (the "gas leg"). The unit cost for each of the two separate products is then multiplied by the volumes of liquid and gas produced on the joint production leases. This provides a total relative cost for the liquids and gas produced on such leases and a ratio of gas cost to total cost. This ratio is then applied to the total cost of the gas condensate leases in order to obtain the unit costs as they apply to the jointly produced gas.

While producer-respondents and the presiding examiner have questioned the use of the relative cost allocation method, it is relatively simple and workable, has been accepted in principle in our electric power work for decades, and has been repeatedly used and approved by the Commission in producer rate cases. *Phillips Petroleum Co.*, 24 FPC 537 (1960), affirmed *sub nom. Wisconsin* v. *F.P.C.*, 303 F. 2d 830 (1961), affirmed 373 U.S. 294 (1963), especially at pages 553, *et seq.; Hunt Oil Co., et al.*, 28 FPC 623, 624 (1962). The reasoning which supports the relative cost method of allocation in computing individual company costs is equally applicable to composite area costs. The detailed application of the method and the arguments against it are dealt with in Appendix C.

Rate of Return

Among the most important issues is the rate of return for flowing gas. We have already discussed in detail the many factors which led us to conclude that a 12 percent return is appropriate. Two of these factors warrant a somewhat different treatment in considering the appropriate return for flowing gas. First, the great bulk of the flowing gas was not found as the result of exploration or development directed toward gas but rather as an incident to the search for oil. In evaluating the risk factor for flowing gas we must therefore consider that there was by no means the same degree of risk knowingly undertaken in finding such gas as in the case of new gas-well gas. On the other hand, much of the flowing gas in the Permian Basin is below pipeline quality and thus will not command the ceiling price prescribed herein and this problem of low quality is more pronounced in flowing gas than in new gas-well gas.

In our judgment these two factors of lesser and greater risk considered together with the other considerations in our previous discussion of rate of return, which apply equally to flowing gas, persuade us that a 12 percent return is appropriate. Also relevant to our conclusion is the fact that revenues from flowing gas are a factor in the scale of exploration for new gas. Moreover,

[35] "Lease separation" refers to the separation of condensate liquids from the gas on the leased property, rather than by later processing.

[36] See, for example, order issued March 5, 1965, 33 FPC 411, in Docket No. E-6383, *Allocation of Costs, McNary Project, Columbia River Washington-Oregon*, and attached Bureau of Power report.

flowing gas includes new accretions of casinghead gas and residue gas resulting therefrom, the price of which may well determine the extent to which such gas is committed to the interstate market. Accordingly, we shall allow a 12 percent return on flowing gas.

Summary of Production Costs

Employing the relative cost method, making the other necessary determinations as discussed in Appendix C, and using the 12 percent rate of return, we arrive at 9.16 cents per Mcf for production costs, consisting of the following:

Production operating expenses	1.75
Depreciation, depletion and amortization	2.42
Return	4.99
	9.16

Exploration and Development Costs

Exploration and development costs pose a different problem than production costs. E&D covers dry hole expenses, geological and geophysical expenses, lease rentals, cancelled and surrendered lease expenses, and all other costs expended on nonproductive properties in the effort to find gas. Expenditures for E&D are not earmarked for particular producing areas but on the contrary are incurred on a nationwide basis by the major producers, who make these expenditures largely in accordance with prospects for discovery rather than on an area-directed basis. No one disputes the fact that the E&D allowance for flowing gas should be computed on a nationwide basis.

The principal problem is the proper allocation of total E&D expenditures between gas and liquids. The allocation problem is illustrated in our *Phillips* opinion, 24 FPC 537, 555–562 (1960). After closely analyzing many possible allocation approaches the Commission adopted the use of the modified Btu method in the Phillips case and reaffirmed it in *Continental Oil Company*, 27 FPC 96, 104 (1962); *Hunt Oil Company*, 28 FPC 623, 624 (1962); and *H. L. Hunt*, 28 FPC 897, 901 (1962).

The modified Btu method of allocation in the *Phillips* case was designed to utilize as a basic standard the relation of the fuel value of gas to the fuel value of oil, but at the same time adjust this relationship to reflect economic trends and the needs of the public for continued exploration and development. Thus the Commission considered not only the ratio of Btu's in a barrel of oil and in an Mcf of gas (about 6 to 1 for *Phillips* production), but also the increasing demand for gas compared to oil, the deeper drilling needed in exploring for gas, the upward trend of gas production, the ratio of the market price of gas to the price of oil, and other matters. Emphasizing that its determination was based on judgment, the Commission determined that an economic factor of 4 should be applied to the Btu content of oil to allocate *Phillips'* exploration costs. The resulting cost relationship of finding an Mcf of gas to one barrel of oil was then about 1 to 24, rather than 1 to 6 as on a straight Btu basis. The Commission pointed out that the result might well be different in a case, unlike *Phillips*, where rates were being determined for the future.

In the present area proceeding Staff, through Witness Lyon, advocated the general method used in *Phillips*, with certain refinements, the principal one being the use of separate economic factors for gas-well gas and casinghead gas, in place of the single factor provided in *Phillips*. The total national costs were apportioned by the Staff to the lease products on the basis of these factors, the amounts so allocated were divided by the respective national volumes of the lease products to determine national unit allowances, and these unit values were then imputed to the Permian sales.

The respondents proceeded differently. They propose to allocate the expenses of developmental dry holes on the basis of the well drilling intentions of certain producers who were polled, the expenses of exploratory dry holes on the basis of intangible drilling costs associated with successful wells, and remaining exploratory expenses on the basis of successful expenditures for gas reservoir reserves compared to oil reservoirs. For the separation of gas and condensate, respondents would convert the condensate back to vapor and allocate costs on the basis of the relative vapor volumes of the gas and the condensate.

The examiner correctly found the respondents' method unsound because it ignores the economic purpose of the driller. While a barrel of condensate is worth some 20 times the value of an Mcf of gas, under the producer's vapor volumetric method an Mcf of gas would be assigned about the same E&D expenses as a barrel of liquids which vaporizes to about the same volume as an Mcf of gas. We may also note that in the allocation of developmental dry hole costs there was a considerable degree of self-selection in the responses from the polled producers. Expressions of "intention" also involve subjective considerations. The data obtained are not the result of a random sample of all producers on an objective basis and do not offer a reliable foundation for fixing prices.

We have reviewed the evidence in the record on this issue and believe that Staff's general approach to the problem is sound but that the breakdown between gas-well gas and casinghead gas is an unnecessary complication of the allocation procedures.[37] The issue is one of exercising reasonable judgment in allocating the total cost between the co-products.

The basic staff method has been attacked by both the producers and the examiner as being circuitous, in that the existing price of flowing gas-well gas is used as one of the bases for determining what the price of flowing gas-well gas should be. We are now able to remove an element of circuitry from such an allocation by reason of the fact that we have computed a cost of new gas-well gas of 16½ cents per Mcf by an independent cost finding technique. We are thus able to relate the price of oil fixed by the marketplace to a separately established price of gas, to aid us in making these allocations.

The record indicates that the 1960 average price in the field for liquids is $2.90 per barrel which would be related to the 16½ cents per Mcf price of gas which we have established herein. The questionnaire data in this record reveals that the ratio of Btu's in a barrel of liquids to Btu's in an Mcf of gas-well gas is 5.1 to 1. Utilizing this Btu ratio and the independently established prices previously mentioned we arrive at a value relationship of a Btu of liquids to a Btu of gas-well gas of 3.45 to 1.[38]

There are other factors which must be considered in arriving at the economic factor for determining the appropriate allocations of E&D expenses between gas and oil. One such guide is the fact, established in the record, that the production costs of a Btu of oil are roughly 4½ times that of a Btu of gas. Another factor to be considered is that the 16½ cents price is one that we have determined to be appropriate for the future for new gas-well gas and that the price of gas moved sharply upward during the 1950's in relation to the price of crude oil. We must also consider that we are determining a cost to be used for fixing prices for flowing gas for the future as well as for the past.

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[37] The further breakdown between gas-well gas and casinghead gas would result in only a difference of 0.12 cent in the E&D expense allocated to flowing gas-well gas and involves the use of questionable value differentials.

[38] The price ratio of $2.90 per barrel of oil to 16.5 cents per Mcf of gas is 17.6 to 1. This ratio is then divided by the 5.1 to 1.0 Btu ratio to determine the value relationship of 3.45 to 1.

These considerations and the other data from the record relating to the allocation question, lead us to conclude that in allocating total E&D expenses, an economic factor of 3.5 should be applied to the Btu's of crude oil and condensate liquids production as compared with an economic factor of 1.0 for the Btu's of all gas. Allocations on a Btu basis so adjusted in our judgment will give proportionate weight to the costs, prices, quality and other economic relationships of the respective hydrocarbons.

We also believe that these relative weightings should be applied to the national production of hydrocarbons, rather than to the Permian Basin production because E&D is conducted on a national basis.[39]

Applying these factors to the national production, the E&D costs for flowing gas-well gas would be 4.08 cents. The details of the computation are shown in Appendix C, pp. 301–303.

Summary of the Cost of Flowing Gas

The cost of old gas-well gas may therefore be summarized in accordance with the evidence presented by Staff and the discussion above as follows:[40]

Production	9.16
Exploration and Development	4.08
Regulatory expense (see p. 197)	.14
	13.38
State production tax @ 7%	1.01
Total	14.39

COMPARISON WITH EXAMINER'S COMPUTATION OF COST OF OLD GAS-WELL GAS

As we noted at the outset we place primary reliance on the historical test-year cost of service presentation. However, the examiner's method of computing the cost of old gas-well gas, with the revisions we think necessary, serves as a useful check on the results. It yields a cost closely comparable to that derived from the more traditional cost-of-service approach.

The examiner found that the cost of old gas-well gas should be fixed at the average cost of gas-well gas produced in 1960. Gas produced in 1960 resulted from exploration and development conducted in some cases many years before, and the cost of drilling and equipping wells which produced gas in 1960 was incurred in years ranging over a span of two decades. Accordingly, the examiner adjusted his exploration and development costs to reflect the lower cost in earlier years.[41]

[39] There is in this case little difference in the practical result, since the application of these factors to area production rather than to national production would change the results of the cost computation by approximately 0.01 cent.

[40] There is no separate item for royalty payments because costs were computed on the basis of ⅞ of the actual volumes and the royalty payments were thus included as an integral part of the cost-of-service computations.

[41] In view of the impracticability of determining such costs directly, the examiner used the following procedure, outlined in Appendix C to the initial decision: "The purpose of this analysis is to compare the average finding cost of old gas-well gas (the gas produced in 1960) with the cost of finding new gas-well gas (the reserve additions found in 1960). The general procedure follows these main steps: (1) the total volume of gas-well gas produced in 1960 is distributed by estimated year of discovery; (2) the volume associated with each year of discovery is weighted by an index of drilling cost per Mcf for that year (1960=100); and (3) the results are totaled and then divided by 1960 production, thereby deriving a weighted average finding cost for the gas produced in 1960 relative to the finding cost of gas-well gas found in 1960. The basic data for this analysis consists of: (1) production of gas-well gas reserves; (2) estimates of annual additions to gas reserves; and (3) indices of annual drilling costs per Mcf of reserves added."

We think that the procedure used by the examiner to arrive at his old gas-well gas cost is reasonable but that certain items of his computation require revision.

The examiner found that total exploration and development costs for old gas (dry-hole costs, other exploration and development expenses, and allowance for growth) should be 25 percent below the figure of 4.12 cents per Mcf applicable in the case of new gas-well gas. This discount yielded a figure of 3.09 cents per Mcf for exploration and development. Production investment costs, DD&A and return, were similarly discounted 25 percent from the 3.95 cents and the 5.21 cents, respectively, applicable in the case of new gas-well gas, yielding a DD&A of 2.96 cents per Mcf and a production investment return of 3.91 cents per Mcf applicable to old gas-well gas.

Unlike production investment costs, exploration and development costs are not capitalized in our decision in this proceeding. They are expenses to be recouped by a producer in the year in which they are incurred. The fact that a lower original investment was necessary to produce gas flowing in 1960 does not affect the exploration and development expenses incurred in that year. Accordingly, these costs should not be discounted, but should be the same as those included in the computation of the cost of new gas-well gas. We shall therefore allow the same amount for E&D as we permitted in the price of new gas-well gas.

In computing the production investment for old gas-well gas staff contends that it should be 84 percent of the new gas-well gas investment cost rather than 75 percent as a result of two revisions of the examiner's method. Staff accepted the examiner's method of deriving the cost of flowing gas-well gas; however, it proposed an 84 percent rather than a 75 percent discount factor as a result of two revisions of the examiner's method.

Staff's first revision of the examiner's approach was a technical adjustment of the annual index of drilling and equipping costs per Mcf added. The examiner's index measures the trend of the allocated cost of total gas reserves added (gas-well gas and oil-well gas), whereas Staff's index measured a trend of unallocated gas-well costs per Mcf of gas-well gas only reserves added. Since we are deriving a gas-well gas cost it appears that Staff's index is preferable to the examiner's index. Staff has utilized an index which produces a result approximately the same as the examiner's but avoids many of the complicated allocations. Accordingly, we will use Staff's index of drilling and equipping costs.

Staff's second revision of the examiner's backtrend method was to apply its national drilling and equipping cost trend to the vintage mix of jurisdictional gas-well gas produced in the Permian Basin rather than applying the cost trend to the vintage mix of all flowing gas-well gas on a nationwide basis, as was done by the examiner. We have determined that the ceiling price for flowing gas-well gas should be fixed primarily on historical costs in the area (*supra*, pp. 212–214). Therefore, the gas-well gas cost trend should be applied to the vintages of gas-well gas in the area.

These adjustments result in a figure of 3.32 cents for DD&A and 4.38 cents for return on production investment rather than the 2.96 cents and 3.91 cents, respectively, used by the examiner.

With respect to all other items we shall follow the examiner's technique and use the same items of cost as used in the new gas-well gas computation. With respect to the amount for net liquid credit a word of explanation may be in order. The Commission concluded that the net liquid credit should be 3.10 cents per Mcf, rather than 2.68 cents per Mcf as allowed by the examiner. The Commission based its determination primarily on questionnaire data but in our discussion we pointed to the trend in recent years toward increased realization

of condensate per Mcf of gas. The trend for the future has limited application to the liquid credit for flowing gas, but we do not rely on this factor and it is not material to our conclusion. The liquid credit we used for new gas-well gas is primarily based upon the questionnaire data which reflects the historical experience of condensate production. The figure we adopted is lower than the amount that could be justified by the latest statistics showing condensate production from the recent discoveries, especially those at greater depths. We believe that our allowance for liquid credit conservatively reflects the condensate derived from the flowing gas-well gas the costs of which we are attempting to verify.

The examiner's computation of the cost of old gas-well gas and our modification of his computation of course reflect the net differences in numerous other items previously discussed in our determination of a new gas-well gas price. A complete comparative summary follows.

	Cost in cents per Mcf	
	Examiner	Commission
Exploration and development costs:		
Dry holes	1.07	1.42
Other exploratory costs	1.19	1.59
Allowance for growth	.83	1.11
Production operating expense	2.88	2.70
Net liquid credit	(2.68)	(3.10)
Regulatory expense	.14	.14
Depletion, depreciation, and amortization of production investment costs:		
Successful well costs	2.16	2.42
Lease acquisition costs	.57	.64
Cost of other production facilities	.23	.26
Return on production investment (at 12%)	3.91	4.38
Return on working capital	.20	.35
Subtotal	10.50	11.91
Royalty at 12½%	1.60	1.83
Production taxes [42]	.72	.90
Total	12.82	14.64

[42] Texas production taxes of 7 percent have been used in this computation. New Mexico taxes are lower, and both cost computations and the ceiling price should be reduced accordingly for gas produced in New Mexico. The amount of production taxes does not include taxes on the royalty payments which are chargeable to the royalty owner. The results, however, are identical to the alternative method summarized, *supra*, at p. 218in which royalty payments were computed as an integral part of the cost of service and the separate item for production taxes was somewhat higher because it included taxes chargeable to the royalty owner.

It is apparent that the results obtained by using the examiner's method, as adjusted in the light of the Commission's views on liquid credit, return and other items, conform very closely with the results obtained in the Commission's own historical cost computation.

THE PRICE OF FLOWING GAS

On the basis of an historical cost determination, as verified by the examiner's approach, we shall fix a ceiling price for flowing gas rounded off at 14.5 cents per Mcf at 14.65 psia for gas produced and sold in Texas. The ceiling price in Texas includes a 1.01 cent productive tax, which we round off to 1.0 cent, leaving a rate less production taxes of 13.5 cents. For gas produced and sold in the three New Mexico counties, Chavez, Lea and Eddy, the ceiling price shall therefore be 13.5 cents per Mcf at 14.65 psia plus the applicable production taxes in effect as of the date of this opinion. In accordance with the earlier discussion, this ceiling price will apply to all casinghead gas, and residue derived therefrom, both old and new, as well as to old gas-well gas and residue gas derived therefrom.

PRICE ADJUSTMENTS TO REFLECT QUALITY DIFFERENTIALS

The importance of quality standards as an integral part of our ceiling price becomes readily apparent if it is recognized that gas is purchased for its energy. The price of gas cannot be related to volume alone but must be related to units of energy free of impurities and sufficiently compressed to enter the pipeline if it is to serve as a mechanism to assure just and reasonable rates. The presiding examiner pointed up the importance of relating the quality of gas to its price as follows:

> * * * Lowering the quality of the gas is the same as raising its price. If the pipeline purchases gas of lesser quality than previously, bears the cost of additional processing to raise the gas to its former standard, and includes the added costs in its cost of service, the result is the same as if the prices charged for the gas by the producer were raised. A pricing system that fails to insure quality and value is a sieve. [*infra*, p. 366]

Some of the respondents have urged that no specific price differentials be established to reflect variations in quality. They argue that buyer and seller, after a ceiling price is fixed, will establish lower prices for gas of below standard quality by bargaining.

If we accepted the producers' contention, the burden of securing lower prices to reflect lower quality gas would be on the pipeline, and the record does not support the producers' contention that through bargaining the parties would necessarily agree upon prices for gas with quality deficiencies which were below the ceilings imposed for pipeline quality gas. A large loophole for evasion of ceiling prices would lie open; a producer receiving the ceiling price for inferior quality gas would be piercing the ceiling prices, insofar as the consuming public is concerned, just as much as if the producer were collecting an above-ceiling price for pipeline quality gas or deliberately diluting the gas with inert material. In addition, gas now flowing under existing contracts would not be repriced, whatever bargains might be made for the future. Its price would be governed by the existing contract terms, limited only by the applicable area price ceilings. We think, therefore, that in this proceeding we must require the area ceiling prices for new gas-well gas as well as flowing gas to be adjusted for departures from the standards for gas of pipeline quality. We believe that the record in this case provides an ample basis for the quality guidelines we here establish.

A preliminary question is the basis upon which the quality adjustments should be applied. We think these price differences should be predicated upon differences in the quality of gas sold under particular contracts rather than upon an averaging process. Such an approach is fairer to the individual producers, and avoids the possibilities of manipulation which would be inherent in a price system which failed to reflect quality differences in particular transactions.

Quality Standards

The first step in establishing price variations corresponding to variations in the quality of gas is to determine the quality standards which must be met if gas is to command the ceiling price applicable to its particular category. There are several quality factors which require consideration in establishing prices in the Permian Basin and we shall discuss each of them separately.

Sulphur

Sulphur, hydrogen sulphide, and other sulphur compounds are the most prevalent impurities in gas in the Permian Basin. The problem is greater here than in any other area in the country. The generally accepted standard

in the Permian Basin, which we here adopt, is that gas which contains more than 10 grains of hydrogen sulphide or 200 grains of total sulphur per Mcf is designated as "sour gas" and is not considered to be of pipeline quality.[43] Gas containing 10 or less grains of hydrogen sulphide and 200 or less grains of total sulphur is known as "sweet gas" and is considered to be of acceptable pipeline quality in this respect. These standards are not only generally accepted in the Permian Basin, but it does not appear that any different standard with respect to sweet and sour gas is applied in other areas.[44]

Water

The record establishes that an accepted standard for pipeline quality gas in the Permian Basin is that the gas shall not contain in the aggregate more than 0.009 pound per Mcf of water, either in the form of liquid or vapor.[45] The prevailing national standard appears to be that gas should contain no more than 0.007 pound of water per Mcf of gas. Even more stringent standards appear in some of the contracts for sale of gas in the Permian Basin.

It may be argued that, since the national average cost has been used in arriving at the ceiling price for new gas-well gas fixed in this proceeding, the national standard for such gas should apply rather than an area standard. Until such time as this Commission has by rule established a different standard, we prefer to adhere to the accepted practices of the industry in the area and we shall consider gas in the Permian Basin containing not more than 0.009 pound of water per Mcf to be of pipeline quality.

Carbon Dioxide

Carbon dioxide is found in excessive quantities, sometimes as much as half of total volume, in 2 to 3 percent of the gas produced in the Permian Basin. It is not combustible and so has no value as fuel. Under the present technology, it contributes nothing in the way of liquids and is valueless to the petrochemical industry. It is not merely a diluent which reduces the value of the gas in proportion to the extent that it is present; it combines with H_2O to form a comparatively mild acid which has a corrosive effect on pipelines. When present in large quantities, its removal is required before the remaining gas can be considered to be of standard pipeline quality, and extraction may be costly.

The evidence in the record indicates that where carbon dioxide is a problem in the Permian Basin, it comprises over 5 percent of the volume of the gas. However any amount of carbon dioxide reduces the value of the gas and we believe that the presence of more than 3 percent of useless diluent in the gas sold to a pipeline would require a reduction in the price. Accordingly, for the purpose of this proceeding, a standard for pipeline quality gas shall be that carbon dioxide shall not exceed 3 percent by volume.

Other Impurities

There was no testimony in the record with respect to impurities other than carbon dioxide, water, sulphur, hydrogen sulphide, and other sulphur compounds. Some filed contracts contain clauses requiring the gas sold under them to be free of oxygen, dust, dirt, gums, and other substances. Precise standards cannot be established with respect to these impurities. The only standard which

[43] Total sulphur shall be determined as provided in: "Test for Total Sulphur In Fuel Gases" ASTM Designation: D 1072–56, adopted 1956.

[44] We are cognizant of the slightly more liberal definition of sweet gas used by the State of Texas.

[45] Water vapor content is to be determined as provided in: "Test for Water Vapor Content of Gaseous Fuels By Measurement of Dew-Point Temperature" ASTM Designation: D 1142–58, adopted 1953, revised 1958.

may fairly be applied, on the basis of this record, is that such impurities will be considered excessive to the point requiring a reduction in the price of the gas if they are present in sufficient amounts so that a pipeline incurs processing costs to remove them from the gas.

Btu Content

The record in this case reveals that in the past the level of Btu content (other than loss of Btu's resulting from excessive carbon dioxide content) has not been a substantial problem in the Permian Basin. Contracts for sales of gas in the Permian Basin generally contain clauses specifying that the Btu content of the gas sold shall not be less than a minimum, generally 1,000 Btu's, and little gas below that level (other than gas containing substantial amounts of carbon dioxide) has been sold in the Permian Basin. Any attempts to evade the ceiling prices for flowing gas imposed herein by reducing the Btu content of the gas below current standards in the area will come to our attention and may be dealt with as the occasion demands. Under these circumstances we see no need to establish any standard Btu content for flowing gas in the Permian Basin so long as present conditions continue.

Looking to the future, however, we believe that it is important that we implement the general principle that Btu adjustment provisions "are in the public interest", advanced in our recent decision in *Texaco Inc.*, Opinion No. 464, 33 FPC 1228 (decided June 10, 1965). While Btu adjustments have not played a major role in the Permian Basin in the past we believe it important that our price for new gas-well gas reflect the energy content of the gas, which in reality is what the consumer is purchasing. We therefore believe it is necessary and appropriate to provide an upward adjustment for this premium quality feature of benefit to the consumers as well as to provide downward adjustments for deficiencies in quality for new gas-well gas. Such adjustments are to be used in computing the applicable pice for new gas-well gas irrespective of whether the underlying contracts contain a Btu adjustment clause. However a producer will of course be limited by his contract if it is below the applicable ceiling as adjusted.

We believe the weighted average Btu content of gas-well gas in the area should generally be used as the guideline for upward adjustments. The weighted average Btu content for gas-well gas in the Permian Basin as shown in Exhibit 118 is 1,042 Btu's per cubic foot. That exhibit reflects the facts for over half of the gas-well gas in the area, and while the precise figure may be somewhat higher or lower, the exhibit indicates that the weighted average is certainly well above 1,000 Btu's per cubic foot and does not exceed 1,050 Btu's. Accordingly, in computing the quality adjustments to the ceiling prices for new gas-well gas we shall permit an upward Btu price adjustment from a base of 1,050 Btu's per cubic foot on a proportional basis above the ceiling price fixed herein. The record also reveals that a minimum standard for pipeline quality gas in the Permian Basin is 1,000 Btu's per cubic foot. The 1,000 Btu minimum is not a national standard but is based on the evidence of the practice in the Permian Basin. We shall accordingly provide a downward adjustment for new gas-well gas from a base of 1,000 Btu's on a proportional basis from the ceiling price fixed herein.[46] The range of 1,000 to 1,050 Btu in which no adjustment will be required in the Permian Basin is not necessarily controlling for other areas where the record may well suggest a narrower range.

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[46] For example, new gas-well gas containing 1,155 Btu's will be allowed a 10 percent increase in rate, and new gas-well gas containing 950 Btu's will be subjected to a 5 percent reduction in rate.

The Btu content of the gas to be used in determining price adjustments can be defined as the total heat value of the standard cubic foot as specified in Opinion No. 464. So that no producer will be penalized twice by the application of a reduction in rate for Btu deficiency in addition to a reduction required by the presence of carbon dioxide or other impurities, the Btu content should be measured after any necessary processing of the gas to remove impurities, as well as after removal of any liquids for which the buyer pays separately, whether on a percentage basis or otherwise.

Pressure

The question of pressure is more complex. Gas cannot enter a pipeline unless it is under greater pressure than the pipeline pressure at the point of entry. Gas of lower pressure must be compressed to raise its pressure above that of the pipeline which it is entering. It is not the number of pounds by which a given quantity of gas may fall over pipeline pressure that is important, but the number of stages of compression through which the gas must be put in order to raise its pressure suffiiciently. The majority of the main-line pipelines in the continental United States operate to maintain a pressure at the compression stations ranging from 800 pounds to 1,000 pounds per square inch (psi) or about 900 psi on the average. Evidence in this case of actual delivery pressures for producers in the Permian Basin indicates that pipeline purchasers in the Permian area have main-line operating pressures averaging about 800 psi. Thus we are presented with the question of whether a national pressure standard of some 900 psi should be adopted here or whether we should use the average pressure in the Permian Basin of about 800 psi.

It could be argued that where national average cost is used in establishing a ceiling price, the average national pressure should also be used in establishing the standards to which gas priced at the ceiling must conform. However, the prices we fix here are area prices, and may be modified in other areas for factors other than cost. The adoption of a 900 pound pressure standard for the Permian Basin would require a price reduction on all Permian Basin residue gas and nearly all gas-well gas. While delivery of gas at higher pressure would confer some benefits on the pipeline (by reducing the amount of compression needed to move gas along the pipeline) it seems inequitable to penalize the producers and processors who deliver gas at the pressure for which the pipeline is designed and who in many cases could have delivered it at higher pressure if called upon to do so, without additional expense. The physical equipment in the Permian Basin is now largely geared to delivery at 800 pounds pressure. We shall therefore adopt an 800 pound pressure standard for the Permian Basin.

The Amount of Price Adjustment

In accordance with the foregoing, we set forth the following principles to govern price adjustments when a purchaser buys gas which deviates from the standards here established for gas for pipeline quality:

(1) The applicable ceiling price shall be adjusted downward by the net cost of processing the gas to bring it up to standard, by the amount of any applicable upward or downward Btu adjustment (for new gas-well gas only) and by the amount of any saving or additional expense to the seller from any reduction or increase in taxes or royalty payments resulting therefrom.

(2) If the processing is performed by the purchaser, a reasonable return upon the required investment should be included as a part of the processing cost incurred in bringing the gas up to pipeline quality.

(3) If processing reduces the volume of the gas, the purchaser shall pay for only the volume remaining after processing.

Procedure

In establishing a procedure for determining the amount of the reduction in the ceiling price applicable in the case of gas with quality deficiencies, our purpose is to impose the minimum regulatory controls required to carry out effectively our responsibilities to assure wholesale customers that the price they pay will be just and reasonable. Accordingly, sales by small producers that are covered by the proposed small producer certificate rule, shall be exempt from such adjustments on the *de minimis* principle, because the burden and expense involved would in most cases exceed the amount of the adjustments. Furthermore, the major producers, processors, and pipelines will be allowed in the first instance to establish among themselves, in accordance with the standards set forth here, the amounts by which ceiling prices should be adjusted in the case of each individual contract which deals with gas which deviates from the quality standards herein established. If the parties reach agreement that no change from the ceiling price is required or that a specific price adjustment is required, a statement of the agreed price for the gas shall be filed no later than 90 days from the effective date of this order. The producer as part of the statement shall itemize the amounts and nature of each of the quality adjustments and explain the basis therefor, and set forth the price agreed upon by the parties as representing the applicable ceiling price as adjusted.

If the parties are unable to agree upon any or all of the quality variations of the gas or the costs of remedying defects (except for sales by small producers exempt from these quality adjustments), the required statement must so indicate and the seller must supply the itemized information required to compute the applicable ceiling price as adjusted. The buyer will be given an opportunity to state its position and the Commission will then determine the applicable area rate. Pending such determination, the seller may collect a price not in excess of the unadjusted area ceiling price for the type of gas in question, subject to the obligation to make refund of any excess collected, from the effective date of this order, above the applicable area rate (the ceiling rate reduced by the cost of processing to correct quality deficiencies and, in the case of new gas-well gas, further adjusted for Btu variations) ultimately determined to be proper.

No pipeline will be entitled, as part of its cost of service, to any amounts paid for gas in excess of the applicable ceiling price as adjusted in accordance with the standards and principles set forth in this opinion. The acceptance for filing of any amendment or certificate, or the failure to suspend any rate so established, shall not prevent the application of this rule.

It is our expectation that this procedure will result in the parties determining the proper adjustments in price levels to reflect differences in the quality of gas sold. Should this objective not be realized and should the Commission be confronted with a large number of contests, or should it be found that evasion or abuse is prevalent, it may be necessary to take measures to fix the precise price variations corresponding to variations in gas quality.

PETITIONS FOR SPECIAL EXEMPTION FROM THE AREA RATES

We have already discussed *supra* at pp. 176–180 why we believe that maximum area rates can and should be established as the just and reasonable rates applicable generally to the sales of natural gas in the Permian Basin. The question remains what procedure or procedures should be adopted for the benefit of those respondents who, by reason of special circumstances, believe they can demonstrate that they are entitled to variant treatment.

First, we should frame the limits of the problem. We are not here treating sales to be permanently certificated after the effective date of this decision. In the future it would normally not be in the public interest to certificate sales of gas (including gas flowing under temporary certificates) at initial prices above the applicable area rate. While we do not visualize any reason for certifying any new sales at prices above the just and reasonable ceiling price, any producer unwilling to accept a certificate at the appropriate ceiling will have an opportunity to show in the hearing on his certificate application the special circumstances which he believes warrant making an exception in his case in the public interest.

The problem for our immediate attention thus relates solely to gas presently being sold under outstanding certificates. Our decision herein has a double impact on the gas presently flowing in interstate commerce from producers in the Permian Basin. It fixes a price for the future, and it determines the basis for refunds for past periods. We shall first discuss the basis for permitting special exceptions to the area rate with respect to future rates for flowing gas and later discuss the question of relief from refund requirements.

It would seem clear that where a producer who has contracted for an above-ceiling price can show that his out-of-pocket expenses in connection with the operation of a particular well are greater than the revenues under the applicable area price, he should be entitled to appropriate relief, and there may be other circumstances where a producer as a matter of law or in the public interest would be entitled to some relief.

We need not and cannot here specify all of the special circumstances which may serve as a basis for exceptions to the area rate. It is clear however that confiscation does not result merely because, as a result of high costs or low production, a given producer cannot, at the area price, recover his expenses for his unsuccessful exploration and development costs and earn the 12 percent overall return on producer investment rate base which we have adopted as the appropriate return to attract capital on an area-wide basis for gas exploration and development. We recognize that any amounts received by the producer for flowing gas above out-of-pocket expenses would be available to finance further exploration, but no producer has a constitutional right to a price for the future which will enable him to expand his venture in the interstate gas business and the inability to earn such allowances at the area ceiling cannot be characterized as confiscation. As the Court of Appeals for the District of Columbia recently observed, "the Commission is not required to subsidize high cost producers with consumers' money." *Atlantic Refining Co.* v. *F.P.C.*, 316 F. 2d 677, 680 (CADC–1963); see also *Callery Properties, Inc., et al.* v. *F.P.C.*, 335 F. 2d 1004 (CA5–1964). The same rule certainly applies to the development of reserves which are held off the market for speculative purposes.

Even in situations where producers are able to show that they are entitled to relief from the obligation to continue to sell flowing gas at the appropriate area ceiling, in most cases it may be sufficient to permit them to abandon their unprofitable sales. Unlike the case of some public utilities which cannot abandon service without harming the public dependent thereon, we will seldom have a situation in which a particular producer's abandonment of some or all of its sales in the area will significantly affect the purchasing pipeline, to say nothing of the ultimate gas consumer. There may, however, be some exceptional situations where abandonment could be shown to be detrimental to consumers, or where the producer could demonstrate that some other form of relief would best serve the interests of the public as well as his own.

The remaining confiscation question is with respect to refunds for past periods. On a composite basis the area ceiling prices for both flowing and new gas provide a reasonable allowance for exploration and development and production operating expenses in addition to a 12 percent return on the producing investment. As we stated earlier, a claim that it would be confiscatory to require the refund of amounts a producer has collected above the area rate cannot be supported by the fact that a particular producer in the past has chosen to spend more than a reasonable allowance in what proves to be unsuccessful or marginal exploratory efforts or by the fact that unit production costs are high because for speculative purposes or other reasons the producer has withheld from production gas that he has discovered. On the other hand it seems clear that a producer should not be required to make refunds for past periods which would deprive him of amounts sufficient to cover his out-of-pocket operating expenses in the Permian Basin for such period. We need not consider other situations at this stage of the proceeding; it is sufficient to note that here too we will entertain petitions for special relief, and that the dockets involved will remain subject to the existing interest obligations pending their resolution.

We need not speculate further here as to the exact circumstances in which special relief may be warranted from the area price maximums for some or all of a producer's sales, or the appropriate nature of such relief. Any producer claiming that he is entitled to special relief from the maximum rate set for any of his Permian sales or from the refund obligations imposed herein may file a petition for such relief with the Commission consistent with the general guidelines set forth herein. Any such petition will be disposed of as promptly as possible. Since the petitioner will bear the burden of showing that he is entitled to special relief the producer (unless authorization is granted for temporary abandonment) will not be relieved of his obligation to continue service at the appropriate just and reasonable rate pending the determination of his petition. See *The New England Divisions* case, 261 U.S. 184, 198–199 (1923).

CHANGES IN THE AREA RATE

Our adoption here of a two-price vintaging system of fixing just and reasonable producer prices simplifies questions as to the appropriate or permissible methods for changing such prices. The two-price system enables us to provide a higher price for future discoveries if justified by changed circumstances. It is unlike the situation resulting from the utilization of a single price based upon historical costs, where significant changes in conditions may necessitate a change in the just and reasonable price for all gas. For example, an indication that new well drilling costs were increasing might (all other things being equal) demonstrate that a higher price should be set for gas certificated at some date in the future but would not necessarily show that the just and reasonable price we here prescribe for gas already flowing requires revision. Other changes unrelated to the continuing operations under which flowing gas is brought to market will be relevant only to the question of whether a new price should be set to govern future sales, thus permitting price stability for gas already dedicated to the interstate market.

This does not mean that the just and reasonable price for flowing gas can never vary. We have fixed the price of the pre-1961 gas-well gas and all other gas on the basis of the composite cost showing of gas-well gas for the Permian Basin in 1960. Of course if it could be shown that the average rates of take of such gas had significantly dropped or that the continuing operating costs of the gas wells had increased significantly, it might well be that the maximum just

and reasonable price for such gas should be adjusted. This would also be true for the gas coming into the market since 1960, although the evidence of record indicates that costs have remained remarkably steady during the ensuing years and are likely to remain stable during the moratorium period prescribed herein. Essentially, under the type of pricing we are instituting, the cost of flowing gas-well gas and all casinghead gas and residue gas derived therefrom will tend to remain relatively constant and permit stable rates, even though changing circumstances might demonstrate the need for new and substantially different rates for gas-well gas coming on to the market at later periods.

In this framework, we approach the question of the appropriate mechanism for altering the area rates. We can, of course, in this proceeding fix the just and reasonable price only for gas flowing pursuant to outstanding certificates. We believe that a moratorium for new rate increase filings above the applicable area ceiling prices for a 2½ year period is essential if our decision herein is to achieve effective control over producer prices. In the absence of such a moratorium the producers would be free to file rate increases and continue to collect their producer prices even though they exceeded the just and reasonable rates herein prescribed. Without a moratorium, the conclusion of one area proceeding would only signal the beginning of the next, and just and reasonable rates for consumers would always be one area proceeding away.

The Supreme Court recently noted the obvious inadequacies of the refund obligation as a protection of the public interest (*F.P.C.* v. *Tennessee Gas Transmission Co.*, 371 U.S. 145, 154, 155 (1962); *F.P.C.* v. *Hunt*, 376 U.S. 515, 524 (1964)). Without the moratorium we have provided the public interest could be protected only to the extent that the Commission could devise procedures to enable it to complete an area proceeding within the 5-month suspension period or shortly thereafter. See *F.P.C.* v. *Tennessee Gas Transmission Co., supra; cf. Panhandle Eastern Pipe Line Co.* v. *F.P.C.*, 236 F. 2d 606 (CA3–1956).

While the Supreme Court's description of a Section 5 producer rate proceeding in the *Catco* case as "well nigh interminable" is, we hope, no longer apt, the more than four-year history of this case, conducted with acute awareness of the running of time, demonstrates that we are dealing with inherently time-consuming proceedings. We expect to complete future area cases in much less time, but we would be unrealistic in the extreme to assume that any rate proceeding could be completed in less than several times the length of the 5-month suspension period. Without the limited moratorium on rate filings prescribed by our order herein this mammoth proceeding would fix prices for only a 5-month period and the producers could then overturn the Commission's order by a series of new filings to reinstate their pre-existing rates.

It is our view that the filing of rate increases by a natural gas company pursuant to Sections 4(d) and (e) can be limited either by private contract or as a result of the reasonable exercise of this Commission's authority under Sections 5, 7, and 16 of the Act. Certainly, it would be an anomalous situation if the filing of rate increases could be restricted by private bargaining but not by reasonable exercise of regulatory authority in the public interest. We have exercised such authority in this initial proceeding fixing rates on a group basis under the Natural Gas Act because it is an essential feature of the area approach if it is to achieve effective control over producer prices for the protection of consumers. We believe the 2½ year period is the minimum time required to afford price stability that will be beneficial to consumers and the industry as well. Considering the evidence of stable costs, and the provisions for earlier relief, if warranted, this limited moratorium is not unfair to producers.

The producers nevertheless contend that pursuant to the provisions of Section 4(d) of the Act, a natural gas company has a right to file any contractually authorized rate increase even if the Commission has just held that the maximum just and reasonable price for such sale is of a lesser amount. They argue that the only procedure available to the Commission is to enter into the suspension and hearing procedure established by Section 4(d), with the company having the right to put the increase into effect subject to refund at the end of the maximum statutory five months' suspension period.

We do not believe that the Commission's powers are so limited that its regulatory efforts must be futile where after a long and full hearing we have determined the just and reasonable rates to be set for the future. The *Mobile* case (*United Gas Pipe Line Co.* v. *Mobile Gas Service Corp.*, 350 U.S. 332, 339 (1956)) made clear that:

> * * * § 4(d) is simply a prohibition, not a grant of power. It does not purport to say what is effective to change a contract, any more than § 4(c) purports to define what constitutes a "contract" that may be filed with the Commission. The section says only that a change *cannot* be made without the proper notice to the Commission; it does not say under what circumstances a change *can* be made * * * [emphasis in original]

It is true that despite the Court's explanation of the meaning of Section 4(d) as simply a prohibition on filings, and not a grant of power, the opinions of the Court in *Mobile* and in the subsequent *Memphis* case (*United Gas Pipe Line Co.* v. *Memphis Light, Gas & Water Division*, 358 U.S. 103 (1958)), contain dicta to the effect that a pipeline can file for such increases as are contractually authorized and after the suspension period, put them into effect subject to refund. See also *Atlantic Refining Co.* v. *Public Service Commission of New York* (CATCO), 360 U.S. 378 (1959). These dicta must be read in context of the issue raised in the cases, which was the effect of restrictions on increased rate filings by pipelines stemming from contractual limitations by the parties in circumstances where the pre-existing rate had not been fixed by the Commission pursuant to its authority to prescribe just and reasonable rates for the future. These cases dealt with regulation on an individual company basis in which there is a long administrative history of permitting increased rate filings and where the Commission as a matter of policy has never written a moratorium into a rate order. They are entirely consistent with our recent order in *United Gas Pipe Line Co.*, Docket No. RP65-1, 32 FPC 1164, issued October 22, 1964, where in refusing to reject an increased rate filed by a pipeline we made clear that "the Commission is [not] completely without discretion to impose by rule or by order a reasonable moratorium on the filing of rate increases under Section 4(d) of the Act in circumstances where the orderly administration of the Natural Gas Act makes such conditions necessary."

The authority we assert herein is neither novel nor unique as applied to group rates set after full agency hearing. The ICC operating under a statute containing language virtually identical to Section 4 of the Natural Gas Act long ago stated that "to say that the Commission's order may be defeated merely by publication and filing of a rate higher than that prescribed by the order is to say also that the shipping public is not entitled to the protection of this Commission's orders during the period they are in force * * *." (*City of Springfield, Tenn.* v. *Louisville N.R. Co.*, 53 ICC 603, 605, 606 (1919); see *Fifteen Per Cent Case*, 45 ICC 303 (1917).) The CAB has similarly held that a group rate fixed by the Board could only be modified by subsequent Board action and not by a carrier's unilateral filing. *Minimum Rates Applicable to Air Freight* Order No. E-17370, 34 CAB 263 (1961).

The Supreme Court has expressly held in *United States* v. *Corrick*, 298 U.S. 435, 439, 440 (1936), that where the Secretary of Agriculture under the provisions of Section 310 of the Packers & Stockyards Act (7 U.S.C. § 211 (1921)) prescribes "the just and reasonable rate or charge, * * * to be thereafter observed" such rates "become the only lawful rates and so remain until further order of the Secretary" and cannot be altered by the unilateral action of a particular marketing agency pursuant to provisions of Section 306 of the Packers & Stockyards Act (7 U.S.C. § 207). That section is virtually identical with Section 4 of the Natural Gas Act.

It cannot be argued that the ICC and Packer & Stockyards Acts precedents are not in point because those acts expressly provide that orders fixing just and reasonable rates "shall continue in force until [the agency's] further order" (see *Interstate Commerce Act*, § 15(2), 49 U.S.C. § 15(2); (1887); *Packers & Stockyards Act*, § 313, 7 U.S.C. § 214). The ICC adopted the position noted above before the language in question was introduced into its Act in 1920[47] and the Supreme Court in *Corrick* supported its conclusion not by reference to the different language of Section 313, but by the quoted language of Section 310 which parallels Section 5(a) of the Natural Gas Act and by citing its earlier decision in *Arizona Grocery Co.* v. *Atchison T. & S.F. Ry Co.*, 284 U.S. 370 (1932), standing for the general proposition that where the agency "declares a specific rate to be the reasonable and lawful rate for the future, it speaks as the legislature and its pronouncement has the force of a statute" (284 U.S. at p. 386).

The absence in the Natural Gas Act of language similar to that found in Section 15(2) of the Interstate Commerce Act and Section 313 of the Packers & Stockyard Act, means only that Commission orders under Section 5(a) do not automatically have the effect of tolling the availability of Section 4 filings (see *United Gas Pipe Line Co., supra*). It leaves the Commission free to exercise its express authority to "fix" by order "the just and reasonable * * * rule, regulation, practice or contract to be thereafter observed and in force" (Section 5(a)) and to "perform any and all acts and to prescribe * * * such orders, rules and regulations as it may find necessary or appropriate to carry out the provisions of this act" (Section 16); See *Public Service Commission of New York* v. *F.P.C.*, 327 F. 2d 893, 896–897 (CADC–1964).

The Commission under Sections 5(a) and 16 of the Natural Gas Act may impose a reasonable moratorium on increased rate filings under Section 4 which are inconsistent with the just and reasonable rates found after hearing, and require that during this period the just and reasonable rates be changed, if at all, solely by modification of its original decision after appropriate proceedings held in that docket. The orderly administration of the Natural Gas Act necessitates that we exercise such authority in fixing the rates for sales by gas producers on an area basis.

It will therefore be our policy to certificate new sales of gas in the future at initial prices no higher than the just and reasonable price for new gas, and upon condition that no increased rate higher than the ceiling price be filed before January 1, 1968 (a 2½-year period which we believe to be the reasonable duration for a moratorium on filings for rates higher than the ceiling prices fixed on the basis of this record), unless within such time, either upon the Commission's own motion or upon an adequately supported petition by some interested party, the Commission at its discretion decides to reopen this proceeding to consider whether a different rate or rates should be adopted for sales certificated at subsequent periods. We expect that the just and reasonable rate for new

[47] *Cf.* Section 4 of the *Hepburn Act of 1906* (34 Stat. 589) with Section 418 of the *Transportation Act of 1920* (41 Stat. 484).

gas would constitute the maximum price at which new gas would be initially certified, the so-called "in-line" price, until the just and reasonable rate is changed by the Commission.

As to existing sales, whether they fall within the categories to which the flowing gas or new gas-well gas rates are applicable, we shall, pursuant to our authority under Sections 5 and 16 of the Act, similarly provide against any filing of rate increases above the applicable ceiling price fixed herein before January 1, 1968, but will permit any interested party within such period to file a petition directed to the Commission's discretion, showing why it believes the proceedings should be reopened to consider earlier changes. The Commission reserves the right to reopen the proceeding in its discretion to permit earlier changes in rates in the event of drastically changed circumstances. In any event after the 2½-year period, we shall also permit contractually authorized rate increase filings to be made pursuant to Section 4 for all sales in the area.

MINIMUM RATES

The examiner found that certain contracts in the Permian Basin were "below the revenue standards" he adopted. While the record is not clear on this point many of these contracts presumably were negotiated at a time when natural gas was a by-product of the search for oil and the interstate markets had not yet developed.

To aid in rectifying the situations where producers had contractually precluded themselves from obtaining an increase in price of their gas, the examiner authorized the seller, with the consent of his buyer, to increase his rates up to the minimum established in the decision; to wit, 9 cents per Mcf of gas-well gas and 7 cents per Mcf for casinghead gas.

The Supreme Court in *F.P.C.* v. *Sierra Pacific Power Co.*, 350 U.S. 348 (1956),[48] recognized that this Commission possesses the power to authorize rate increases despite contractual limitations to the contrary. However, the Court was careful to point out that such an order required as a foundation more than the mere fact that, because of an improvident bargain, a utility was receiving less than a fair price for its product. The Court said (at p. 355): "In such circumstances the sole concern of the Commission would seem to be whether the rate is so low as to adversely affect the public interest—as where it might impair the financial ability of the public utility to continue its service, cast upon other consumers an excessive burden, or be unduly discriminatory."

It is thus clear that the test of whether rates should be increased is not one of private equities but of the public interest. It is also clear that the examples set forth by the Court are not, and were not intended to be, the only instances where public interest would justify an authorization to increase rates in contravention of a contract. In addition it should be noted that the *Sierra* case was decided in the context of an individual company rather than an area rate approach.

We concur with the examiner in his conclusion that the establishment of minimum rates in this case is in the public interest and that the price impact on the consumer will be *de minimis*. While on the one hand, the establishment of a maximum price for the area is essential so that the ultimate consumer does not pay a price which is excessive in relation to group costs and other relevant considerations, we believe that a minimum price also constitutes an integral part

[48] Though this case involved the Federal Power Act, the Court noted that: "The pertinent provisions of the Federal Power Act, * * * are §§ 205(c), (d), and (e), and 206(a), which are substantially identical to §§ 4(c), (d), and (e), and 5(a), respectively, of the Natural Gas Act." (at pp. 350–351)

of the area rate approach. The rate received by a producer must not be so low as to prevent or retard further exploration and thereby decrease possible discovery of gas reserves which will be needed by consumers. The amount of additional revenue so provided, at the most $250,000 annually, will have no significant impact on consumers but the relief afforded the individual producers involved may be important to their continuation in the search for additional gas supplies needed to meet the growing needs of the consuming markets.

Although we have agreed with the examiner's conclusion as to the need for a minimum rate, we believe that his remedy, which would not allow the producer with sub-minimum rates to raise them to the minimum unless he secured the approval of his purchaser, is not sufficient. Renegotiation of contracts resulting in increased rates which do not exceed the area rate would be proper without any action by this Commission, so that the examiner's remedy would avail nothing.

We therefore deem it necessary and appropriate to establish a minimum rate in this area of 9 cents per Mcf for gas of standard pipeline quality, with adjustments from the minimum price to reflect any deviations from the quality standards established herein, and to hold that the minimum rate herein established may be filed without purchaser approval at any time after this order becomes final.

REFUNDS

We shall require appropriate refunds in the case of rates which are the subject of proceedings under Section 4(e) of the Act, and have thus been collected subject to an obligation to refund amounts collected in excess of the just and reasonable rates as here determined. In each case the proper rate level for computing refunds shall be the area rate applicable to the particular category of gas involved, as adjusted by reason of any quality deviations in the particular gas.

The presiding examiner proposed that the total refunds to be made with respect to contracts for the sale of gas-well gas should be computed for each separate year on the basis of whether the industry as a whole had collected an excessive amount for gas-well gas in that year. Under this proposal, if one producer collected revenues from the sale of gas-well gas in excess of his proper prices, he would be required to refund such excess amounts only if it were shown that in the industry as a whole in that year had received revenues from gas-well gas in the area in excess of the proper revenues for such gas. The same principle would be applied with respect to residue gas and to casinghead gas. Further, any deficiency in any year in overall industry revenues from any one of the three categories—gas-well gas, residue gas, or casinghead gas—would be used to offset excessive revenues collected for any other category of gas.

The underlying theory of the presiding examiner's approach is that refunds should be ordered only to the extent that overall industry revenues exceed overall industry expenditures in a given year. The briefs on exceptions indicate that many of the parties are not clear as to how this theory might be applied in particular cases.

Several, fundamental objections preclude adoption of the examiner's proposed method of computing refunds. We think it would result in inequities among wholesale customers as well as among individual producers. If one wholesale customer has been overcharged it is of little comfort to him to know that another customer has received a bargain. Conversely, if one producer has collected excessive amounts, he should not be relieved of his responsibility to return the excess by reason of the fact that some other producer collected too little. Fur-

thermore, the administrative difficulties involved in attempting for each year, and each category of sales, to equate industry revenues with industry expenditures, and to allocate the excess revenues among the purchasers, seem almost insurmountable.

We have established just and reasonable ceiling prices for the Permian area, with adjustments from the ceiling prices in the case of gas which deviates from the quality standards we have established. The applicable ceiling price, including any quality adjustments, is the proper price for gas sold under a particular contract. We think it is proper and equitable to require refunds of amounts collected in excess of the ceiling price for gas sold under each contract. This has been our practice in prior proceedings under the Natural Gas Act, and on this record we see no reason, legal or equitable, to fail to return to the wholesale customers the excess sums they have paid. To the extent that any producer receives a lesser amount than our ceilings permit it is because he has agreed to prices which yield that amount or failed to file for a higher rate.

Refunds will be required only with respect to the rates which are the subject of Section 4(e) proceedings, and only for the periods during which such rates have been collected subject to refund.

A refund procedure must be established. We have determined that price adjustments corresponding to departures from standards shall be left to the parties for initial determination, if they are able to agree. The price applicable to particular gas cannot be finally determined until the parties have determined the quality of gas and the computed corresponding price adjustments. Accordingly, each producer (except small producers, who will be considered below) shall file a computation of refunds due with respect to each rate schedule within 30 days from the date of the filing of an agreement with his purchaser as to the quality of the gas sold and the cost per Mcf of processing such gas to pipeline quality standards. If no such agreement is reached the refund computation is to be filed within 30 days from the date of Commission determination of the quality adjustments. (See *supra*, p. 225 hereof for procedure.)

In the case of Section 4(e) proceedings, the refund computation shall also be made for all periods during which rates were collected subject to refund. With regard to each rate schedule, such computation shall specify the applicable rate or rates as established in accordance with the principles set forth in this opinion (including any adjustments for quality as prescribed herein), the rate or rates collected during the period subject to refund, the period during which any rate was collected in excess of the proper applicable rate, the volume of gas for which such excess rate was collected, and the amount of refunds due. Interest on such refunds (at the prevailing rate) shall be included in the computation.

Each producer will be directed to retain the refunds to be made by him until further order of the Commission. Such retention shall be in accordance with the option principle established by the Commission in *Humble Oil & Refining Company*, 32 FPC 49, Docket No. G–9287, *et al.*, issued July 8, 1964.

The rates for small producer sales as defined in the rule providing for small producer certificates for such sales proposed this date are not required to reflect any quality adjustments either for past periods or for the future. Small producer refund obligations will therefore extend only to refunding amounts collected subject to refund in excess of the amounts collectible under the base ceiling rates. If a small producer wishes to take advantage of any permitted upward adjustment for new gas-well gas of high Btu content, he will be required to indicate also any offsetting deficiencies in quality of the gas in question by filing the same statements required of large producers.

SMALL PRODUCER PROBLEM

There have been many suggestions, foremost of which are those by Justice Clark, dissenting in *Wisconsin* v. *F.P.C.*, 373 U.S. 294, 329–30 (1963), and speaking for the Court in *F.P.C.* v. *Hunt*, 376 U.S. 515 (1964), to the effect that this Commission should consider procedures for the exemption of small producers from regulation. There are many compelling arguments to justify distinctive treatment of small producers. The justification goes beyond the obvious benefits of relieving the small producer of the expense and burden of the regulatory process. Among other considerations, expediting the administrative process and facilitating effective regulation are suggested as additional benefits.

The examiner has set forth a well documented argument for recognizing the special problems of the small producer and affording him separate regulatory treatment. At the very heart of his analysis are two basic propositions which serve to distinguish the small producer from the large. The first is simply a recognition of the characteristic of "smallness," which as the examiner has said means that the typical small producer has limited operations and is thus subject to a greater degree of risk than is a large producer.

The examiner's second proposition is that the small producers, although numerous, account for a relatively small share of the natural gas produced in this country, and that even without regulation they usually cannot obtain more for their gas than the regulated price we fix for the major producers. In the nation there are over 2,000 small producers as defined by the examiner, *i.e.*, those selling less than 10 million Mcf of gas per year, filing rate schedules with this Commission. They provide only about 15 percent of the total supply of natural gas moving in interstate commerce. The examiner concludes that the exclusion of the small producer from direct price control would thus have a *de minimis* impact on the consumer while the effect on the small producer would be highly beneficial. His procedural device for according exemption was a blanket finding that all the rates of the small producers were just and reasonable.

We agree with the examiner in general that special treatment of the small producer group offers scope for streamlining the regulatory process without the risk of substantial impact on consumer prices. Consumers and the natural gas industry alike have a strong stake in the continuation of the exploration efforts of the thousands of small operators, who contribute a large share of the discoveries of new sources of gas. Easing the burdens of regulation would help to assure their continued participation in the gas production business.

While we are convinced that there is need for distinctive treatment for small producers, which we shall provide herein, we do not believe it is necessary or desirable to provide outright exemption. We reach this conclusion assuming that exemption is legally permissible despite the mandatory language of Sections 4 and 7 of the Natural Gas Act.[49]

In our opinion the salutary objectives of those who propose exemption can better be achieved within the framework of regulation. Furthermore, any exemption for small producers would be more an allusion than a reality. As the small producers suggest, the area ceilings we prescribe will tend to set the maximum prices they can obtain for their gas.

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[49] Section 4(a) states in part that "*all* rates and charges" by "any natural gas company shall be just and reasonable." In Section 4(c) it is stated that "Under such rules and regulations as the Commission may prescribe, *every* natural gas company shall file * * * in such form as the Commission may designate, * * * *all* rates and charges * * *."

Section 7(c) provides in part that "No natural-gas company * * * shall engage in the transportation or sale of natural gas, subject to the jurisdiction of the Commission * * * unless there is in force with respect to such natural gas company a certificate of public convenience and necessity * * *."

A basic consideration in reaching our conclusion in this matter is that the impact of small producer prices on consumers is by no means *de minimis* on an area basis, and is of great impact in some situations. Sales by small producers constitute 80 percent of the gas supply of one pipeline [50] and range from 9 percent to about 60 percent of the supply of the other 25 largest pipelines. While small producers represent only 15 percent of the aggregate interstate gas supply it is obvious they are a substantial factor in the cost of the gas supply of millions of American consumers.

Another consideration which weighs with us is that penetration of rate ceilings, even on a small scale, could be seriously disruptive of a pattern of uniform area ceilings.

The examiner suggested relief for small producers from present filing requirements in the following manner: (1) a general certificate would issue to those natural gas companies which meet the qualifications of a "small producer", and (2) such producers would be required to file annual statements containing information as to their jurisdictional sales. The small producers in this proceeding support these suggestions.

We are interested in affording real relief to the small producers and in providing meaningful measures to clear our dockets and facilitate effective regulation. We recognize the burdens to small producers of complying with the filing requirements promulgated pursuant to Section 7 of the Natural Gas Act before new gas supplies can be connected. Such filings, which are routinely handled by the larger companies can, in the case of a small producer, strain his resources. The time lag, even the few weeks required under our expedited procedures, can deprive a small producer of badly needed income. In light of these circumstances the Commission finds that it is necessary and appropriate to afford the small producers relief as provided below and we are issuing a notice of proposed rulemaking, this date, to implement our conclusions.

A small producer is thereby defined to be a natural gas company selling jurisdictionally less than 10,000,000 Mcf annually on a nationwide basis. Such a classification will include almost 250 of the filing producers in the Permian Basin and leave about 40 major companies subject to the filing requirements of Section 7 for individual sales. Nationally this breaking point would classify approximately 2,000 producers as small and about 75 as major companies. We believe that the record amply supports this reasonable classification made pursuant to Section 16 of the Act. For this purpose, the combined jurisdictional sales of affiliated companies (as further defined in the rule issued this date) will be considered as the sales of a single producer.

Companies or individuals in the Permian Basin qualifying as small producers will be granted small producer certificates pursuant to Section 7 of the Act authorizing all future small producer sales (as defined therein) in the area at or below the applicable area ceiling rate, thereby eliminating the need to obtain separate certificates for each sale as is presently required. This action will not only relieve the producers and the Commission of a large paperwork problem, it will enable small producers to bring their gas to market without any regulatory delay.

Sales in areas other than the Permian Basin by small producers will not be eligible for coverage by such certificates until an area rate is fixed therein because the determination of a specific area rate is a prerequisite for the issuance of such certificates.

All producers in the Permian Basin who apply and qualify as small producers under our proposed rule issued this date will be granted special certificates as to

[50] Kansas-Colorado Utilities Company, see its F.P.C. Form 2.

their Permian sales which will cover not only any future small producer sales (as defined therein) made within our area ceiling prices, but also all such sales for which a separate certificate has already been issued. Naturally, these certificates will be subject to the limit of 10,000,000 Mcf of annual jurisdictional sales on a nationwide basis and to area rate limitations. Those certificate applications within the ceiling pending before the Commission by small producers in the Permian Basin that come within the proposed rule will be covered within small producer certificates and any applications for certificates above ceiling will be granted conditionally upon acceptance of an initial price no higher than the ceiling.

Recipients of the small producer certificates will be required only to file annually a simple one-page statement in which they will state the total volume of jurisdictional sales and certify that all such sales were within the applicable area ceiling. The producers holding such certificates will no longer be compelled to file Forms 301–A or 301–B,[51] nor will they be required to file individual initial rate schedules pursuant to Section 4(c) of the Act for the small producer sales. Furthermore, in light of our decision to accept all rate increases up to the area rate, holders of small producer certificates will not hereafter be required, under Section 4(d) of the Act, to file such changes for their small producer sales as they are made. Section 4(d) requires such filings "Unless the Commission otherwise orders * * *." We believe that inclusion of information pertaining to these changes, in the annual reports of the pipeline purchasers, will satisfy not only the language but also the purpose of Section 4(d). Of course, no increases above the applicable area ceiling will be permitted without the approval of the Commission pursuant to the filing requirements of Section 4(d).

Should a producer cease to be a small producer by virtue of an increase of jurisdictional sales to a level in excess of 10,000,000 Mcf in a year, or should he propose to sell at prices above the area rate, or should he make sales which do not qualify as small producer sales he must abide by the present requirements, *i.e.*, his certificate will not apply to such situations. Specific details of the small producer relief are explained in the Notice of Proposed Rulemaking issued this date, *infra*, p. 434.

MISCELLANEOUS ISSUES

Favored-Nation and Spiral Escalation Clauses

The Presiding Examiner stated:

> * * * Most favored nations clauses and spiral escalation clauses cause price increases in a contract price to occur without reference to the circumstances or economics of the particular operation, but solely because of what happens under another contract. These clauses contravene the public interest and the basis on which prices have been determined in this decision. They are therefore declared to be inoperative and of no legal effect. No change in a rate resulting from such indeterminate pricing provisions will be permitted to take effect under this decision and order. (Initial Decision, *infra*, p. 373.)

The examiner correctly observed that most favored-nation clauses and spiral escalation clauses are not in accordance with the principles upon which a rate structure should be based. We have proscribed the filing of contracts containing such clauses executed on or after April 2, 1962. (Order No. 242, 27 FPC 339; *F.P.C.* v. *Texaco Inc.*, 377 U.S. 33.) We do not think, however, that such clauses

[51] Presently required by the Regulations under the Natural Gas Act, Sections 260.5 and 260.6.

in contracts already accepted for filing at the time of our order outlawing such clauses for the future should be denied effect insofar as they serve to permit filings up to the applicable area prices prescribed herein. When the contracts containing such clauses were negotiated such clauses were a part of the bargain arrived at between the parties. Had they been proscribed at that time, escalation clauses of permissible types might well have been substituted. In any event there is no reason in the public interest to prevent rate adjustments which will permit producers to collect a just and reasonable price for their gas. These indefinite escalation clauses will, of course, like all other escalation clauses, be subject to the moratorium provisions discussed *supra* at pp. 227–231 and, as the examiner ruled, such clauses will not be permitted to authorize rate filings above the applicable area rates subsequent to the expiration of the moratorium period.

Application of the Order

This proceeding, instituted under Section 5(a) of the Natural Gas Act, will determine the just and reasonable rates to be hereafter observed and in force for all jurisdictional sales being made under respondents' rate schedules. Such rates will apply as ceilings to all sales of respondents whether they were being made at the time we instituted this proceeding or were begun subsequent thereto. Certain of the respondents argue that our order cannot apply to rates established in contracts filed by such respondents after this proceeding was instituted. The argument has no merit. The evidence in this proceeding is based on a composite showing of the overall production in the area and fixes an area rate specifically designed to be just and reasonable for all jurisdictional sales in the area.

To hold otherwise would require an unending succession of Section 5 area rate proceedings, each covering only the sales instituted prior to the institution of the proceeding. We are not required to engage in any such massive duplication of effort. This proceeding was instituted to determine the just and reasonable rate or rates for the sales of natural gas produced in the Permian Basin subject to the jurisdiction of the Commission (Ordering Paragraph "A" of Order Instituting Hearing, 24 FPC 1121 (1960)). Consistent with the provisions of Section 5(a) of the Act, our Order will apply to all of respondents' sales in the described area. (See *United Gas Pipe Line Co.* v. *Mobile Gas Service Corp.*, 350 U.S. 332, 341 (1956).)

A few certificates have been issued since the institution of this proceeding authorizing sales in the Permian area by persons not respondents in this proceeding. Our Order here will not apply to these sales, but the parties making such sales will by separate order be directed to show cause why the area rates should not be applied to them.

Finally, with respect to certain of respondents' sales, increased rates have been filed subsequent to the institution of this proceeding and the dockets involving such increased rates (collected subject to refund) have not been consolidated herein. The above-stated reasons why our determination should apply to newly certificated sales is equally applicable to these nonconsolidated increased rate filings and the record in this proceeding would appear to be adequate to determine the rates to be hereafter collected for these sales and to determine refund obligations. However, the dockets involving the increased rates were not consolidated herein and the respondents have not been afforded a hearing respecting their refund obligations. Accordingly, we shall not order

refunds in these dockets but instead institute a separate proceeding requiring respondents to show cause why the rates here determined should not be utilized in determining their refund obligations.

Examiner's Witness Frazier

Continental (Brief on Exceptions, p. 78) on behalf of the Major Producer Group contends that the presiding examiner improperly called as his own witness Charles H. Frazier, then Director of Development for the Philadelphia Gas Works Division of The United Gas Improvement Company, and that he used Mr. Frazier's testimony as the basis for the dual pricing system, his pricing and location differentials, and rate design. The Major Producer Group argues that the burden of proof is the Commission's and that in the Section 5 part of the proceedings, it is well-settled that the commingling of the investigatory and adjudicatory phases of an administrative proceeding violates due process of law and the specific requirements of the Administrative Procedure Act. They note that Section 1.30(f) of our Rules, like Section 5 of the Administrative Procedure Act, provides that one engaged in the investigatory phase must not participate in the decisional process.

It should first be observed that neither Section 5(c) of the Administrative Procedure Act nor Section 1.30(f) of our Rules by its terms applies in rate proceedings. Thus, even if it were assumed that the examiner in calling his own witness was acting in an "investigative" role, he did not violate either the Act or the Rules. More important, however, the examiner's action was not "investigative" but a proper function of the trial examiner in a hearing. Both the Senate and House Committee Reports on the Administrative Procedure Act expressly point out that hearing officers "have the authority and duty—as a court does—to make sure that all necessary evidence is adduced."[82] The Act confers authority for what the examiner has done (see Section 7, *passim*). We also note that the State courts have approved the action of a judge in calling his own witness. *Ramsey* v. *Mading*, 217 P. 2d 1041 (Wash, S.Ct.); *Hunt* v. *State*, 248 Ala. 217, 27 So. 2d 186, 193; and *People* v. *Rotello*, 339 Ill. 448, 171 N.E. 540, 542. See also 9 Wigmore, Evidence 267–270; 3 Wigmore, Evidence 151–153; 4 Jones, Evidence 1685.

It is suggested that Witness Frazier may have had an interest in the proceeding because his employer, a gas distributor, though not a party in this proceeding, is an intervener in other area proceedings. This point, however, only goes to the weight to be given his testimony, not its admissibility. If interest in the proceeding were a disqualification most of the evidence in this case would be stricken. See 4 Jones, Evidence, 1865–1966.

Witness Frazier's background and employment status were well known at the time he was called and are a matter of record. Respondents were given a full opportunity to cross-examine Frazier and to bring out anything which would impeach him either by way of challenge to his qualifications as an expert witness or challenge to his views because of his interest. His testimony, of course, is entitled to no more credence because he was called by the examiner rather than by a party. We conclude that the calling of Witness Frazier was proper and has not been shown to have resulted in any prejudice to respondents.

The Commission further finds:

(1) Each of the respondents listed in Parts I and III of Appendix A to this opinion is, and at the time of all past sales with which we are here concerned was, a natural gas company within the meaning of the Natural Gas Act and

[82] Sen. Doc. No. 248, 79th Cong., 2d Sess., page 207. See also House report at page 268.

is engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption, subject to the jurisdiction of this Commission.

(2) Past, present, and proposed sales of natural gas to which the order herein applies are subject to the jurisdiction of this Commission.

(3) Rates for all sales of natural gas, by the producers in Texas Railroad Districts 7–C and 8 and New Mexico counties Lea, Eddy, and Chavez which are respondents herein, that are above the applicable area rates prescribed herein, have not been shown to be just and reasonable or otherwise lawful under the provisions of the Natural Gas Act and should be disallowed, and refunds should be required as hereafter provided.

(4) The just and reasonable rates for past, present, and proposed sales of natural gas to which this order applies are the applicable area rates set forth in ordering paragraphs (A) and (B) below.

(5) It is necessary and appropriate and in the public interest to establish minimum rates as provided in ordering paragraph (G) for all natural gas produced in the Permian Basin.

(6) Contracts providing for rates in excess of the applicable just and reasonable rates determined herein or below the minimum rates herein established are in that respect unjust and unreasonable.

(7) The moratorium until January 1, 1968, upon the filing of price increases above the just and reasonable rates established herein is necessary to the practical administration of area rate ceilings and the effective price regulation of natural gas producers.

(8) Except as herein granted the exceptions to the initial decision and proposed order should be denied.

The Commission orders, pursuant to Sections 4(e) and 5(a) of the Natural Gas Act:

(A) *The Base Area Rates*

The following base area rates are hereby established, as of the effective date hereinafter defined, as the just and reasonable rates for sales of gas for resale in interstate commerce by the respondents in this proceeding, subject to any applicable adjustments for quality as provided in ordering paragraph (B) hereof:

(1) For new gas-well gas, as defined in this opinion, sold and to be sold pursuant to contracts executed on or after January 1, 1961, and any residue gas derived therefrom:

a. In Texas Railroad Districts No. 7–c and 8—*16.5 cents per Mcf* (at 14.65 psia).

b. In Lea, Eddy and Chaves Counties in New Mexico—*15.5 cents per Mcf* (at 14.65 psia) plus the applicable state and local production taxes in effect on the effective date hereinafter defined.

(2) For gas-well gas, sold and to be sold pursuant to contracts executed before January 1, 1961, and any residue gas derived therefrom, and for all casinghead gas and any residue gas derived therefrom sold and to be sold:

a. In Texas Railroad Districts No. 7–c and 8—*14.5 cents per Mcf* (at 14.65 psia).

b. In Lea, Eddy and Chaves Counties in New Mexico—*13.5 cents per Mcf* (at 14.65 psia) plus the applicable state and local production taxes in effect on the effective date hereinafter defined.

(B) *Quality Standards and Adjustments to the Base Area Rates*

(1) The base area rates fixed in ordering paragraph (A) herein shall be adjusted for any deviations from the standards for pipeline quality gas in

Texas Railroad Districts Nos. 7–c and 8, and in the New Mexico counties of Lea, Eddy and Chaves, which are hereby established as follows:

a. *Carbon Dioxide:* Pipeline quality gas shall contain not more than 3 percent carbon dioxide by volume.

b. *Hydrogen Sulphide:* Pipeline quality gas shall contain not more than 10 grains of hydrogen sulphide per Mcf of natural gas at 14.73 psia and 60° F.

c. *Total Sulphur:* Pipeline quality gas shall contain not more than 200 grains of total sulphur per Mcf of natural gas at 14.73 psia and 60° F.

d. *H_2O:* Pipeline quality gas shall contain not more than .009 pound of H_2O per Mcf of natural gas at 14.73 psia.

e. *Other Impurities:* Pipeline quality gas shall contain no oxygen, dirt, dust, gum, or other impurity in sufficient amounts to require the buyer to incur processing costs to eliminate such impurities in order for the gas to meet either customary commercial standards or the customary requirements of any of the interstate pipelines in the area.

f. *Pressure:* Pipeline quality gas shall be delivered at a pressure of not less than 800 pounds per square inch.

g. *Btu Adjustment:* (For new gas-well gas only). The maximum standard will be 1,050 Btu's per cubic foot at 14.73 psia and 60° F. and the minimum standard will be 1,000 Btu's per cubic foot at 14.73 psia and 60° F. Upward and downward adjustments of the base area rates will be permitted on a proportional basis as specified at pages 223, 224 of this opinion if the Btu content exceeds the maximum standard or is below the minimum standard.

(2) When a purchaser buys gas which deviates from the quality standards established in subparagraph (1) above, the base area rate fixed in ordering paragraph (A) shall be adjusted for any deviations from such standards as follows:

a. The applicable base area rate shall be adjusted downward by the net cost of processing the gas to bring it up to standard.

(i) If the processing is performed by the purchaser, a reasonable return upon the net investment should be included as part of the processing cost incurred in bringing the gas up to pipeline quality.

(ii) If processing reduces the volume of the gas, the purchaser shall pay for only the volume remaining after processing.

b. The applicable base area rate for new gas-well gas only shall be adjusted downward or upward by the amount of any applicable Btu adjustment and by the concomitant amount of any saving or additional expenses to the seller from any reduction or increase in taxes or royalty payments resulting therefrom.

(C) Applicable area rate, as that term is used herein, shall mean the base area rate established by ordering paragraph (A) or the rate determined after adjustment, if any, of that base area rate for the deviations from the quality standards established by ordering paragraph (B).

(D) The applicable area rate as defined in ordering paragraph (C) above, shall be effective from and after the effective date hereinafter defined and any amounts collected in excess thereof from and after such effective date shall be subject to refund plus interest at 7 percent. In addition, with respect to the rates involved in the Section 4(e) proceedings set out in Part III of Appendix A, the applicable area rate as defined in paragraph (C) above, shall be effective from the date such Section 4(e) rates were collected subject to refund and all amounts collected under those Section 4(e) rates in excess of the applicable area rate shall be subject to refund from the date such excess was collected plus interest at the rate specified in the respective Section 4(e) proceeding, in accordance with the provisions of ordering paragraphs (I) and (J) herein.

(E) Within 45 days from the effective date hereinafter defined each respondent shall file a supplement to each applicable rate schedule, effective as of the effective date hereinafter defined, reflecting any reductions required to bring any or all of its rates into conformity with the applicable base area rate established by ordering paragraph (A) herein.

(F) (1) Within 90 days from the effective date hereinafter defined, each respondent listed in Part I or Part III to Appendix A (except those exempted by subparagraph (3) hereof) shall file with the Commission a statement in conformity with Appendix D to this opinion for each rate schedule such respondent has on file with this Commission for the sale of natural gas produced or sold within Texas Railroad District No. 7–c, Texas Railroad District No. 8, or the New Mexico counties of Lea, Eddy or Chaves. Such statement shall set forth either that the gas accords with all pipeline quality standards established herein, or in which respects the gas deviates from the particular quality standards established herein; the agreed cost to the purchaser of processing the gas to bring it to the pipeline quality standards established herein with respect to each quality deviation; any upward or downward Btu adjustment for new gas-well gas; and the resulting applicable area rate for the gas. Such statement shall be signed by both the seller and the purchaser. If the seller and the purchaser are unable to agree upon any or all of the particulars entering into the computation of the applicable area rate, the seller shall file the statement herein required which shall indicate the absence of agreement and supply the information required to compute the applicable area rate as well as the contentions of the parties with respect to the quality and amount of the adjustment for any item in dispute. The purchaser may file a separate statement setting forth its views within the period herein provided.

(2) The statement filed hereunder which reflects full agreement between seller and purchaser shall be deemed accepted by the Commission unless the Commission, within 60 days after such filing, shall otherwise order. In the event of disagreement between the seller and purchaser or, where the Commission otherwise determines that the statement filed is inconsistent with the provisions of ordering paragraph (B) herein, the Commission will, after appropriate proceedings, prescribe the applicable area rate to be applied as of the effective date hereinafter defined.

(3) Any respondent listed in Part I or Part III to Appendix A is exempt from filing the statement required by subparagraph (1) hereof for any sales which are "small producer sales" as defined in the rule providing for small producer certificates proposed this date, if within 45 days from the effective date hereinafter defined such respondent files the information requested in Appendix E to this opinion required to qualify for a small producer certificate for such sales. If the Commission subsequently finds that such a producer does not qualify as a small producer such applicant shall be required to file the statement required by subparagraph (1) hereof within 90 days after any such Commission finding.

(G) *Minimum Rates*

(1) Minimum rates for natural gas produced in the Permian Basin area are hereby established as follows:

For gas meeting all pipeline quality standards *9 cents per Mcf* at 14.65 psia.

For gas not meeting all pipeline quality standards as established herein *9 cents per Mcf* reduced by the amount of any adjustments for quality as provided in ordering paragraph (B).

(2) All respondents who are currently making sales subject to the jurisdiction of this Commission and produced in Texas Railroad District No. 7–c, Texas Railroad District No. 8, or any of the New Mexico counties of Lea, Eddy or Chaves,

are hereby authorized to apply for increases to the minimum rates fixed in subparagraph (1) hereof. Such applications shall be accompanied by the information required in Appendix D to this opinion, signed by the seller (or the agent or operator). Increases to the established applicable minimum rate will be granted notwithstanding contractual provisions to the contrary which are hereby modified *pro tanto*.

(H) *Moratorium on Rate Increases*

No respondent listed in Part I and Part III of Appendix A to this opinion shall file any change in rate providing for a price in excess of the applicable area rate prior to (1) subsequent order of the Commission in this proceeding permitting such filing or (2) January 1, 1968, whichever is earlier. All contracts of the respondents listed in Part I of Appendix A relating to sales of natural gas subject to the jurisdiction of this Commission and produced in Texas Railroad District No. 7–c, Texas Railroad District No. 8, or any of the New Mexico counties of Lea, Eddy or Chaves shall be deemed amended, pursuant to Section 5(a) of the Natural Gas Act, by the inclusion of the following language:

From the effective date of the order of the Federal Power Commission in the Permian Basin Area Rate Proceeding, AR61–1 (therein defined as September 1, 1965), until January 1, 1968, no increase in rates may be filed, except in compliance with a specific order of the Commission for a rate in excess of the applicable area rate as determined pursuant to said proceeding or pursuant to later order of the Commission.

(I) *Refund Reports*

Within 120 days from the effective date hereinafter defined a refund report shall be filed with this Commission in triplicate by each respondent involved in one or more of the Section 4(e) proceedings set out in Part III of Appendix A to this opinion. The report shall set forth the following information (if more than one rate schedule is involved the respondent shall supply the information for each schedule separately):

(i) The rate collected during the period subject to refund, and the periods during which each rate was collected.

(ii) The volume of gas sold at each such rate.

(iii) The difference between the total amount collected during the period subject to refund and the applicable area rate as defined herein. If seller and buyer do not agree upon the items necessary to the computation of said rate, the seller shall make this computation on the basis of the information supplied by the seller in the statement required by ordering paragraph (F) subject, however, to the terms of subparagraph (2) thereof.

(iv) The interest, at rates as specified in each Section 4(e) proceeding, on the amount collected during said period in excess of the applicable area rate. The interest shall be calculated to the date of the report.

(J) *Treatment of Refunds*

Each respondent shall retain the amounts shown in the report required under ordering paragraph (E) subject to further order of the Commission directing the disposition of those amounts. If a respondent elects to commingle these retained refunds with its general assets and use them for its corporate purposes, and after notice to the Commission it is specifically authorized so to do, it shall pay interest thereon at the rate of 4.5 percent per annum on all funds thus available from the date of the filing of the refund report to the date on which they are paid over to the person ultimately determined to be entitled thereto in a final order of the Commission. If a respondent elects to deposit the retained refunds in a special escrow account, the respondent shall tender for filing on or before the date of the filing of the refund report an executed Escrow Agreement, condi-

tioned as set out below accompanied by certificate showing service of a copy thereof upon each of its jurisdictional customers. Unless notified to the contrary by the Secretary within 30 days from the date of filing thereof, the Escrow Agreement shall be deemed to be satisfactory and to have been accepted for filing. The Escrow Agreement shall be entered into between respondent and any bank or trust company used as a depositor for funds of the United States Government and the agreement shall be conditioned as follows:

(1) Respondent, the bank or trust company, and the successors and assigns of each, shall be held and formally bound unto the Federal Power Commission for the use and benefit of those entitled thereto, with respect to all amounts and the interest thereon deposited in a special escrow account, subject to such Agreement, and such bank or trust company shall be bound to pay over to such person or persons as may be identified and designated by final order of the Commission and in such manner as may be therein specified, all of any portion of such deposits and the interest thereon.

(2) The bank or trust company may invest and reinvest such deposits in any short-term indebtedness of the United States of any agency thereof or in any form of obligation guaranteed by the United States which is respectively payable within 120 days as the said bank or trust company in the exercise of its sound discretion may select.

(3) Such bank or trust company shall be liable only for such interest as the invested funds described in Paragraph (2) above will earn and no other interest may be collected from it.

(4) Such bank or trust company shall be entitled to such compensation as is fair, reasonable and customary for its services as such, which compensation shall be paid out of the escrow account to such bank or trust company. Said bank or trust company shall likewise be entitled to reimbursement for its reasonable expenses necessarily incurred in the administration of this escrow account, which reimbursement shall be made out of the escrow account.

(5) Such bank or trust company shall report to the Secretary quarterly, certifying the amount deposited in the trust account for the quarterly period.

(K) No respondent shall file hereafter any change in rate providing for a price in excess of the applicable area rate where the contractual right to such filing is based upon any contractual provision which would not be permitted by subsections (a), (b) and (c) of Section 154.93 of the Regulations under the Natural Gas Act.

(L) Notwithstanding the issuance of this final order, these proceedings shall remain open for such further action as may be necessary with respect to individual respondents and such other action as may be necessary in the premises.

(M) Except as herein granted the exceptions to the initial decision and proposed order are hereby denied.

(N) The date of issuance of this opinion and order within the meaning of Section 19(a) of the Natural Gas Act is the date shown on *supra*, p. 159 of the opinion immediately below the title thereof. The term "effective date herein after defined" (as it is used in the ordering paragraphs herein) is September 1, 1965.

Commissioner O'Connor *concurring* and *dissenting* on limited issue.

Commissioner Ross *concurring* and *dissenting* on limited issue.

Commissioner Black *concurring.*

Commissioner Bagge *not participating.*

O'CONNOR, *Commissioner, concurring and dissenting on limited issue:*

The Commission's decision issued today is a significant event in the evolution of our area rate policies, and, on the basis of the record before us, it establishes

just and reasonable rates for natural gas producers in the Permian Basin. It is my opinion that our extensive investigation has been synthesized into a meaningful system of regulation, and, for the purposes of our initial area proceeding, I endorse the consideration of costs. The cost analysis we utilize is a useful and proper determination of the financial requirements of the industry, and the results are defensible. I therefore concur in the Commission's opinion, including, of course, the procedures for implementation of the rates we establish; my dissent is limited to one issue.

While I join for present purposes, I am convinced that the experience gained in this costly and expansive proceeding justifies a simplification of the trial and disposition of future area proceedings. Price control being our objective, it is clear that the interests of producers and consumers can be adequately protected under expedited procedures based upon reasonable market prices. The record in this case fully establishes that the contract price at which most producers are able and willing to operate is just and reasonable. This standard provides the measure of inducement that has been successful in providing an excellent source of energy for use in all sectors of the Nation. Thereby, any policy that focuses on profits realized, as recommended by some parties before us, would be avoided, and the focus would be on supply elicited, which policy we here endorse. Furthermore, it is preferable to tolerate such imperfections as might result from area regulation in the interest of avoiding complicated cost-plus methodology.

The contract price is the measure of inducement. Composite costs best serve as a check on average field prices to preclude significant price departures. Our judgment should rest primarily on the market place where we can rely on competition to determine just and reasonable rates. In the hope that they will become the rule, I herein express my additional views and recommendations.

PRELIMINARY CONSIDERATIONS

In 1954 the Supreme Court made the unexpected determination that this Commission has jurisdiction over the interstate sales of natural gas producers and that it has a corresponding obligation to regulate those sales in the public interest. For fourteen years prior to that decision the Commission had repeatedly rejected the jurisdictional argument, and, due to the obvious difficulty of the task, the Commission had regularly recommended legislation granting only limited regulation over producers. In 1956 the Congress acquiesced in this view by approving such legislation, only to see it rejected by Presidential veto for reasons totally removed from the merits of the bill itself. Today, more than a quarter-century after the Natural Gas Act was adopted, and eleven years after this Commission was granted jurisdiction over producer sales, a decision has been reached which accommodates to an intent that prices for natural gas be regulated. However, although the law compels an embarkation into price control during peacetime, it does not dictate a single methodology, and herein lie my separate recommendations for future area decisions.

The task of selecting a reasonable approach to regulation that will reflect the practical necessities before us is a difficult one, but cognizance of several factors will make an acquittal of the duty more meaningful. The production of natural gas is an industry in which there is an intricate interplay of special market circumstances. Pipeline control over field prices presents awesome monopsonistic powers. Problems of waste and correlative rights compel state conservation regulation. Shared problems with oil lead to an overlapping of economic interests. Public utility characteristics at the transmission and distribution end go so far as to generate demands for price controls over the producing industry. The ab-

sence of traditional public utility characteristics in the production of natural gas presents problems that are directly antithetical to the transmission or distribution of the commodity; there is not the same direct relationship between investment and output at the crucial focus of the individual company, and there is certainly no legal obligation to provide new services. Reflecting these multifarious consideration, Justice Jackson observed, "If natural gas rates are intelligently to be regulated we must fit our legal principles to the economy of the industry and not try to fit the industry to our books." *F.P.C.* v. *Hope Natural Gas Co.*, 320 U.S. 591, 650 (1944). In that opinion he emphasized,

> Is it necessary to a "reasonable" price for gas that it be anchored to a rate base of any kind? Why did courts in the first place begin valuing "rate bases" in order to "value" something else? The method came into vogue in fixing rates for transportation service which the public obtained from common carriers. The public received none of the carrier's physical property but did make some use of it. The carriage was often a monopoly so there were no open market criteria as to reasonableness. The "value" or "cost" of what was put to use in their service by the carrier was not a remote or irrelevant consideration in making such rates. Moreover, the difficulty of appraising an intangible service was thought to be simplified if it could be related to physical property which was visible and measureable and the items of which might have market value. The court hoped to reason from the known to the unknown. But gas fields turn this method topsy turvy. Gas itself is tangible, possessible, and does have a market and a price in the field. The value of the rate base is more elusive than that of gas. It consists of intangibles—leaseholds and freeholds—operated and unoperated—of little use in themselves except as rights to reach and capture gas. The value lies almost wholly in predictions of discovery and of price of gas when captured, and bears little relation to cost of tools and supplies and labor to develop it. Gas is what Hope sells and it can be directly priced more reasonably and easily and accurately than the components of a rate base can be valued. Hence the reason for resort to a roundabout way of rate base price fixing does not exist in the case of gas in the field. 320 U.S. 647–648.

Regulatory authority must be employed as the characteristics of the industry dictate. Congress and the courts have refused to confine permissible principles of procedure to a narrow corridor; by granting the Commission flexibility, they implicitly recognized the wisdom of the Justice's words.[1]

By these distinct considerations, the purpose and the method of price regulation is presented in its proper perspective, and they should dictate the results required. Where a compulsory service obligation exists the only regulatory problem is to appraise a service that must, of legal necessity, be rendered. Where the output is direct and constant, the value of the service thus performed, in terms of the allowed rate, can legitimately be referenced to a reasonable yield on the actual costs involved. In the absence of this obligation, however, the role of appraising the services performed assumes a decidedly different function: the problem becomes that of fixing a price based, not only upon what must be performed, but primarily upon what will induce the product. The regulatory emphasis shifts. It is not so much actual cost as it is market cost;

[1] See, *e.g.*, *Wisconsin* v. *F.P.C.*, 373 U.S. 294 (1963); *Colorado Interstate Gas Co.* v. *F.P.C.*, 324 U.S. 58 (1945); *F.P.C.* v. *Natural Gas Pipeline Co.*, 315 U.S. 575 (1942); *Bel Oil Corp.* v. *F.P.C.*, 255 F. 2d 548 (5th Cir. 1958); *Forest Oil Corp.* v. *F.P.C.*, 263 F. 2d 622 (5th Cir. 1959).

not only prudent return but incentive prices; not just cost of service but also cost of supply. These multifarious considerations are so well established that there should be no need for further discussion. They were made explicit in our decision to focus on area rate-making and have been consistently reaffirmed. *Phillips Petroleum Company*, 24 FPC 537, 542–548 (1960); aff'd, 373 U.S. 294, 308–310 (1963). That decision compels thorough consideration of the factors that determine a reasonable market price.

It has been argued that *en masse* cost proceedings contain an inherent incentive for low cost producers since their profits are limited only by ceilings premised on much higher costs. Group cost proceedings may offer more incentives than individual proceedings, but if the history of pipeline production and its regulation by this Commission on an individual cost basis is any indication, cost regulation as a general principle in utility regulation does not provide the necessary system. By such control, there has been a 25 per cent decrease in the ratio of actual pipeline production over a six-year period: in 1957, pipeline production was 11.69 per cent of purchases; in 1958, 10.56 per cent; in 1959, 10.87 per cent; in 1960, 10.38 per cent; in 1961, down to 9.57 per cent; and in 1962, only 8.78 per cent. See *Sales by Producers of Natural Gas to Natural Gas Pipeline Companies* (F.P.C., 1963). These statistics are for individual companies as composited on an annual basis.

It has also been argued that, if total industry costs plus a reasonable return are recovered, then gas will continue to be found. Total costs are not recovered under group cost regulation; the higher cost producers, which must be considered in any statistical compilation, will still not be made whole. Moreover, gas is found by the individual decisions and acts of thousands of producers. To them, incentives must relate to profits available in other sectors of the economy. If the maximum price any one producer can obtain from his production is insufficient, as he might determine *vis-a-vis* his own interests and alternative investments, it is of little concern to him that the ceiling was premised on the larger percentage of the industry's costs. So long as there is a reasonable likelihood that his prices will be reduced below his contract terms or his certificate conditions, he will not have the necessary incentive to commit funds for further exploration.

I emphasize, in full agreement with our opinion, that the area rates we are to determine have a single, overriding purpose: to control the available supply of natural gas; and those rates have but one utilitarian function: to be high enough, but only high enough, to accomplish this policy function. In the context of area pricing, just and reasonable rates can best be used as a measure to elicit the necessary supply. So viewed, price control is the overriding policy. The function should be accomplished, and the standard should be employed, in the most direct and least dilatory manner possible.

REGULATION BASED SOLELY ON COSTS

The Commission places primary reliance for its answer in this initial case upon cost-plus regulation. This accepted formulation is little more than individual cost of service applied on an area basis to an averaging of composite costs. In making this determination, we must grapple with Gordian problems that do not readily accommodate to precise disentanglement; for our purposes here, cost analysis defies mathematical logic. Nevertheless, the focus in this proceeding on such costs make it both necessary and proper that we determine the financial requirements of the industry.

Costs as a Basis for Comparison

The major emphasis in the Commission opinion on cost-plus regulation appears to stem from a conviction that costs *must always* be the primary basis for regulation. I believe we have more flexibility, particularly for future proceedings, than is suggested there. The leading authority on this issue is *F.P.C.* v. *Hope Natural Gas Company*, 315 U.S. 575, where the Supreme Court declared:

> It is not the theory but the impact of the rate order which counts. If the total effect of the rate order cannot be said to be unjust or unreasonable, judicial inquiry * * * is at an end. The fact that the method employed to reach that result may contain infirmities is not then important.

The tenor of the above quotation supports the general proposition that regulatory agencies are to be accorded a strong presumption of validity in determinations that must be based largely on commission expertise. Certainly producer regulation qualifies as a subject matter in which there should be large scope for Commission innovation and adaptation to the economic facts of life in the industry. The Commission opinion, in my view, charts too narrow a course for the future. Cases such as *City of Detroit* v. *F.P.C.*, 230 F. 2d 810 (1956), where the D.C. Circuit Court reversed a Commission determination which would have allowed a pipeline the field price for its purchases of natural gas from an affiliated producer, do not bind us to costs alone. The Commission had there sought to avoid the complicated and time-consuming "rate-base" method, which is presently relied upon for the flowing gas price albeit on an area basis. The circuit court reversed, holding that the purposes of the Natural Gas Act require that costs be considered; however, the opinion emphasized that this was to be regarded as no more than a starting point. Thus, the Court there stated:

> * * * though we hold that method [the rate base or cost of service method] not to be the only one available under the statute, it is essential in such a case as this, that it be used as a basis of comparison. It has been repeatedly used by the Commission, and repeatedly approved by the courts, as a means of arriving at lawful—"just and reasonable" rates under the Act. Unless it is continued to be used at least as a point of departure, the whole experience under the Act is discarded and no anchor, as it were, is available by which to hold the terms "just and reasonable" to some recognizable meaning.

The above language was relied upon by the Fifth Circuit in another proceeding, *Bel Oil Corporation* v. *F.P.C.*, 255 F. 2d 548 (1958), where that court was faced with an allegation by certain producers that the Commission should base just and reasonable rates on field prices. The court rejected this contention, saying:

> We cannot agree [to] the proposition that the evidence thus far adduced makes out a *prima facie* case of reasonableness of the contract price of 16 cents. We do not hold that the evidence of field price is irrelevant. We do hold that evidence of unregulated prices in the field is not sufficient to warrant a finding by the Commission that a price comparable to them is just and reasonable within the intendment of the Natural Gas Act, *Id.*, at 553.

The Court further observed:

> The regulation of the prices at which thousands of "natural gas companies" may sell to the pipeline companies is a difficult one at best. It is a field which in many respects requires new formulas to test what is just and reasonable.

Rebutted in efforts to rely solely on contract prices, the Commission commenced the seemingly interminable task of determining just and reasonable rates to be allowed on an individual company cost of service basis for the country's major producers of natural gas. Realizing the futility of the individual cost approach, the Commission made the necessary determination that area rates be utilized. Significantly, the decision marked a step away from the individual company costs; the emphasis shifted to other economic indicia. New formulae for public utility regulation were necessary. It became possible under area pricing that some producers might not be able to operate under ceilings; it also raised the possibility that many producers would receive high rates of return simply because of the success of their operations. The departure signalled the demise of cost-plus regulation for natural gas producers. Recognition was accorded the fundamental difference that exists between the producer of a commodity and the seller of a service. The latter is readily amenable to utility regulation; the former clearly is not. Significantly, the same court that decided *City of Detroit* affirmed the departure from costs in the *Second Phillips* litigation. In 303 F. 2d 308 (D.C. Cir. 1961) Chief Judge Prettyman, author of *City of Detroit*, declared:

> * * * But what of a fair price for a commodity bought and sold by a merchandiser? Almost the whole of the economics of merchandising differs from the economics of public utility service. Are the just and reasonable prices of such a merchandiser limited to fair returns on his own investment and prices paid by him (and, if so, what investment and what prices), or are those prices reasonably measured by the fair prices for the product as measured by the open competitive market for the product, evaluated by Commission expertise and data on the whole of the market operation? Either criterion is a method of regulation. It seems to us that the choice must lie with the Commission. *Id.*, at 388.

In turn, the Supreme Court affirmed the area approach, 373 U.S. 294 (1963). Significantly, it there declared:

> We recognize the unusual difficulties inherent in regulating the price of a commodity such as natural gas. We respect the Commission's considered judgment, backed by sound and persuasive reasoning, that the individual company cost-of-service method is not a feasible or suitable one for regulating the rates of independent producers. We share the Commission's hopes that the area approach may prove to be the ultimate solution. *Id.*, at 310.

Although repeating assurances at oral argument that "composite cost-of-service data" would be considered, the Court went on to say that *City of Detroit*, insofar as it required cost regulation, is to be distinguished from area pricing because the circuit court did not have before it any questions relating to the area rate method. This precedent leads inexorably to the conclusion that, even though some consideration of costs may be required for an initial area pricing formula, the cost approach need not, in circumstances of workable competition, be the governing methodology. Nevertheless, five years after the area approach was initiated in *Second Phillips*, and over twenty years after the Court observed that "he who would upset the rate order under the [Natural Gas] Act carries the heavy burden of making a convincing showing that it is invalid because it is unjust and unreasonable in its consequences." * * * *F.P.C.* v. *Hope Natural Gas Co.*, 320 U.S. 591, at 601 (1944), this Commission retains its attachment to cost-plus. In the light of compelling authority, it must be concluded that fears of judicial review need not be entertained to preclude Commission departure

from strict adherence to cost-plus. In this proceeding there has been an extensive investigation into the operations of producers, with all parties having received a thorough opportunity to present their separate views and to review the evidence presented by others. Beyond a doubt, with due consideration being accorded the many difficulties inherent in any cost analysis of a joint product, it is clear that the prices adopted today bear a close and substantial relation to the weighted average prices negotiated in the field. The cost-plus rate and the negotiated contract rate fall within that zone of reasonableness that is essential to regulation. Therefore, it is not required in future proceedings that costs be the beginning and the end of just and reasonable rates. The time is ripe to abandon costs as the sole referential. Among the alternatives, competition has been shown to be sufficient to provide an appropriate and compelling measure of just and reasonable rates.

Inherent Limitations in Cost-plus Regulation

Cost-plus regulation alone is not an objective, independent determinant for just and reasonable prices for producers. Any determination upon evidence of costs will necessarily depend on numerous pragmatic adjustments that will, without consideration in detail of other relevant factors, permit a certain amount of variation that could otherwise be controlled. It is no difficult matter to appreciate the problem. Staff concedes that "costing for producers of gas is not, and likely never will become, as precise as is customary in utility regulation." The major inherent difficulties are fourfold.

Fundamentally, the factual and statistical presentations relied upon in the main opinion are but estimates. There are immense difficulties in the collection, selection, and presentation of data. Voluminous questionnaires are issued, but many go unreturned. Staff Appendix data in the largest of the five size categories is based on 93.8 per cent of the producers. In the next largest group only 30.9 per cent are available. The percentages are dropped drastically to 8.0 per cent in the third group, to 2.7 per cent in the fourth, and to but 0.8 per cent in the smallest. Although the excellent response in the largest category does provide good area cost coverage, there is a notable exception by the absence of crucial exploratory drilling costs. Specifically, unrecorded dry holes are of necessity incomplete. Any meaningful anticipation of probable accuracy is weakened by an absence of fully reliable statistical verity. Perhaps these deficiencies could be cured in the future, but the precipitous decrease for available questionnaire data on the small producer groups presents more fundamental problems, particularly since the small producers drill the greater proportion of exploratory wells. The smaller producers operate on extremely limited resources and are thus less likely to maintain books that would be adequate to provide meaningful replies. While 67 of 68 Appendix B questionnaire responses for the second largest group are acceptable for compositing purposes, 46 of the 105 Appendix C responses were inconsistent or incomplete to the extent that their data was entirely excluded. Consequently, as sales and production volumes decrease data credibility likewise decreases. Exhibit 255, among others, indicates there is an exact inverse relationship between sales volumes and per unit costs; as the former decrease, the latter increase. This statistical inaccuracy means that primary reliance on questionnaire data places the small producer—the one most likely to be undercut through *en masse* normative costing—in a triple squeeze: due to the high cost of compilation, a low percentage can submit cost data; a high percentage of the data submitted must thus be rejected; and such responses as finally filter into a composite exhibit must be discredited for low coverage on a voluntary basis.

Despite these inherent deficiencies, the issuance of the questionnaires is not inutile. To the contrary, their submission has been of notable assistance in arriving at rates which are just and reasonable, and in establishing, as evidenced in our opinion, that negotiated field prices are within the permissible zone of reasonableness, even from a cost perspective.

Of necessity, the Commission had to supplement questionnaire data by amplifying the information available from various published sources. Although this reinforces some aspects of data reliability, other problems arise in proportion. The separate publications are usually limited to the very large operators, and are thus even more restricted than under the questionnaire responses. Coverage of these outside sources is usually national and international, so that expenditures are presented in broad categories that portray many meaningful items in single dollar total; consequently, specific cost items that should require special regulatory treatment cannot be separately identified for the Commission's purposes. As various sources are necessarily utilized, approximation of these unknown components is effectively prevented by the obscure or overlapping categorizations used by each source. Statistical probability thus declines and, although such cost analysis provides a "zone of reasonableness" within which the required pragmatic adjustments can properly be made, there is no precise objective standard for the purposes of the industry.

After the cost components are adopted, the circular ceremony known as cost allocation begins. We have avoided some of the pitfalls, but our reliance on even the semblance of allocation requires that we exercise our judgment within a fairly broad range of rates. By definition, allocations occur because certain costs cannot be directly identified with certain functions of the various identifiable products or assets, and allocated costs thus present a distinct existence apart from directly ascertainable costs. Where the ratio to total industry costs is small, the gaps are insignificant; however, as the ratio increases, both the costs and the resulting rates, to the extent directly transferred, become less reliable and more subject to adjustment. As the speculative base becomes more pronounced, the choice of allocation formulae can produce a wider range of rates, but the logical relationship between any resulting rate and the current costs of supply becomes even more remote. Although the courts may have declared that "It is not the theory but the impact of the rate order which counts," I do not believe that merely because the results reached today are reasonable and have a valid reference to the prevailing market price at the wellhead that cost-plus should be employed in the future as the sole referential. The imprecise determinations can only be a transcendent command unduly complicating later proceedings, and the analytic principles evoked can have but the validity of a foregone conclusion.

The difficulties involved in allocations are not hard to appreciate. The allocations problem confronted by the Commission is that of attributing legitimate, but separate, costs to a largely joint product. According to witness Sherwin, the costs attributable to associated gas are 100 per cent joint, as that term is technically employed, and, for non-associated gas, 31 per cent joint and 24 per cent shades of joint and common. Thus, even for non-associated gas, only 45 per cent of the costs are directly attributable to the product committed to our jurisdiction. The Commission has previously stated the implications of this:

> While we must make allocations in all rate cases, the amounts involved in electric and gas pipeline cases have been comparatively small, and the allocations relatively simple. In the case of a producer, the amounts involved in the allocations of costs are major in size and extremely difficult to make. The result is that a producer actually could become bankrupt, or could

> make enormous profits, depending merely upon the methods of allocation used. 24 FPC at 543–544.

Strict adherence to allocation formulae would produce a spectrum of rates so wide and variant as to lend a sophist's support for the extremes, and as a practical matter to be capable of producing clearly unrealistic results. In such a case, as well as in the case of prescribed rates that come to rest somewhere between the extremes, the supposedly independent determination of legitimate costs is actually based upon pragmatic adjustments of either the formulae employed or, in a guise of expertise and trending, of the deceptively precise mathematical resultants. This certainly is no well-guarded secret:

> When an unrealistic result is reached, the formulae for allocations must be changed, in order to bring about a reasonable result. The allocation methods then become a means of supporting a result already arrived at, rather than a means of arriving at a result which was previously unknown. *Id.*, at 544.

Finally, even after statistical costs are collected, compiled, selected, allocated, and invariably trended and modified, they must still be related to reserve additions before the desired costs per Mcf can be found. An understatement of reserves found causes high per unit costs, and thus results in high rates. An overstatement has the reverse results. Despite the confidentiality attached by producers to their reserve figures, the industry's cooperation in this proceeding prompted them to submit a composite exhibit of estimated reserves for the Permian Basin. In addition, there are numerous published sources for reserves estimates. Nevertheless, such figures are no more than estimates, and their estimation entails a considerable degree of subjectivity. This is revealed on the record before the Commission as was similarly disclosed in the investigation into Phillips' individual costs. See 24 FPC at 544.

The statutory function of rate regulation is to arrive at reasonable results, and no criticism can be levelled at the attempt to stay within a zone of reasonableness. The use of composite figures to explain economic behavior is clearly a most useful analytic system; however, reliance on allocations, estimates, and other variations of expertise are not the only independent referentials that are desired or that can be utilized.

To the extent that cost analysis is productive of reasonable results, and with one exception our opinion today meets this judicial standard, it would be most helpful for our regulatory purposes if ascertainment of a producer's investment were to be presented on a basis conforming to sound accounting practices. The derivation of a return allowance is a three-step computation: first, ascertainment of the investment; second, determination of the period of time over which the investment is to be allowed a return; and, third, ascertainment of the rate of return. I concur in the Commission's determination on this issue because, on the record in this case, no other disposition is feasible. However, it appears that the yield concept deserves full consideration in future proceedings as a reasonable alternative that might be preferable to traditional methods.

In a 1963 publication by Arthur Anderson & Company, entitled *Accounting for Oil and Gas Exploration Costs*, it is concluded that the present practice of the industry of expensing exploration and development costs as incurred is in discord with the accounting and economic principles. Written for the limited purpose of discussion and study, the publication recommends that leasing, acquisition, carrying, drilling, geological, and other such costs, as well as general and administrative costs related to exploration and overhead, be capitalized and later amortized on an overall unit-of-production basis as production occurs. It states. "[s]uch aggregate costs include nonproductive exploration costs which,

in our opinion, are capital in nature," and later, "[t]hey should be capitalized since they are just as much a part of the cost of the reserves found as are the lease and well equipment on the producing wells." The pamphlet recognizes, however, that "* * * appropriate recognition should be given to such current reductions in income taxes as may result from the current deduction of such capitalized costs for income taxes as incurred. This is essential to a proper determination of costs."

The recommendation in the pamphlet may also be sound for regulatory purposes. At least, as recommended by Staff witness Spain, that portion of it which advocates full cost accounting for all finding expenditures should be thoroughly explored. Any lesser treatment is a refusal to recognize the full cost of acquiring productive assets. Such cost accounting has been undertaken on a very limited basis by the industry, and it appears that the results have provided more accurate knowledge of the functioning of the industry and of the results of expenditures. Without going into detail at the present, I believe the true yield method may be shown not to change the rates here established. In any event, it is not possible to utilize this control for our decision today: the record is not adequate, the various recommended returns are not directly transferable, and the industry has not generally accepted the principles involved.

AN APPROPRIATE BASIS FOR DECISION

These limitations inherent in cost-plus producer regulation do not, however, spring only from the allocations and adjustments, nor only from the inherent difficulties of data collection, selection, and compilation, nor only from the resulting deficiencies in the construction of a legitimate costing model, nor only through deemphasis of available reserves estimates. I believe the facts in this case reveal that in the future the Commission need not be confined to cost-plus regulation. The accusation of "drastic inflationary cycles" in wellhead prices in the last twenty years stands rebutted. As a matter of general principle, it is not sound to argue that cost-plus regulation cannot be supplemented because the rise in wellhead prices, experienced in the recent past, was due to producer-dictation of contract prices; that those prices were grossly in excess of cost trends; further, that the wellhead price increase was directly reflected in burner tip increases, albeit four-fold that at the wellhead; and, finally, that any attempt to consider factors in addition to cost-plus regulation would constitute an abdication of responsibility, and would result only in another round of similar, allegedly violent, price jumps.

The propriety of the price rise since 1945

Any detailed discussion of the accusation of price-dictation by producers will not be undertaken here;[2] however, long experience with the industry is convincing that, where price dictation exists, it is seldom with the seller. All available information and discussion lead persuasively to the conclusion that field prices are set after vigorous bargaining within a context of numerous restrictive economic forces. More particularly, in the Permian, there has been an essentially monopsonistic environment whereby the transmission company in a particular field would set, on a unilateral basis, the fixed, maximum rate for natural gas in the area. Accomplishing this unilateral price-dictation is particularly

[2] The problems are well-documented in numerous professional journals and academic surveys. Reference is made particularly to MacAvoy's *Price Formulation in Natural Gas Fields*, (Yale University Press, 1962); Neuner's *The Natural Gas Industry; Monopoly and Competition in Field Markets*, (University of Oklahoma Press, 1960); and Cookenboo's *Competition in the Field Market for Natural Gas*. (The Rice Institute Pamphlet, 1958).

possible for a company free of economic constraint. This was the situation for El Paso Natural Gas Company. El Paso not only purchases over 70 per cent of the interstate Permian gas, but it also produces over 15 per cent of its total volumetric purchases. In this connection it should be noted, as was established by the record in *United Gas Pipe Line Company*, Docket No. RP63–1, 31 FPC at 55 (1964), wellhead prices are uniformly depressed in areas where pipeline production is prevalent. Nevertheless, many have argued that, if transmission companies had possessed any bargaining leverage, the recent rise in gas prices *could not have occurred*. This argument must be rebutted.

It is clear that the wellhead price increases of the 1950's began at levels not even remotely approximate to the cost or value of separately found reserves. No responsible authority disputes this position. As late as 1960, this Commission is on record that:

> * * * rigid adherence to the rate base method will, in many cases, price the producers' gas completely out of market. This fact is now abundantly clear: Regardless of variations in allocations methods, allowance for incentives, and other disputed factors, computations of the cost of natural gas which have been presented in the many cases before us show that natural gas has been, in most instances, substantially underpriced. 24 FPC at 547.

When the Supreme Court ordered Commission jurisdiction over natural gas producers, gas was not paying its own way in the industry. The problem came to the forefront in 1948 when the Commission's *Natural Gas Investigation* established that gas was being wasted in enormous volumes, that it nevertheless had excellent value as a fuel, and that the most effective practice would be to establish a minimum price on sales of gas to pipelines in order to conserve the resource. It is paradoxical that, four years prior to its *First Phillips* decision, the Supreme Court should approve state-imposed minimum wellhead prices for natural gas to the end that it would not be wasted. See *Cities Service Gas Co.* v. *Peerless Oil and Gas Co.*, 340 U.S. 179 (1950). This disparity between costs and past prices is indicated by our opinion today.[3] If the analysis we utilize for new gas is applied to the average wellhead price for natural gas in 1947, the difference between the two is at least 2.4¢, with the average contract price being *below* the cost-plus figure. In 1947 gas sold at an average price of 6.0¢, but the Commission's present approach, if applied then, would have resulted in a price of 8.4¢. It was not until the late 1950's, according to the costs established today, that natural gas prices came to approximate the cost-plus rationale utilized by our opinion. Thus, the price rise of the 1950's resulted primarily from the gradual maturation of the natural gas industry into one where the product sold was paying a just return to the independent producer. Particularly anomalous, in view of allegations of "continuing inflation" of natural gas prices, is the fact that such an increased allowance to provide a return on investment and expenses is the least that should be accorded the producer as a result of his elevation to a "natural gas company" under the Act.

In addition to natural gas coming into its own, there were, in the main, four factors that led to increases. *First*, the sudden rise in interstate demand necessitated, because of our regulatory standards, an equally sudden increase in reserve capacity with a concomitant market allocation to the higher usage. *Second*, the resultant of such demand was an activation of favored nation and spiral escalation clauses. *Third*, there was an extensive renegotiation of escalation clauses by pipelines in order to preclude such a repetition. *Fourth*, a

[3] It is not possible to relate our present cost analysis in precise manner to past prices, primarily because of the absence of questionnaire data. Nevertheless, industry-wide statistics provide a meaningful basis for comparison.

competitive buyer's market existed temporarily when transmission companies entered new purchasing areas to negotiate contracts at prices somewhat above then extant market values. It is of special significance that wellhead increases occurred in the latter instance, particularly in the Permian Basin in the late 1950's for it indicates that, without a competitive purchasing structure, producers are not able to achieve the higher prices. Thus, taking the average wellhead prices for the Permian in 1947 and 1956, the prices were 4.0¢ and 9.7¢ respectively, which are prices significantly less than the costs that have been established by this proceeding. By the rationale today utilized, this Commission could have established maximum prices of 7.2¢ and 12.5¢ in those two years, and the difference between the costs and what El Paso was then dictating amounts to prices some 30 percent *below* the new gas ceiling that would have then been required.

Furthermore, it must be emphasized that there is absolutely no support, apart from a so-called "anarchic inflation" allegation discussed hereinafter, that transmission companies, even though they possess superior bargaining leverage, are, because of an alleged ability to shift the costs without concern, indifferent to using this leverage. This accusation has been clearly refuted, not only by the published authorities cited earlier, but by the record before us. Witness Mayer, who has participated for over thirty-five years in the negotiation of sales contracts for Phillips Petroleum Company which is the largest independent producer of natural gas in the United States, and has been a supervisor in the sales division since 1945, testified as follows:[4]

> Q: Turning first to matters of general rebuttal, I direct your attention to the question of the Examiner occurring during cross-examination of Mr. Frazier at Tr. 231/27,003, lines 1–4, concerning the degree of bargaining between pipelines and producers existing in the past and present in the Permian Basin and ask you to state what your experience has been in this regard.
>
> A: I have been intimately involved in negotiations with the pipeline companies in the Permian Basin for nearly twenty years. *I have yet to see the time that the negotiator for the pipeline didn't drive as hard a bargain as he possibly could.* In my opinion, the pipelines have negotiated, and will continue to negotiate, for the purchase of gas in every way which will result in the greatest benefit to themselves and their customers.

This experience of the industry cannot, as a matter of record, be disputed. Significantly, the Examiner, although not fully persuaded on this matter for the entire period of the 1950's, was able to conclude as follows:

> * * * There is presently intense competition between pipelines for the limited growth in city-gate demand. And now that the city-gate price has advanced materially and distributors' costs have increased, competitive price pressures in the ultimates market have resulted in an added cost consciousness on the part of pipelines.

Since we are here fixing rates for the future, the circumstances with which we should be most concerned are reflected in the above conclusion.

Reliance need not be placed solely on the above. It is more significant that the rise in the price of natural gas can be fully explained, and that this rise has been part of a long-term picture that cannot be overlooked if there is to be a dispassionate analysis of the price-rise argument. The Bureau of Mines has compiled data in its *Minerals Yearbook* into charts that begin with 1940 or 1945. Such data have been used to emphasize the price rise. This limited survey

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[4] Tr., pp. 28, 138–139.

is misleading because it overlooks the experience of wellhead prices over a twenty-year period prior thereto:[5]

Year	Price (cents per Mcf)	Year	Price (cents per Mcf)	Year	Price (cents per Mcf)
1922	11.1	1935	5.8	1948	6.5
1923	10.0	1936	5.5	1949	6.3
1924	9.3	1937	5.1	1950	6.5
1925	9.4	1938	4.9	1951	7.3
1926	9.5	1939	4.9	1952	7.8
1927	8.8	1940	4.5	1953	9.2
1928	8.9	1941	4.9	1954	10.1
1929	8.2	1942	5.1	1955	10.4
1930	7.6	1943	5.2	1956	10.8
1931	7.0	1944	5.1	1957	11.3
1932	6.4	1945	4.9	1958	11.9
1933	6.2	1946	5.3	1959	12.9
1934	6.0	1947	6.0	1960	14.0

This complete presentation reflects the full scope of the price history of natural gas production: a germinal period of relatively high prices followed by successively declining periods which resulted in depressed prices that were extremely low; the low point was reached during wartime when price controls were imposed based on market conditions; and finally, there was a period of successive increases during the post-war period responsive to the increased demand. Significantly, these statistics establish that the moving average price in 1954, when federal producer regulation was imposed, was 1.0¢ lower than that of 1922, and the oft-emphasized increase from 1950 to 1960 was but 0.9¢ greater than the seldom emphasized decrease from 1922–1940.

Even the increase from 1945–1960 must be placed in further perspective. Based on *Minerals Yearbook* statistics, the record exhibits reveal the explosive volumetric growth experienced by natural gas sales over the relevant period: in 1935, 1.92 trillion cubic feet; in 1940, 2.66 trillion cubic feet; in 1945, 3.92 trillion cubic feet; in 1950, 6.28 trillion cubic feet; in 1955, 9.41 trillion cubic feet; and, in 1963, 13.88 trillion cubic feet. During this period demand increased over 700 per cent. This growth, when considered with the circumstances that production rates of return on average total capitalization have declined steadily since 1951,[6] and that several large supply areas have developed from what were once considered doubtful prospects, conclusively establish that there is no substance to the proposition that extravagant producer returns resulted in unnecessary exploratory drilling activity during the relevant period. The activity of natural gas production is simply not susceptible to the same precision of cost-control that is possible in most manufacturing and retail operations. Ultimately, unproductive outlays will always be the price of flowing gas, just as flowing gas will always be the product of once doubtful expenditures.

Reflecting a remarkable demand explosion, the high desirability of natural gas as an energy source doubled its relative position in the energy fuels market. Gas supplied but 14.1 per cent of this market in 1946. This increased to 17.6 per cent in 1949, to 20.5 per cent in 1951, to 24.5 per cent in 1954, to 27.6 per cent in 1958, and to 29.4 per cent in 1960. While the 1946–1960 rate of growth for

[5] Record Exhibit No. 25, Schedule 2. See also Bureau of the Census, *Historical Statistics of the United States* (1960) and subsequent supplements.

[6] Respondent's Exhibit No. 220, Schedule 11.

coal-lignite and liquid petroleum was a sluggish 2.4 and 4.7 per cent, respectively, natural gas experienced the rapid growth rate of 8.4 per cent.

The effect of this increasing demand on wellhead prices has been thus explained:[7]

> The sharp increase in field prices over the space of a year or so is undoubtedly responsible for much of the political support of price regulation for the industry. Such a rapid rise in prices is, of course, quite possibly compatible with the operation of a competitive market where consumption increases rapidly and where a part of the increase is in higher value uses, as has been shown to be the case in this industry. Total marketed production averaged 5.1 trillion cubic feet per year for the country as a whole in the period 1946–1950, compared with 8.8 trillion from 1953–1955, an increase of about 75 per cent, compared with the 86 and 93 per cent increases in price in [Texas Railroad District Number 4 and South Louisiana]. The relative price increases are not appreciably greater than the relative increase in consumption for the nation as a whole; and in these two areas marketed production was probably up more than the national total.

The increasing demand for interstate gas dictated that annual additions not only equal production, but that a reserve cushion also be added as a safety margin. As annual consumption increased, annual findings had to increase at a greater rate. Prices had to rise, not only to meet rising costs, but also to finance the annual increase in capacity. In other words, prices had to more than recompense the previous investment in order to provide more than current production. The result was the classic reaction of a free market: prices rose, not only to increase capacity in response to demand, but also to limit that demand until deliverability had accelerated.

The price rise has had, and continues to have, two other highly desirable effects upon the disposition of natural gas: it curbed waste, and it deflected gas away from such inferior uses as carbon black production. The record portrays this quite distinct inverse relationship between price and waste:

Year	Average wellhead price seven Southwestern States (cents per Mcf) constant (1947–49) purchasing power	Wasted and vented seven Southwestern States percent of net production
1946	4.1	24.7
1947	3.9	22.7
1948	4.3	15.7
1949	4.5	15.1
1950	4.7	12.2
1951	4.8	10.2
1952	5.6	10.0
1953	6.7	9.1
1954	7.4	7.7
1955	7.6	7.5
1956	7.7	7.6
1957	8.0	6.8
1958	8.7	5.1
1959	9.4	4.4
1960	10.1	4.2

The Bureau of Mines *Minerals Yearbooks* reveal the identical inverse relationship between price and less desirable uses:

[7] Cookenboo, *op. cit.*, p. 39.

Consumption sources	1940	1945	1950	1955	1963
Residential	16.7	15.6	19.9	23.4	24.5
Commercial	5.1	5.9	6.4	6.4	8.7
Total	21.8	21.5	26.3	30.3	33.2
Oil Field	26.8	23.5	19.7	16.7	14.2
Carbon Black	13.9	11.0	6.8	2.7	.8
Refineries	4.8	8.7	7.6	6.9	5.4
Electric Utilities	6.9	8.4	10.4	12.7	14.6
Other Industrial	25.8	20.9	29.2	30.7	31.8
Total Industrial	78.2	78.5	73.7	69.6	66.8

In evaluating the advisability of placing primary reliance on field-negotiated prices, it is necessary to appreciate that the increase in wellhead prices was but a slight portion of the increase in burner tip prices, and that neither increase was inconsistent with contemporaneous trends. Witness Jordan's exhibit reflects the following relationship between wellhead and burner tip price increases:[8]

Year	Wellhead prices	Average value residential use	Wellhead price as a percent of residential value
1950	6.5	69.0	9.4
1951	7.3	76.0	9.6
1952	7.8	83.1	9.4
1953	9.2	86.5	10.6
1954	10.1	89.3	11.3
1955	10.4	88.7	11.7
1956	10.8	91.3	11.8
1957	11.3	93.0	12.2
1958	11.9	98.2	12.1
1959	12.9	101.1	12.8
1960	14.0	103.4	13.5
INCREASE			
1950–55	3.9	19.7	19.8
1955–60	3.6	14.7	24.5
1950–60	7.5	34.4	21.8

The above clearly establishes that, while the years 1950–1955 saw a 3.9 cent increase in wellhead prices, they also saw a 19.7 cent increase in residential prices. The years 1955–1960 show a similar relationship: a 3.6 cent increase in wellhead prices and a 14.7 cent increase in residential prices. For the entire period, the relationship was 7.5 cents to 34.4 cents, revealing that residential price increases were the result not of wellhead price increases, but, among other things, of increases in the capital costs and expenses of transportation and distribution. The following nationwide figures are important:[9]

Disposition of consumer prices

Average overall prices	1954	1957	1960	Percent
Prices (per Mcf):				
Wellhead value	0.10	0.11	0.14	
Value at point of consumption	.38	.43	.50	
Functional shares (per Mcf):				
Production	.10	.11	.14	28
Other	.28	.32	.36	72
Total	.38	.43	.50	100

[8] Respondent's Exhibit No. 42.
[9] Respondent's Exhibit No. 32, Table 14.

Changes in consumer prices

Functional shares (per Mcf)	1954 to 1957	1954 to 1960
Production	+0.01	+0.04
Other	+.04	+.08
Total	+.05	+.12

These charts are persuasive indicators that producers have not been the cause of "anarchic inflation". To the contrary, the legitimate costs of producing and delivering natural gas have necessarily resulted in price increases which must be borne to the end that a sufficient and assured quantity of gas is available for ultimate users throughout the Nation. Significantly, our opinion today establishes that costs have risen to rates that are no more than is required to provide natural gas service.

The price indices at production and consumption points for various fuels, and a comparison of production point fuel price increases to general indices is conclusive in the cumulative statistical presentation. The record reveals the following:[10]

Comparative weighted average prices of mineral fuels at points of production in cents per million Btu

United States

Year	Natural gas	Crude oil	Bituminous coal	Pennsylvania anthracite
1945	4.6	21.0	11.7	23.2
1946	4.9	24.3	13.1	26.9
1947	5.6	33.2	15.9	28.4
1948	6.0	44.8	19.0	31.2
1949	5.9	43.8	18.6	33.0
1950	6.0	43.4	18.5	35.0
1951	6.8	43.6	18.8	37.4
1952	7.2	43.6	18.7	36.9
1953	8.6	46.3	18.8	38.1
1954	9.4	47.9	18.4	33.5
1955	9.7	47.7	17.2	30.9
1956	10.0	48.1	18.4	32.2
1957	10.5	53.2	19.4	35.4
1958	11.1	52.0	18.5	35.0
1959	12.0	52.0	18.2	32.9
1960	13.0	49.7	18.1	(1)

[1] Not available.

Annual Indexes of Retail Fuel Prices

(1945=100)

Year	Oil gas residential space heating	No. 2 fuel oil	Bituminous coal	Anthracite coal
1945	100.0	100.0	100.0	100.0
1946	99.0	100.8	105.3	110.9
1947	100.0	120.2	124.4	120.4
1948	100.9	153.0	148.2	135.2
1949	102.2	145.0	153.6	144.4
1950	102.6	146.6	159.2	150.0
1951	103.6	155.0	162.8	164.5
1952	106.9	158.6	165.9	167.1
1953	112.6	166.8	169.3	178.7
1954	115.8	167.9	169.2	172.0
1955	121.8	173.5	171.0	168.9
1956	122.7	182.0	177.3	177.7
1957	124.0	191.4	184.4	193.1
1958	131.2	180.3	187.1	191.5
1959	135.7	182.8	190.3	189.6
1960	147.2	179.6	191.9	185.3

[10] Respondent's Exhibit No. 25, Schedule 15.

These data reflect what has been too-lightly disregarded: that the rise in natural gas prices was not excessive in relation to the rise in interstate demand, the rise in wholesale price trends, the rise in price trends for competitive fuels, or the rise in average hourly earnings. They also reveal that criticism cast on the producer for residential price increases was 80 per cent misplaced, and accusations of extraordinary production returns were statistically unsupported. This overall picture is made clear by the chart on page 260. Rather than constituting a justification for rigid cost-plus regulation, the criticism is refuted by the extensive investigation and cross-examination that has occurred in this case. It must be concluded that natural gas has been earning no more than a fair return on its costs, and the absence of conclusive evidence to the contrary bolsters the presumption that the competitive factor in the field provides, within limitations, the necessary independent determinant to this Commission's regulatory responsibilities.

The absence of producer price-dictation in the Permian Basin

The early necessity for conservation laws in most states was a result of the ruinous competition that was possible in producing fields because of the law of capture. This era of active rivalry among producers is now past, but the opportunity for independent operation which led to state conservation regulation indicates the sense of independence that is common among the operators of producing properties. It is indeed fortunate that these early predatory practices have been eliminated. Furthermore, the prevention of drainage to protect correlative rights and the regulation of production to reflect market demand has not eliminated competition in other aspects of the companies' activities. The primary basis that leads to any presumption of a lack of competition has been the price rise. As discussed earlier, this has been no more than a reasonable rise responsive to high costs, and it was considerably less marked than the increases which resulted in other commodity-oriented industries.

Aside from the overwhelming concentration on costs by Staff and the California distributors, thorough consideration of the competition issue has been clouded in a failure to make precise definitions. The problems of description and categorization result from the various meanings attached to the concept of competition. In my view competition means a buyer is free to purchase alternative sources of a product from relatively small sellers acting independently of each other.

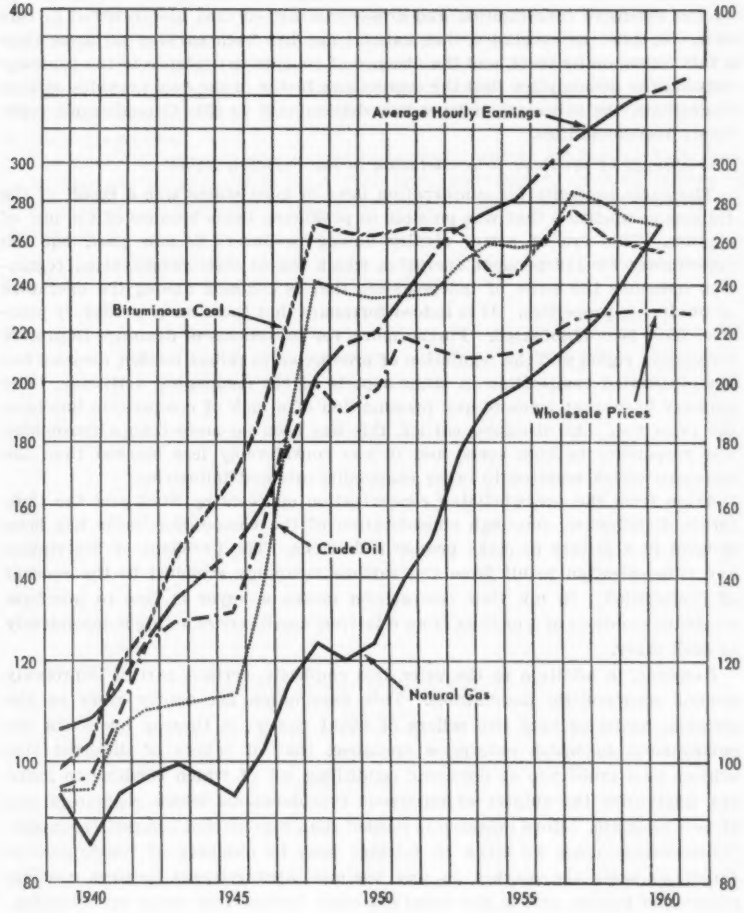
However, in addition to the price rise emphasis, certain parties improperly assume monopolistic motivations. This assumption necessarily rests on the classical model of only two sellers of equal power; it thereby overlooks the environment in which enterprise operates: that of sellers of different size subject to a multitude of economic conditions, all of which combine to make any final price the subject of numerous considerations which regulators can at best estimate. More evidence is needed than a restricted competitive model. Consideration must be given to relative size, to numbers of companies, to ability to enter the market, to any business arrangements between various sellers and buyers, and to the countless other factors that make up a market. Of particular significance to the producing industry are such special market conditions as acreage controls, flaring rules, and the prevention of lapse of the lease. The question is one of the power of a seller or group of sellers to dictate a price that is divorced from costs. This condition does not exist in the Permian Basin. It is clear that there is such a measure of effective competition that in future proceedings producers can be accorded a relative degree of independence to the end that contract prices determine the ceiling price we set for natural gas.

COMPARATIVE TRENDS OF AVERAGE PRICES OF MINERAL FUELS AT POINTS OF PRODUCTION

United States

1939-1961

INDEX NUMBERS 1935-1939 = 100



On the record before us, there is no evidence of monopolistic power possessed by producers in the Permian Basin. The issue, though properly raised by the producers, has gone unnoticed by the other parties. Respondents have met the burden of proof on the competition issue. Staff and the California intervenors have not. The state of the record is such that Respondents have made every possible showing of competition, and, further, they have shown that this competition is sufficient, under a majority of the contracts, to provide a meaningful methodology for determination of just and reasonable rates. It is no answer to say that the producing industry has not met its burden. The burden of proof is not solely on Respondents. Although this proceeding involves Section 4(e) filings, where the burden is expressly placed on producers, it is essentially a Section 5(a) proceeding in which our Staff must make the proper showing. Nevertheless, this case cannot turn on the burden of proof. There is sufficient evidence on all issues. Furthermore, that this is a regulatory proceeding does not detract from thorough consideration of relevant economic evidence to ascertain whether producers exercise undue powers over price. Certainly there is no basis for a presumption that there is no competition. The ramifications of the order we issue today require comprehensive and meaningful treatment of this issue.

Briefly, the record shows that, of all producers in the Permian, 361 were named in the order initiating this proceeding, but no one of these sells over eight per cent of the gas produced on a national basis. In addition, at least 2,280 producers in the Permian Basin supply gas to processing plants under percentage contracts. In the aggregate, there were 54 producers in 1960 who sold over ten million Mcf of gas per year. In the Permian Basin there are 20 producers selling some 80% of the gas produced. These numbers and sizes necessarily raise the presumption that there is such a degree of self-interested rivalry and of independent action as to preclude a presumption of concerted action. On the other hand, there is not a scintilla of evidence that any of the producers have ever acted collusively; they have not exercised their power in a manner harmful to the competitive market. There has been no parallelism in prices to indicate action by any producers to control price. This stands out clearly:[11]

Year	Company	Number of contracts	Price range
			Cents
1953	El Paso Natural Gas	45	9.0-10.0
1954	do	80	8.5-10.0
	Permian Basin Pipeline (Northern Natural Gas)	6	9.0-10.5
1955	El Paso Natural Gas	32	8.5-10.0
	Northern Natural Gas	2	9.5-15.0
1956	El Paso Natural Gas	47	7.5-10.0
	Pioneer Gathering System	1	11.0
1957	El Paso Natural Gas	36	9.5-11.0
	Northern Natural Gas	7	9.5-16.0
	West Texas Gathering Co	15	16.0
1958	El Paso Natural Gas	34	10.5-11.0
	Northern Natural Gas	1	16.0-22.0
	Transwestern	10	16.0-22.0
	Pioneer Gathering System	9	10.0-12.5
	West Texas Gathering Co	2	16.0
1959	El Paso Natural Gas Co	24	9.0-11.0
		[1] 407	14.5-17.0
	Northern Natural Gas Co	3	13.5
	Transwestern	12	16.0-22.0
	Pioneer Gathering	2	12.5
	West Texas Gathering	5	16.0
1960	El Paso Natural Gas	19	10.5-17.0
		[1] 15	15.0-17.0
	Northern Natural Gas	1	13.5
	Transwestern	23	15.5-22.0
	West Texas Gathering	5	16.0

[1] Renegotiated.

[11] Respondent's Exhibit No. 25, Schedules 12 and 13.

Such a vast range in prices over the period of almost a decade certainly is suggestive of the fact that all producers, or even the major sellers do not exercise effective monopoly powers.

There is relative ease of entry into the business. Such discrimination as may exist comes, not from producers, but pipelines. Further, it must be emphasized that such factors as a rapid growth rate, excess capacity, and meeting the prices of a rival are conditions to be expected in a market that is rapidly expanding and coming into its own. The opening of markets and the high rate of technical progress usually characteristic of such a situation make for uncertainty as to the most profitable policies. Any uncertainty of prices under contracts, even when Transwestern broke El Paso's monopoly, reflects on more than unprecedented demand and not monopoly control by producers.

The sole non-competitive factor has been the long-term contract, required by this Commission as a condition precedent to certification. Early uncertainty as to the proper prices for natural gas and particularly its use as a waste product acerbated this twenty-year pricing policy by compelling producers to insist on various indefinite escalation clauses to the end that, once stable prices were realized at a level that returned costs to the producer, each seller would so benefit. These clauses have been negotiated in the Permian since at least 1945 when El Paso contracted with Phillips for a sale of gas at 3.5¢ per Mcf, but subject to indefinite escalation based upon El Paso's resale rates at the California border. Since the middle of the last decade, such indefinite escalations have been uniformly condemned. The following comment is relevant:[12]

> Many witnesses appearing before the committee, particularly those representing distributing interests and consumer areas, maintained that escalation clauses in existing contracts, unless their operation is controlled in some effective manner, could result in very large increases in the cost of gas to consumers—particularly in view of the fact that a contract for natural gas usually runs for 20 years or more, and a large proportion of the contracts presently in effect were entered into in recent years * * *
>
> It is provided * * * that where a rate increase is based on a price increase resulting from the operation of an escalation clause [except the so-called step-up and tax-increase clauses] in an existing contract the Commission may not consider as an operating expense for the purchase of such natural gas any part of the increase in price which results in a price in excess of the reasonable market price therefore.

We have endorsed the above recommendation by prohibiting the prospective operation of such clauses.[13] Our opinion today permits their further operation only to the extent they were negotiated in past periods and in any event such escalations cannot exceed the ceiling rates. Looking to the future the extensive impact of limited price increases in new contracts cannot approach the increases realized in the last decade. Thus, by this determination, there is a solution to the single factor that has compromised workable competition.

Finally, in determining the competition issue, it is relevant to consider an energy market broader than the natural gas industry of the Permian Basin. It is clear that natural gas is presently sold at a level competitive with other fuels and sources of energy. This is particularly the case on a national basis, and is the result of continuing economies in the coal and electric industries. If our analysis is expanded beyond the Permian to take cognizance of this national

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[12] Report of the Committee on Interstate and Foreign Commerce; to amend the Natural Gas Act, as amended; House Report 992, p. 9 (84th Congress, 1st Session, 1955).

[13] See, *The Pure Oil Company*, 25 FPC 383 (1961); Order Nos. 232 and 232–A, 25 FPC 379, 609 (1961), amending Sections 154.91(a) and 154.93 of the Commission's Regulations under the Natural Gas Act.

energy market, there is evidence of those conditions that would indicate restrictive economic forces. There are alternative energy sources to provide an independent determinative of prices. The consumer's individual outlay does not restrict his freedom to select alternative sources; the energy market is in a state of equilibrium. For this reason, if no other, transmission companies cannot disregard the prices paid to producers, and, particularly for the future, it cannot be assumed that the pipelines do not have the same interest in their investment as the distributors have in their related investment.

Reliance on the price rise to justify a conclusion of producer price-dictation must falter in the face of overwhelming evidence that this rise was parallel to the rise in all other price indices, that the price rise reflected the elevation in the value of natural gas to a level that would return to the producer his reasonable costs, and that there is competition sufficient for our regulatory purposes. For these reasons, I rely upon the reasonable market prices in addition to the cost considerations in our decision.

JUST AND REASONABLE RATES BASED ON CONTRACTS

Far from undercutting our power to impose effective price ceilings, a price-demand approach would retain flexibility and would still present a direct relationship between cost considerations and the price ceiling. In view of the cost presentation herein, it appears that in the future reliance on competitive forces should be sufficient. The independent operation of substantial parts of the market will provide an average price accommodating to the mandate that controls be imposed upon prices for natural gas. To the extent possible, one part of an essentially joint product will be regulated in a manner responsive to the needs of both the industry and the consumer. So long as most producers can operate under a compulsory price ceiling, the supplies will be available, and by that ceiling the consumer will be protected from price escalations that are not acceptable. The question becomes one of methodology. Although it might be preferable to enact legislation to abandon any effort at price control other than such reasonable restraints as might be imposed upon pipelines, such limited controls are not totally removed from a method that has proven successful in the last few years.

Relevance of our in-line pricing policies

Following the Supreme Court's mandate in *Atlantic Refining Company* v. *F.P.C.* (*CATCO*), 360 U.S. 378 (1959), the Commission has followed a course in Section 7 proceedings of fixing ceilings at reasonable rates relevant to the existing market. It has thereby centered its attention on the weighted average prices under contracts which provide for the sale of substantial volumes of natural gas in interstate commerce. Indefinite escalation provisions have been removed, and rate increase moratoria have been imposed. Attention has been directed to permanent and temporary certificates covering contract rates, and the Commission has strenuously resisted all attempts to interject cost presentations submitted on an individual company basis. It has thus been successful in effectuating, simply, quickly, and with minimal disruption, what five years of agitation and uncertainty, fraught with numerous procedural disruptions, can scarcely improve upon: fixed rates that are sufficiently high to induce adequate reserve accretions and yet with provisions for rate increases that would be so gradual that any unpredictable economic disruption at the distribution end of the natural gas industry would be precluded. Although the procedure was notably unrefined, it has likewise proven to be remarkably efficacious. The in-line procedure took the notable step of avoiding cost-plus producer regulation and thereby illustrated

that a "sane, sensible, and effective" course to producer regulation was available. Significantly, it represented initial development of the policies we adopt today. Nevertheless, since in-line proceedings arise under Section 7, it is appropriate that there be a more thorough analysis of contract prices when consideration is given the standards of Sections 5(a) and 4(e). Thus, the Ninth Circuit has stated that the provisions of Section 7 for certificates of public convenience and necessity do "not mean that before certificating such a sale the Commission must determine that the proposed initial price is just and reasonable [by Sections 5(a) and 4(e)]." *United Gas Improvement Co.* v. *F.P.C.*, 283 F. 2d 817, 822 (9th Cir. 1961).

The record in this case provides substantial evidence that in the future we should perfect a system of producer regulation that considers costs, but relies on the competitive forces, which in themselves provide an independent determinant to prices apart from what producers might prefer to dictate. Thus, the logical focus of producer regulation on an area basis lies in the negotiated field contracts. They are executed under circumstances of market compulsion after full consideration by persons intimately associated with the industry of all the factors that a regulatory agency can only estimate. These contract prices provide a privately litigated answer to the question of what rates will be necessary to get the gas out of the ground. Any meaningful system of regulation would appraise the level of these prices as determined by arm's-length bargaining in a competitive market. The analysis should include intrastate prices for that market will provide useful information for comparative purposes. While it is to be expected that regulation will distort a competitive market, contracts continue to be negotiated above these ceilings, and in-line price conditions are refused by producers in favor of other markets. Finally, since costs now approximate revenues, it should follow that competitive prices would accordingly be in-line.

The focus on contracts would remain constant unless there were important departures in direct relation to current experiences and projections of production volumes, exploration and development expenditures, drilling success ratios, market demand reserve additions, and the general cost indicia of the national economy. Of these several economic indicia, the single most important one is the reserves added each year. This is the crucial measure of the ability of just and reasonable rates to elicit the necessary supply. For present purposes it is apparent that field negotiations have been successful in eliciting supply, and that no specific reserves to production ratio should be required. The other important economic indicia are exploration and development expenditures and drilling success ratios. Both are joint costs of the oil and gas industry, but substantial deviations of either over the long term will require corresponding rate adjustments. Necessarily, both relate to the supply elicited. It is these relationships that can best assist us in a determination of whether regulatory controls are successful in meeting current and projected needs. If adequate reserves were being elicited, an uncomplicated, practical decision would be one which imposed a single ceiling approximating the initial price mode or median for new contracts. If additions were excessive, based on current ratios, the ceiling could be lowered to inhibit exploration and dedication of further volumes to interstate commerce. If additions were deficient, the single ceiling would be adjusted proportionately upward, and, if the reserve posture required even more drastic remedies, contract rates could be increased upward pursuant to Section 5(a) as construed in *F.P.C.* v. *Sierra Pacific Power Co.*, 350 U.S. 348 (1956). Finally, if specific rates were unduly discriminatory or preferential

in specific cases they could be adjusted within the purport of just and reasonable rates.

Such a policy could be implemented with a minimum of time and expense. The regulatory burden would be greatly relieved, and Federal expenses would concomitantly be reduced. Although an orderly conclusion of pending area rate cases is presently required, contracts should provide an expeditious basis for setting just and reasonable rates in all other producing areas. Ancillary benefits would follow as cost-plus thinking is de-emphasized. More meaningful reserve data would be obtained. Difficult allocations could be of more limited impact. Cost questionnaires, indicative of whether trends in well-head prices were approximating general indices, would be far more simple and consequently far less expensive to complete. Since prices would be established expeditiously, they would be maintained current without resort to figures and testimony that are five years old. This would be achieved in addition to our current policy, clearly the most consumer-conscious yet effected, of imposing increased limitations to maintain current prices with provisions for filing for moderate increases in accordance with market determinations and other general economic trends.

The Reasonable Market Prices

Subject to these additional views on the course we should take in establishing just and reasonable area rates for the Permian Basin, I concur fully in the Commission's opinion. Our opinion establishes that profit-oriented costs and supply-oriented contracts do not, in the aggregate, depart in any significant manner from each other. To the contrary, an analysis of market prices establishes that contracts have apparently approached costs for the natural gas industry in the Permian, and, for the past few years, have maintained a level close to the costs analysis we here adopt. This is a significant stabilization. Thereby, a market price has been established which provides a reasonable measure of the rate necessary to elicit supply. From the record in this proceeding, for the period with which we are concerned, the overwhelming volumes of gas-well gas are sold under new contracts at the weighted average price of approximately 16.5¢. Considering this close proximity of the contract average to composite costs, it is clear that, by either standard, the rates we prescribe for the Permian Basin are just and reasonable.

The record establishes that, for all filed contracts in a seven-year period before and after 1960, there was a range in prices from 2.15¢ to 18.0¢.[14] The weighted average price for these contracts, based on volume, was 14.20¢ for 1962. This price is based on the initial contract price, and it is not shown what adjustments, if any, were provided for quality, taxes, and other circumstances. These have a definite impact on the regulatory rate we must establish. More particularly, as of early 1962, approximately one-half of the volumes sold was at an upward range from 15.0¢ to 17.0¢. Under various periodic escalations this price could be increased, by the end of 1968, to a price ranging from 16.0¢ to 18.0¢, with the overwhelming volumes being sold at prices approaching 18.0¢. Since we here intend price control up to an earlier date, Respondent's contract testimony is commensurate with the just and reasonable rate for the period. Other testimony establishes that, for contracts dated subsequent to 1960 but prior to the middle of 1963, the base prices range from 9.0¢ to 17.0¢ for gas-well gas, with the larger volumes flowing at rates ranging from 15.5¢ to 17.0¢ with the largest volumes at 16.0¢.[15] Based upon this survey of base prices under contracts, some as reduced under certificate conditions and accepted by producers, the 16.5¢

[14] Respondent's Exhibit No. 252.
[15] Staff's Exhibit No. 317A.

rate established by our cost analysis is clearly within the range of contract prices.

There are limitations in relying solely on the above evidence, primarily because various adjustments for deviations from the standards for pipeline gas are not necessarily reflected in the contract price for new gas-well gas. The weighted average contract price for gas-well gas is 14.76¢, apparently after certain proportionate adjustments to reflect deficiencies.[16] Among others, these deficiencies include excessive sulphur and hydrogen sulfide content, excessive water content, below standard pressure, and excessive carbon dioxide in the gas. From the record it appears that the possible range for specific adjustments will be from three to five cents; however, for all adjustments that might be necessary, the reasonable amount of the average adjustment will be in a range of from 1.0¢ to 1.7¢.[17] Adding this adjustment to the average weighted price of 14.76¢ a ceiling is indicated of from 16.0¢ to just below 16.5¢. In accordance with a policy of rounding upward, this would mean that a price of 16.5¢ is the just and reasonable rate for new gas-well gas.

Further analysis of the record evidence supports the above conclusion.[18] Since the contract prices must be considered in the light of the quality of gas sold, it appears clear that, of the limited volumes of gas sold at pipeline quality standards, the 16.5¢ rate is clearly in line. The highest price for new gas-well gas is 17.0¢, which was paid for an estimated annual volume of 2,126,400 Mcf under six rate schedules. All of this gas appears to meet pipeline quality standards, except for 180,000 Mcf of gas sold under one contract allowing a lower Btu content and containing no specification as to water content. A larger quantity of new gas-well gas was sold at 16.0¢—6,149,336 Mcf to El Paso, 9,751,680 Mcf to Transwestern, 2,444,772 Mcf to Northern, and 958,320 Mcf to West Texas Gathering Company. All contracts for sales to West Texas Gathering Company would allow delivery of "sour" gas. The 16.0¢ price might have been higher had the gas been required to be of pipeline quality. These contracts are silent with respect to water content. Contracts governing the 2,444,722 Mcf sold to Northern provided for a minimum Btu content ranging between 950 and 1,000 and had no provision with respect to water content. These contract provisions do not reveal the actual quality of gas delivered, but again it appears that the 16.0¢ price would probably have been higher for higher quality gas. It is indicated that a 16.0¢ price paid by Transwestern was negotiated despite variations in the quality of gas. Some 420,000 Mcf sold under three contracts is subject to contract provisions requiring that the gas meet all pipeline quality standards save that the contract is silent with respect to water. The actual water content of the gas delivered cannot be determined. The remainder of the gas appears to be below standard in either pressure or in hydrogen sulphide content. Some 1,108,000 Mcf of this gas may also be deficient in Btu content, and about 6,475,000 Mcf of this gas moves under contracts which provide no standard with respect to water. The El Paso contracts at 16.0¢ are uniform in fixing delivery pressure at 1,000 pounds but are silent on most of the other quality standards.

At the contract price of 15.0¢, estimated annual volumes of 8,433,048 Mcf of new gas-well gas were sold to El Paso and 2,007,324 Mcf to Northern. The 26 El

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[16] Staff's Exhibit No. 334.

[17] A precise adjustment for quality cannot be ascertained from the contract exhibits in this proceeding. The Examiner made a general determination that one cent would be appropriate. See Examiner's Decision, *infra*, pp. 368–372. Subject to developments under the quality adjustment procedures we establish, the range is presently appropriate.

[18] Staff's Exhibit No. 334.

Paso contracts at this level are, with two exceptions, silent as to water content. Eleven of them require pipeline standards with respect to sulphur and hydrogen sulphide. One is silent on this subject, and the remaining 14, totaling nearly 3.5 million Mcf, do not require pipeline standards with respect to sulphur. Pressure appears to be below pipeline standards in the case of the majority of the 15.0¢ gas sold to El Paso, and possible Btu content deficiencies are indicated with respect to about one-third of this gas. The three contracts at 15.0¢ for sale of new gas-well gas to Northern provide for pipeline quality standards in all respects save that no standard was provided with respect to water content. Again we have no information as to the actual water content of the gas delivered. From the above it must be concluded that new gas-well gas delivered at prices below 15.0¢ is, from the record before us, deficient with respect to one or more quality standards.

Attention should be called to the fact that the prices set forth in this exhibit are not for all the market sales of gas in the Permian Basin Area. No information was included in this record as to particular nonjurisdictional sales although some attempt was made by the Staff to show that the average non-jurisdictional prices were lower than jurisdictional prices. I emphasize that such intrastate conditions of the market are relevant considerations to area pricing. Taking all these factors into consideration upon the evidence presented, it must be concluded that our price of 16.5¢ set for new gas-well gas is appropriate; therefore, a just and reasonable rate is established.

Despite the validity of the 15.5¢ base price (exclusive of State taxes) for new gas-well gas, it is not acceptable to the extent that there is not a full upward adjustment for high Btu content.

It is clear that the quality of a particular volume of natural gas has a definite impact on the value we should assign to that gas. Consumers are interested, not in Mcf's, but in the heating units derived therefrom. For variations from what is required to supply consumers adequate therms of gas, there should be proportionate adjustments. On the basis of the record before us it is a matter that is not readily susceptible to resolution, and, to determine the full extent of the adjustments that might be necessary, we have ordered procedures for negotiation of these matters.

It appears that natural gas from the Permian Basin is generally deficient in many of the standards required for pipeline quality as we have proposed in R–200, noticed at 18 F.R. 2.60, 2.61 (1961). A large amount of sour gas is found, there are several fields with large amounts of carbon dioxide, and low pressures are common. These deficiencies are to be reflected in downward adjustments from our base prices. On the other hand, Permian gas does have one quality—Btu content—that is apparently higher than is delivered to pipelines in other producing areas. I dissent from the anomalous position of requiring full downward adjustments for all quality deficiencies while denying to producers a right to obtain meaningful upward adjustment for the single quality standard that is above pipeline quality. I emphasize that this dual standard attacks the validity of our cost analysis since, absent proper upward adjustments, it is possible that producers will not recover their legitimate costs.

In our recent decision in *Texaco Inc.*, Opinion No. 464 (issued June 10, 1965), 33 FPC 1228, we determined that, for the Hugoton-Anadarko producing areas, 1000 Btu's was the standard for pipeline quality there. Significantly, we relied on the contract terms, although Staff had favored a weighted average base of approximately 1020 Btu's. It is appropriate to adopt area standards, but this being an area proceeding, all relevant circumstances should be considered. It is far from clear that the area standard for new gas-well gas is at 1050 Btu's. The weighted average for new gas-well gas is 1042, but this average is derived by excluding

carbon dioxide volumes; if the latter are included the weighted average is lowered to 1034 or lower. Furthermore, it should be noted that the weighted average for all gas flowing in 1960 appears to be at 1039 Btu's. If our attention is directed to the contract requirements of the pipelines, which is the standard for determining all the quality deficiencies, it is clear that the minimum required is 1000 Btu's or lower. The standard Btu provision imposed by the transmission companies for purposes of price adjustments or rejection is between 1000 and 950 Btu's, but the preponderance of the contracts requires 1000. The opinion is thereby left with an obvious gap of 50 Btu's by which producers are denied the benefits of the gas they sell. If we compare the area standard with the national standard, it is clearly at 1000 Btu's, as we have proposed in R–200. Finally, it appears that the 50 Btu gap is important solely to the California distributors as a result of the high Btu content in the gas delivered to them at the California border. The reasons for this high standard are not known; certainly no producer participated in the negotiations leading to these sales. Rather than approve a practice of unknown origin, I would rely on the uniform contract standard for the Permian area, for the Nation, and for our proposed R–200 to set an upward adjustment from 1000 Btu's for new gas-well gas.

There are major difficulties in basing regulation on contracts while adopting the directionality thesis. Under price-demand split-level pricing should be avoided. In addition, since the natural gas industry generates a large portion of its own capital, it thereby underwrites current exploration by the older production. Reinvestment is an accepted and necessary feature of the industry, and the revenues it receives must be a source of funds for continued and increased nationwide exploration and development. We can be assured that the needed gas will not be found unless we acknowledge a proper role to reinvestment. This conclusion is particularly compelling during a transition to effective just and reasonable rates. We must condition our determination today to developments under a two-price system. Directionality is presently acceptable as an exploratory device of the industry. Because of the variance in elasticity between casinghead gas and gas-well gas, price can be utilized as a device to elicit supply; however, such regulation must be premised on a two-price system to reflect market conditions. In these circumstances, the selection of a dividing line between old and new production can be made. In view of the necessary role of reinvestment and of the long pendency of these proceedings, the division date should be drawn between the years when reinvestment was the sole reliance and when directionality had begun to establish itself. Since this had occurred by 1960, I accordingly join in the division date for old and new gas. For the test year, the weighted average price for all flowing gas-well gas was below 14.5¢. Again, the record is deficient as to the quality of this gas. The record does establish that the weighted average revenues received for all gas-well gas flowing in 1960 was 13.05¢.[19] Applying an appropriate upward adjustment for quality deficiencies a price in the range of 14.0¢ and 14.5¢ is established. It is noted that this is a different standard for determining a price for old gas-well gas than for new. Nevertheless, it is an appropriate standard for determining a regulatory rate reflecting the price at which a majority of producers are able and willing to sell gas for a period encompassing several years during which costs were apparently being recovered. This is offset by the less demanding standard required for new gas-well gas to the end that an appropriate incentive is utilized. Further, the 14.5¢ ceiling applies to new casinghead gas and to

[19] Staff Exhibit No. 175, Schedule No. 1. It should be noted that the average initial price for gas-well gas sold in 1960 is 13.2¢. See Staff Exhibit No. 118.

residue gas from non-gas-well gas reservoirs. This reflects the relative inelasticity of those types of gas. Therefore, it can be concluded on the present record that the cost-plus rate of 14.5¢ for flowing gas is the just and reasonable rate, and I accordingly support the rate design prescribed. For future proceedings our opinion should lend support to this simpler and more realistic approach.

It follows from my dissent as to the appropriate Btu standard that I also dissent from the determination to permit an upward Btu adjustment only for new gas-well gas. The fact that tremendous volumes of high Btu content gas are sold in residue gas, in casinghead gas, and in old gas-well gas is not considered, although our quality standards otherwise apply to all types of gas. I cannot condone this discriminatory determination. Upward Btu adjustment from a base of 1000 should be applied to all gas from the Permian Basin. I would note that the additional revenues to the producers as a result of the 1050 standard will apparently be so minimal as to be meaningless. The better course would be to avoid any standard pending developments under the quality adjustment procedures.

Although I believe a more complete discussion of just and reasonable market prices should have been added to supplement the reliance solely on cost-plus, I support the rationale in the main opinion. The cost analysis there employed is not only reasonable; more important, it is a feasible synthesis of the cost evidence before us. Such costs are most useful as a basis for comparison to the contract prices. Our proceeding has established a significant point: there is no substantial difference between market and costs in the Permian. Either method is presently permissible for purposes of area ratemaking. Accordingly, with the single exception of the Btu standard, I join in the procedures recommended for applying and enforcing the prices determined here today.

Ross, *Commissioner, concurring and dissenting on limited issue:*

The instant decision represents, in my opinion, a noteworthy advance toward the goal of effective producer regulation and one which, with but one exception, I fully support. In addition to the Examiner and the parties, we are indeed indebted to our Staff and our predecessors on the Commission for their ingenuity in suggesting the concept of the area approach and for beginning this case.

The decision properly recognizes that the basic purpose of the Commission's rate regulation is to assure for the consumers of this nation an adequate supply of gas at reasonable prices. In the course of developing a methodology to meet this objective the majority significantly expresses a flexible and receptive attitude towards certain issues that were not adequately developed by the parties in this first attempt at area producer regulation, notably capitalization of E&D costs and the usefulness of econometric presentations. My principal purpose in writing this separate statement is to emphasize and focus attention on the changes forecast by the majority, and to suggest future potential refinements in both the methodology and basic data.

While the decision is essentially sound, there can be little dispute that the margin of error will be narrowed as more complete and meaningful data are made available. Surely regulators should not be expected to vouch for absolute accuracy of their predictions without comprehensive and comprehensible gas reserve information.

Since the advent of electronic computers, econometrics has become increasingly useful in many fields as a tool for analyzing complicated economic problems. For the first time in a proceeding before this Commission, an attempt was made to analyze and test the complex interaction of regulatory and market factors with the aid of such advanced statistical and mathematical techniques. The Staff's

econometric studies, commonly referred to as the Wein model, were a commendable effort to clarify the supply-eliciting function of natural gas field prices. This is one of the strongly contested and critical issues in this proceeding. The producers, drawing mainly on an analogy with unregulated competitive markets, argued that higher gas prices will elicit larger supplies. The Staff, on the other hand, stressed the inherent limitations on the industry's ability to respond to changes in gas prices. According to the Staff's presentation, the economic determinants of future gas supply include not only the price of gas, which is being fixed in this proceeding, but also various other factors such as the determinants of market demand, the price of oil, and the success ratio in exploratory drilling.

One valuable feature of the Staff's studies is the attempt to identify and quantify both the direct incentive effect of price on exploratory activity and the indirect "feedback" effects on supply due to the price elasticity of gas demand under conditions of inter-fuel competition in the market place. These opposing effects, as well as the independent effect of oil prices on exploratory activity, cannot be assessed profitably in the abstract, *i.e.*, by gut reaction, but should be quantified, if at all possible, in the interest of more informed regulation under the Natural Gas Act. An example of this questioning attitude is Staff's refusal to accept automatically the proposition that the supply-eliciting function of price in unregulated competitive markets, where price is the result of the push and pull of impersonal market forces, is duplicated in the gas producing industry.

In the long run, I am confident that such analyses will provide fresh insights into the behavior of natural gas supply. I am also confident that this modern economic tool, as it becomes better known, will be adopted by the industry for its own use. Inevitably, this will result in a better understanding of the industry both for the manager, the regulator and the consumer.

In view of the fact that directionality with a two price system has been accepted by the Commission, it is inappropriate for this reason alone to use the results of Staff's studies. Their usefulness in the context of this case has been to cause everyone to wonder about and question the heretofore unchallenged hypotheses of the petroleum industry. When better developed, I am sure the results will provide both a practical and *legal* foundation for better gas producer regulation. I am therefore looking forward to the continuing use and refinement of the application of econometric and other advanced analytical techniques to the difficult task of producer regulation in future proceedings. Surely we should strive for more objective evaluation of economic matters in contrast to relying on our "feel" in such situations.

In view of the basic approach adopted in the decision, the desirability of establishing future area rates in the context of a nation-wide proceeding—from both an economic and administrative standpoint—is strikingly confirmed. The price for new gas is based entirely on a nation-wide rationale and on nation-wide data. This same basis is used to support the price determined for all other gas. As the decision concludes, the search for gas is conducted on a national basis. This is true not only with respect to producers but increasingly regarding the pipelines as well. The evaluation of location on price, the importance of which the decision affirms, can be determined much more effectively—if not exclusively—in a proceeding which considers the interrelationships of the various areas of supply with the markets they serve.

From a purely administrative point of view, a nationwide proceeding is a practical necessity. This marks only the first area case, which covers three producing areas. At this time final decisions in the three pending area cases involving eight producing areas are far from imminent; yet a further consideration of Permian rates will be due in a relatively brief two and one-half years.

At this rate of progress, a review of Southern Louisiana rates could be due even before the Hugoton-Anadarko cases are concluded. It is easy to see that the Commission could well become involved in the determination and redetermination of the rates for but a fraction of the producing areas in the country, and never complete the job of determining the rates for all of the producing areas. Either this will be the result, or the Commission as well as the industry and other interested parties will be required to add tremendously to their staffs.

Considering area rates within the framework of a national proceeding would also obviate the necessity of plowing the same old ground time and time and time again. Area proceedings involve substantial time and cost not only for the parties but also for the Commission and its staff. While separate area proceedings have advantages for the first couple of cases, the law of diminishing returns rapidly takes over.

Another aspect of our decision which is ripe for further consideration concerns a method of pricing new gas, commonly referred to as project accounting. This method visualizes a project consisting of the finding of a given volume of non-associated gas reserves by the drilling effort in a specific test year (*e.g.*, 1960) and the subsequent production of that gas over an assumed depletion period. All necessary outlays to acquire the capital assets (*i.e.*, the reserves), together with an appropriate return on the investment over its productive life, are assumed to be recovered through the revenues traceable to the initial investment. Cash production expenses related to the lifting of the gas to the wellhead are also estimated and added to the investment charges to arrive at a total cost per Mcf to be recouped on a unit-of-production basis over the depletion period. This cost model, which capitalizes all investment outlays relating to the acquisition of the asset and then allows a return thereon during its period of commitment, requires what is sometimes called a "true yield". The acceptable method of determining such a rate is an investor-demand type of study focusing on the "capital attraction" rate or the experienced cost of borrowing in the capital market. This is the rate of return standard that is commonly applied by the Commission in regulating natural gas pipelines and electric utilities.

This method can be compared with that employed by the Examiner and adopted by the Commission which is probably best characterized as a form of cross-section accounting. Under the latter method, the costs are estimated for the volumes produced in a given year, assuming equal production from a universe of gas producing properties equally distributed by vintages (thus cross-cutting all vintage projects). Further, under a convention of accounting in the petroleum producing industry, but without logic in economic costing, the cost model of the distributors capitalizes only the cost directly associated with productive properties, which is only a portion of the total cash outlays made in acquisition of the reserves. Outlays for dry holes and other expenditures not directly associated with successful properties are presumed to be expensed in the year of outlay, rather than to be recovered in future years from the revenues of producing properties discovered in the course of a general exploratory effort. Thus, E&D expenses, not related to the production or output of the given year, are substituted for those E&D outlays of previous years which were incurred in connection with the successful exploratory efforts and recouped in the given year when the reserves are being produced. Cash production expense, depreciation, depletion, and amortization expenses, and a return on investment computed on a cross-section basis are also charged on a unit-of-production basis.

In selecting a cost model for new gas-well gas, consideration must be given to the fundamental character of the economic costing problem. Unit costs of production for any commodity or service can only be arrived at by a careful match-

ing of all necessary inputs with the associated output. This matching must, because of the time value of money, adequately reflect the timing as well as the cost of all inputs. Inputs allowed must strictly relate causally to the output and all such inputs, with their timing, must be fully represented. The project method of accounting meets this basic requirement. In contrast, the other method expenses the portion of the capital outlays which relates to unproductive properties as if they were current operating costs, even though that portion is inseparable, at the initial planning stage, from the successful E&D outlays. Such expensing practices can lead to a distortion of the investors' allowed return from revenues generated by the initial investment.

In addition, an ancillary benefit of the project method lies in the fact that the somewhat discomforting aspect of "Adjustment for Exploration in Excess of Production", which seems to charge current rate payers for additions to a company's capital assets, is avoided.

This costing approach of capitalizing unsuccessful as well as successful well costs has substantial support within the accounting profession. Arthur Andersen & Co. has enunciated this position clearly and forcefully:

> The purpose of exploratory activity is to discover oil and gas reserves for future use. Discoveries, however, are unlikely without the incurrence of some exploration costs for unsuccessful ventures. Such costs are necessary in the search for and discovery of new deposits of oil and gas reserves. Exploration costs for unsuccessful ventures are as much a part of the cost of the oil and gas discovered and produced as are the direct costs of productive wells.
>
> Only a portion of the oil and gas reserves discovered is likely to be produced and sold in a given year. The matching of related costs and revenues logically requires that the portion of all costs, including exploration costs, applicable to the oil and gas currently produced be charged to expense in the period of production.
>
> Because of the hazardous and speculative nature of the oil and gas industry, most companies have expensed their exploration costs as incurred. This practice has ignored the real capital nature of these costs, and has resulted in financial statements that do not show the total cost of the oil and gas reserves or of the current production therefrom. When exploration costs are charged to expense as incurred, profits are reduced or losses are shown in the exploratory years, because a substantial portion of the costs then being charged off does not relate to the income of the current period but to the income to be derived from future production of oil or gas.[1]

In addition, an excerpt from *Asset Accounting*, by William A. Paton, 1952 edition (pages 440 and 441) states as follows:

> In developing a wasting asset the costs of all explorations may be capitalized, even if some specific operations don't pan out, as long as the program is being carried on in a reasonable manner in the light of prevailing standards and techniques.
>
> In the development of an oil lease, for example, several dry holes may be dug for each operation that proves to be productive. In this situation the cost of the dry holes may be regarded as a part of the cost of the activities that resulted favorably; like the falsework used in the creation of a building they represent preliminary operations necessary to the end result.

It should be emphasized, however, that this is not an endless road as the previous source cautions.

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[1] *Accounting for Oil and Gas Exploration Costs*, Subject File OI 2220, Item 124, Arthur Andersen & Co., January 1963, page 4.

> This interpretation, of course, must not be pushed to the point of justifying as assets the cost of development operations not warranted in the first place or long continued without success. (Paton, *Asset Accounting, Ibid.*)

Thus, while it may be appropriate to capitalize those unsuccessful ventures which can be related to the finding of successful production, this should not be interpreted as a blank check for loading the rate base with any other costs which have no bearing on productive properties.

Despite the seeming advantages of the project cost model, the record in this proceeding contains a meager amount of evidence directed to estimating a true yield rate of return and relatively much more directed to finding a rate of return under the comparable earnings test which is employed in the cross-section accounting method. With some reluctance in view of the size of the record here, I nevertheless conclude that the evidence on the critical aspect of rate of return on a true yield basis is not adequate to support the use of this method in this case.

My sole exception to the decision relates to the date of division between new and old gas which the majority fix to be January 1, 1961. I dissent to that finding because it is fundamentally inconsistent with the very basis of the two-price system adopted by the majority. This system was first advanced by witness Kahn and applied by Roseman. Implicit and explicit in their testimony, and as the majority emphasize, the purpose of the two-price system, the purpose of a higher price for new gas, is to provide the incentive to find necessary new reserves. It is a rate designed to encourage the finding of gas in the future, for the future.

The majority's decision repeatedly emphasizes this rationale:

> *Looking to the future* we are establishing a pricing system that will encourage the industry to expand and perfect its ability to drill directionally so that revenues from gas consumers can increasingly be devoted to finding additional gas reserves. (p. 186) [emphasis added]
>
> The incentive is built into the two-price system. *It provides a price for the future* related to current and future costs and payable only to producers who discover gas-well gas and dedicate their discoveries to the interstate market. (p. 186) [emphasis added]
>
> If a one-price system were to be adopted, average historical costs—not the highest current costs—would necessarily serve as its foundation, and we have no assurance that such a price would elicit the investments at current cost levels which are needed to bring forth adequate new supplies of gas-well gas. (p. 186)
>
> * * * if such a ceiling were fixed high enough to elicit new gas-well supplies it would result in windfall profits for all other gas and if fixed low enough to reflect costs for old gas it would not assure adequate supplies for the future. (p. 187)
>
> * * * bring forth needed gas supplies in the future and this fact supports our conclusion to fix a higher ceiling for new gas-well gas which will encourage exploration at deeper horizons directed toward finding gas. (p. 188)
>
> The separate price we fix herein for new gas-well gas in the Permian Basin should serve to furnish a practical test of whether in fact it will result in bringing forth additional supplies. (p. 188)

It requires no lengthy citations from Webster's dictionary for one to understand that incentive or encouragement relates to the future—not to the past. No matter how hard it tries, the Commission simply cannot incite or encourage a producer to find and dedicate gas to interstate commerce which he is already selling, has been selling for up to four and one-half years, and for which he would need a specific order from the Commission before being free to discontinue.

Insofar as the majority relies on the issuance of the Policy Statement, the decision strikes a sharp blow at a basic purpose of the Natural Gas Act and the regulatory process. This Statement was issued without notice, without hearing, without any opportunity whatsoever for interested parties to comment. Reliance on such a Statement, the basis of which is devoid of support in the record, is improper. This is especially true since the Statement itself recited:

> It is anticipated that these differences in price levels will be reduced and eventually eliminated as subsequent experience brings about revisions in the prices in the various areas.

How ironic it must seem to the consumers of the nation that the opposite is true—that our "subsequent experience" is viewed in the light of the Policy Statement.

Looking to the future, it is easy to see that this approach will result in a crazy-quilt maze of old and new gas prices, depending on irrelevant factors such as the length of time required to try the case, and the particular test year used. Thus, "new" gas-well gas can be four and one-half years old in Permian; but in South Louisiana, assuming (but not predicting) a final decision in 1967, "new" gas-well gas will be nearly seven years old! This is some legacy.

Irrespective of how this aspect of the decision is viewed, it makes no sense. I therefore dissent to this aspect of the decision. In my view, the new gas price should relate to gas sold under contracts executed after the date of this decision.

In response to this position which was advanced by the California intervenors, the majority has no rebuttal. It simply states: "We believe, however, that the intervenors' argument proves too much * * *."

Lastly, in order to avoid any future misunderstanding, I wish to note my disagreement with the modifications of the Examiner's method of determining the old gas price as set out in the majority's decision.

In summary, this opinion is a beginning—albeit a good beginning—toward implementing our responsibilities to establish just and reasonable producer rates. I believe that with improvements, including those here suggested which the Commission indicates a willingness to consider, we will make further progress toward achieving a fair and effective system of producer regulation.

BLACK, *Commissioner, concurring:*

I join in today's historic decision but wish to express briefly my separate views with regard to the Commission's determination of rate of return.

In the final analysis the allowance for rate of return is a judgment consideration. With some reluctance I concur in the Commission's exercise of judgment that on the evidence before us 12% is not excessive. I do not feel, however, that the record strongly supports such a conclusion.

Because of the great numbers of producers who are affected by our decision in this proceeding and in the area rate cases to follow, the importance of a careful rate of return determination cannot be over emphasized. Translated into terms of the price of Permian gas, the difference between Staff's recommended 9.5% and the Commission's 12% is about 1.5¢ per Mcf for both new gas-well gas and flowing gas. This means about $11 million *annually to* jurisdictional purchasers of Permian gas, or nearly $4.5 million for every percentage point of rate of return.

Serious deficiencies exist in the presentation both of respondents and of the staff on the rate of return question. The Examiner's basis for adopting a 12% rate of return is equally unsatisfactory. It is based on the earnings experience of nine "highly successful" non-integrated companies whose sales represent only about 4.5% of all jurisdictional sales made in the Permian Basin. Of these nine companies (which in my view is a woefully inadequate number to constitute a

representative sampling) only three producers are primarily responsible for bringing the earnings up to the 12% average. And of these three, two were the smallest of any of the exhibit companies. Their total 1960 United States pipeline sales were, respectively, 5.2 million Mcf and 3.2 million Mcf. Their Permian Basin sales were, similarly, but an infinitesimal part of the total. It is apparently conceded that the non-integrated producer is not typical of Permian Basin gas producers; indeed, the conclusion is unavoidable. Respondents' witness stated on the record that the typical producer is the large integrated company, and that the non-integrated producers constitute a class that is constantly diminishing in number. It is inappropriate that they should have been separated out as the standard for employment of the comparable earnings test. They simply are not comparable.

The Commission avoids any discussion of the adequacy of the non-integrated producer as a basis for comparison and instead rests our case entirely on a discussion of the risks of natural gas production cast in the most general terms. My colleagues employ as the starting point the rates of return allowed jurisdictional pipeline companies, which fall into the range between 6.0% and 6.5%, and then seek to establish that natural gas production is a riskier business than natural gas transmission. I agree; but the translation of this added risk in terms of percentage points of return on investment has only marginal support in the record and we should acknowledge this to be the fact.

The principal risk which characterizes the operations of the independent producer is, as the main opinion properly notes, the dry hole—or non-commercial well—risk. The Commission points out that we are allowing the recovery of dryhole and associated costs as operating expenses in determining the area price for gas, but goes on to observe that "the uncertainty whether productivity will meet the industry average nevertheless remains as a risk for *each individual producer* * * *." We are not, of course, making rates on an individual basis. A return of 12% will not obviate the risk of each individual producer in the Permian Basin; nor for that matter will a 50% return. On the Commission's reasoning it could be argued that we would have to allow a rate of return which would cover the least successful operation in the area. A basic rationale of the area-pricing approach as noted more than once in the Commission's opinion is its inherent incentive to exploration. While individual producers may not, in fact, earn a given return on their investment, by the same token no individual producer is *restricted* to a particular return. Efficient, prudent management—or just plain good luck—can produce a return which in the context of individual company rate making would be termed vastly excessive. But under our approach such companies can keep the fruits of their good fortune.

We are making rates for the industry as a whole, and the Commission properly observes that "there is a degree of predictability to production operations as evidenced by the fact that the industry as a whole has maintained over extended periods a consistent record of new discoveries and added reserves."

The main opinion effectively disposes of the producers' case for a 16–18% rate of return, and I will not comment further. I do, however, wish to address myself briefly to Staff's approach, which was joined by the California distributor intervenors, with the hope that the records in future area proceedings will provide the Commission with guidance to decide the proper rate of return on a more informed basis.

Staff's evidence, related to over-all earnings experience on total capital, includes the following:

(1) A national group of 35 companies, including both integrated and non-integrated oil and gas producers accounting for some 60% of reported 1960 pipeline sales in the United States. The simple average earnings of this group

for the years 1957–1961 amounted to 9.5%, the median 8.8% and the weighted average 9.3%.

(2) A selection of 31 companies in the Permian Basin (again including both integrated and non-integrated producers) selling 81% of all the gas sold in the Permian Basin in 1960. The same averaging techniques as applied to the national group produced returns of 9.5%, 8.9% and 9.3%, respectively.

Staff also made use of data published by financial institutions, notably the Chase Manhattan Bank and the First National City Bank of New York. The results (both for total manufacturing and for petroleum production and refining) are not markedly different than those produced by Staff's special studies. These statistics, together with information taken from the well-known *Fortune* magazine study of the 500 largest industrial companies, address themselves separately to a return on equity capital. Although today's Commission opinion does not speak in terms of a return on equity, it is nonetheless a traditional and important tool in arriving at a proper rate of return. Using Staff's selected integrated and nonintegrated companies, an over-all rate of return of 12% translates into 13.5% return on equity, assuming an equity ratio of 85%.

Chase Manhattan's group of companies (including Staff's selection) for the entire period *1934–1961* earned 9.44% on average total capital and 10.46% on average equity capital. For the five-year period 1957–1961 earnings on average total capital were 9.56% and 10.44% on average equity capital.

The First National City Bank figures, which included data for a large number of companies representing total manufacturing and a substantial group (124 in 1961) of petroleum production and refining companies, show for the petroleum companies a return of 9.66% on equity for the entire period 1925–1961 and 10.88% for the five-year period 1957–1961.

The *Fortune* study discloses an average of the mean rates of profit on equity for the petroleum industry to have been 8.88% for the years 1957–1961.

I cite these figures, not in an attempt to establish that the Commission's rate of return determination is erroneous, because I recognize that these statistics are in many respects not comparable and are likely subject to a variety of infirmities which make them inappropriate for the Commission to rely heavily on. My purpose is to indicate my belief that an over-all rate of return allowance of 12% is very probably a generous one.

In my view the principal infirmity in Staff's approach is the assumption that the unallocated earnings of the integrated producers necessarily reflects the level of earnings and thus the appropriate rate of return for the separate function of their gas production departments. Staff's position that the non-production operations of the integrated producers are riskier than those of gas production rests largely on argument. While it is true that the far-flung and diverse operations of the large integrated producers may be at least as risky over all as the production of natural gas, the record does not affirmatively support such a conclusion.

The Commission opinion asserts that "integrated returns are relevant to the instant issue" but notes that "Without a departmental segregation of costs and revenues, it is impossible to calculate production department returns."

Whether such a segregation can be made on another record or whether some other reliable means can be devised more accurately to reflect the earnings of gas producers on their jurisdictional investment, I express no opinion. I only emphasize my strong hope that the Commission's determination of rate of return will not be understood as some kind of immutable standard which we have developed in this pilot decision, or that it will discourage the vigorous and imaginative prosecution of the rate of return case in future area rate proceedings.

Perhaps the most important single reason for a liberal rate of return allow-

ance in the Permian Basin is that the greater part of Permian gas is substantially below pipeline quality. The Commission has provided for downward price adjustments to reflect these quality differentials with the result that much of the gas sold will not command the ceiling prices we have established.[1] The very strong likelihood that the producers will continue to find large amounts of substandard gas is characterized by the main opinion as a risk factor, and I agree that it is appropriate to reflect this special risk in rate of return, which may well be sufficient to justify a return allowance of 12%.

With the reservations noted above, I expressly concur.

[1] It should be noted, of course, that our allowance of upward adjustments in price to reflect heat value in excess of 1,050 Btu's without a corresponding downward adjustment until Btu content falls below 1,000 undeniably constitutes something of an offset to the producers' risk.

APPENDIX A

Docket No. AR61–1, *et al.*

PARTIES AND PROCEEDING CONSOLIDATED [1]

Part I

The order of December 23, 1960, made the following parties Respondents:

Abell, George T.
Ackers, D. E.
Ada Oil Co.
Adams & Ray
Aikman, Claude E.
Aldrich & Fullingim
Amerada Petroleum Corp.
American Trading & Production Corporation
Anderson-Prichard Oil Corp. (now Union Texas Petroleum, A Division of Allied Chemical Corporation)
Antweil, Morris R.
Ard Drilling Co., The
Argo Oil Corporation (now The Atlantic Refining Company)
Ashland Oil & Refining Co.
Atlantic Refining Co., The
August, John J.
Aurora Gasoline Co.
Austral Oil Co., Inc.
Aztec Oil & Gas Co.
BBM Drilling Co.
BTA Oil Producers
Baker & Taylor Drilling Co.
Bakke, W. E.
Bankers Trust Co., Trustees
Barnes, J. C.
Barnes, R. C.
Barnhart Hydrocarbon Corp. (now Northwest Production Corporation)
Barnhart, Paul F.
Baxter, Murphy H.
Bayview Oil Corp.
Beach, Mrs. R. G.
Bell Petroleum Co.
Benedum-Trees Oil Co.
Bird, Ethel W.
Black, Henry Drilling Co., Inc.
Blackwood & Nichols Co.
Blackwood, F. G.
Blanco Oil Co.
Bond Oil Corp.
Bradley, Albert
British-American Oil Producing Co., The
Brown & Key, Inc.
Brown & Wheeler
Brown, Herman (now Herman Brown Estate)
Brown, James G. & Associates
Burk Royalty Co.
Burns, John J.
Cabot Carbon Co. (now Cabot Corporation)
Cahill, John T.
Callery, F. A., Inc.
Campbell, E. P.

[1] With names of record as of June 30, 1965.

Carper Drilling Co., Inc.
Carter, R. W.
Castleman, Barbara B. (now Barbara B. McComb)
Champlin Oil & Refining Co. (now Champlin Petroleum Co.)
Charm Oil Company
Cherry, A. W.
Christmann, John J.
Cities Service Oil Co.
Cities Service Production Co. (now Cities Service Oil Co.)
Clark Dale Drilling Co.
Cobb, Dalton H.
Coline Oil Corp.
Colorado Oil & Gas Corp.
Coltexo Corp.
Columbian Carbon Co.
Cone, J. R.
Cone, S. E.
Connally, J. E., d/b/a Connally Oil Co.
Constantin, E., Jr.
Constantine, S. T.
Continental Oil Co.
Coronet Oil Co.
Cosden Petroleum Corp.
Cox, John L.
Crouch, Louis
Cruce, J. L., Jr.
Crumly, L. D., Jr.
Culbertson, E. A. & Irwin, W. W.
Dalport Oil Corp.
Danglade, F. J.
Dansby, Ben, Jr.
Darneille, George J.
Daugherty, J. A.
Davis, Ethel Jo.
Davis, K. W.
Davis, K. W., Jr.
Davison, Leland
Delhi-Taylor Oil Corp. (now Tenneco Oil Company & Continental Oil Company)
Derrick, J. Roy
Dixon Management Corp.
Donnell Drilling Co.
Dorchester Corp. (now Dorchester Gas Producing Company)
Drilling & Exploration Co., Inc.
Duncan Drilling Co.
Duncan, J. Walter, Jr.
Duncan, Raymond T.
Duncan, Vincent J.
Duncan, Walter
Elliott & Hall
Elliott, Inc. (now Elliott Oil, Inc.)
Elliott Production Co.
El Paso Natural Gas Products Co.
Enfield, Robert N.
Eppenauer, A. R.
Evans, David M.
Falcon Oil Corp.
Felmont Oil Corp.
Fields, Bert
Fikes, Leland
Fleet, Howard W.
Fogelson, E. E.
Foree, R. L.
Forest Oil Corp.
Fox, James, O., Jr.
Franklin, John M.
French, L. R., Jr.
Gackle, Albert
General American Oil Co. of Texas
General Crude Oil Co.
George Royalty Co.
Getty Oil Co.
Gibbins, J. P.
Goldston Oil Corp.
Goldston, W. L., Estate of
Grace, Joseph Peter
Great Western Drilling Co.
Greene, Hazel
Greenbrier Oil Co. (now Lakeland Petroleum Corporation)
Gruss, Joseph S.
Gulf Oil Corp.
Halbouty, Michel T.
Hall, G. E.
Hall & Stewart Drilling Co.
Hamilton Dome Oil Co., Ltd. (now Westates Petroleum Co.)
Hammonds, George S. } (now APCO
Hammonds, Scott } Corp.)
Hamon, Jake L.
Hanley Co.
Hanlon-Boyle, Inc.
Harper Oil Co.
Hart, Patricia Ruth Carter
Haynes & V. T. Drilling Co.
Herd Oil & Gas Co.
Hernstadt, William L.
Hiawatha Oil & Gas Co.
Hill, John H.
Hitchcock, E. C.
Hodge, T. F.

Honeyman, R. B., Jr.
Honolulu Oil Corp. (now Pan American Petroleum Corp.)
Horne, L. L. (now Estate of L. L. Horne)
Howard, Alvin H. and Vasser, D. E.
Howard, Frank A.
Hudson & Hudson, Inc.
Hudson, William A.
Hudson Co., W. H.
Humble Oil & Refining Co.
Hunt Trustee Estate, Caroline
Hunt, H. L.
Hunt, Lamar
Hunt, Lyda Bunker, Estate of (now Hunt Industries)
Hunt, N. B.
Hunt Oil Co.
Hunt, W. H.
Hunter, J. D., Trustee
Husky Oil Co.
Indian Royalty Co. (now Cornell Oil Co.)
Inland Natural Gasoline
Inman, Curtis R.
Jal Oil Co., Inc. (now Joseph E. Seagram & Sons, Inc., d/b/a Texas Pacific Oil Company)
Jocelyn-Varn Oil Co.
Johnson & French Oil Co.
Johnson, J. Wes, d/b/a Tower Oil & Gas Co. of Texas
Jones, J. E., Drilling Co. (now Sohio Petroleum Co.)
Julkirk Corporation
Kay Kimbell, Oil Properties (now The Estates of Kay Kimbell)
Kelly, John M.
Kerr-McGee Oil Industries, Inc.
Kewanee Oil Co.
Kidd, Barron (now James L. Green, Jr. & Thomas Sloan)
King, Warren, Dye & Yeckel
Kirby Production Co. (now Kirby Petroleum Co.)
Ladenburg, Thalmann & Co.
Lamont, Thomas S.
Latch, Leonard
Late Oil Company
Laughlin, Phil E.
Leonard, J. M.
Leonard Oil Co.
Limpia Royalties, Inc.
Livermore, George P.
Lomax, W. L. (Pete)* & J. P.
*Now Gladys Lomax (Mrs. W. L. Pete)
Lone Star Producing Co.
Lowe, Ralph
Lundbeck, G. Hilmer, Jr.
Luse, W. P. & Jack L. Burrell, *et al.*
Lyle, W. M.
M. W. J. Producing Co.
MacDonald Oil Corp.
Makin Drilling Co.
Maracaibo Oil Exploration Corp.
Markham, Jack
Martin, Williams and Judson
McAlester Fuel Co.
McFarlin, E. B. & Ketchum, E. P.
McGrath and Smith
McKnight, William L., d/b/a La Gorce Oil Co.
Meadows, A. H.
Mendota Oil Co.
Mertzon Corp.
Mesquite Gas Products, Inc.
Miami Petroleum Co., Inc.
Midland National Bank, The, Trustee
Midwest Oil Corp.
Miller, Charles P.
Moberly, George A.
Moncrief, W. A., Jr.
Monsanto Chemical Co. (now Monsanto Company)
Monterey Oil Co. (now Humble Oil & Refining Company)
Moore, J. Hiram
Moore, John I.
Moore, Wayne
Moses, H. L. (now Estate of H. L. Moses)
Moses, Lucy
Mosser, H. J.
Murphy Corp.
Neill, J. P.
Neleh Gas & Oil Corp.
Nemaha Oil Co., Agent
Nolan, Wm. C. & Theodosia M., d/b/a Munoco Company
Norsworthy, Clarence L., Jr.
North Central Oil Corp.
Northern Natural Gas Producing Co.
Norwood Oil Co. and/or Norwood Drilling Co.
Odessa Natural Gasoline Co

Ohio Oil Co. (now Marathon Oil Company)
Oil Well Drilling Co.
Olsen Oils, Inc.
Olsen, R., Oil Co., d/b/a Texas Pacific Oil Company } (now Joseph E. Seagram & Sons, Inc.)
O'Neill, Joseph I., Jr.
Pan American Petroleum Corp.
Parker Drilling Co. (now R. L. Parker)
Parrish, Grace Marjorie Moran
Pauley Petroleum Inc.
Payne, Clifford E.
Pecos Company
Peerless Oil & Gas Co.
Penrose, Neville G., Inc.
Phillips Petroleum Co.
Pioneer Production Corp.
Placid Oil Co.
Poff, H. Bryan
Powell, Celestine V. Trust
Powell, Doless E.
Powell, Len
Powell, Mortimer
Powell, Purnell F.
Prentice Development Corp. (now Irving D. Isko)
Pulaski, Dan J.
Pure Oil Company, The
Putnam, G. D.
Redfern Oil Co.
Reef Corporation
Regester, H. W.
Reigle, E. E., d/b/a Richmond Drilling Co.
Republic Natural Gas Co. (now Socony Mobil Oil Co., Inc.)
Resler & Sheldon
Richardson, Sid W. (now Perry R. Bass)
Robertson, French M.
Rodman, E. G.
Rodman, E. G. and Noel, W. D.
Rodman, Late & Noel
Rodman-Noel Oil Corp. (now Rodman Petroleum Corp.)
Rosenthal, Jerome B.
Rutherford, P. R.
Rutter & Wilbanks Bros. (now DST Exploration Corp.)
Ryan, Katherine
Samedan Oil Corp.
Sands, Caroline H. & Lloyd B.
Santa Rosa Gas Co.
Sapphire American Petroleums, Inc. (now Richard C. Davoust)
Saturn Drilling Co.
Scarborough, Warren
Schermerhorn Oil Corp.
Scott, Paul P., Trust
Secure Trusts
Sharp, J. R., Inc.
Sharples Oil Corp., The
Shea, Edward L.
Shell Oil Co.
Signal Oil & Gas Co.
Simmons, Jay
Sinclair Oil & Gas Co.
Skelly Oil Co.
Slade, Inc.
Slick Oil Corp. (now Midhurst Oil Corporation)
Snowden, James H.
Socony Mobil Oil Co., Inc.
Sohio Petroleum Co.
Southern California Petroleum Corp. (now Reserve Oil & Gas Company)
Southern Petroleum Exploration Inc.
Southern Union Gas Co. (now Southern Union Production Company)
Southland Royalty Co.
Spence, Aurelia, Mrs.
Standard Oil Company of Texas (now Division of California Oil Company)
Starr, J. W.
Stekoll Petroleum Corp. (now Sunac Petroleum Corp.)
Stout, Billy J.
Street, Gordon, Inc.
Street, Gordon P.
Sun Oil Co.
Sunray Mid-Continent Oil Co. (now Sunray DX Oil Co.)
Sunset International Petroleum Corp.
Sunshine Royalty Co.
Superior Oil Co., The
TXL Oil Corp., The
Tela Corporation
Terrill, J. W.
Texaco Inc.
Texaco Seaboard, Inc. (now Texaco Inc.)
Texas Crude Oil Co.

Texas Gas Products Corp. (now Union Texas Petroleum, A Division of Allied Chemical Corporation)
Texas Gulf Producing Co. (now Sinclair Oil & Gas Co.)
Texas-Hanover Oil Co.
Texas Hydocarbon Co. (now Union Texas Petroleum, A Division of Allied Chemical Corporation)
Texas National Petroleum Co. (now Union Oil Co. of California)
Texas Pacific Coal & Oil Co. (now Joseph E. Seagram & Sons, Inc. d/b/a Texas Pacific Oil Company)
Thornbury, D. H.
Three States Natural Gas Co.
Tidewater Oil Co.
Todd, W. L., Jr.
Tres Oil Co.
Tri-Service Drilling Co.
Trice Production Co.
Tucker, R. C.
Turner, Fred, Jr.
Two States Oil Co.
Union Oil Company of California
United States Smelting Refining and Mining Co.
VEM Oil, Inc.
Vaughn, G. H., Jr. & Jack C.
Vest, Earl & Sam; Dorbandt, Arnett; Ross, Bert
Warren Petroleum Corp.
Watts, Ed. E.
Weier Drilling Co. (now A. D. Weier, Jr., *et al.*)
Welborn, J. M.
West Texas Gathering Co.
Westbrook-Thompson Holding Corp.
Western Development Company of Delaware
Western Natural Gas Co. (now Sinclair Oil & Gas Company)
Western Oil Fields, Inc.
Western Petroleum Co. (now CRA, Inc.)
Westlund, Carl J., Inc.
Willetts, Elmore A., Jr. and Craig, Earle M., Jr.
Williams, D. A.
Williamson, J. C.
Wolfson, Reuben I. & Sam
Wrightsman, Charles B. (now Wrightsman Petroleum Company)
Young, Marshall R.
Zachary, J. M.

Part II

The following Respondents were eliminated as parties to the proceeding by subsequent orders of the Commission:

American Trading & Production Corp.
Barnes, R. C.
Bayview Oil Corporation
Bond Oil Corporation
Coline Oil Corporation
Columbian Carbon Company
Coronet Oil Company
Dansby, Ben, Jr.
Falcon Oil Corporation
Felmont Oil Corporation
Greene, Hazel
Halbouty, Michel T.
Hanlon-Boyle, Inc.
Howard, Alvin H. & D. E. Vasser
Indian Royalty Company
Kerr-McGee Oil Industries, Inc.
Maracaibo Oil Exploration Corp.
Mosser, H. J.
Poff, H. Bryan
Ryan, Katherine
Snowden, James H.
Tela Corporation
Terrill, J. W.
Young, Marshall R.

Part III

The following proceedings involving proposed increases in rates were consolidated. Proceedings marked with "*" are consolidated only insofar as they pertain to the Permian Basin, New Mexico and Texas Railroad Commission Districts Nos. 7–C and 8 areas. Regarding proceedings marked with "**", there remains open the question of the contractual support of the respondents to make

the increased rate filings. This question will be determined in *Amerada Petroleum Corporation, et al.*, Docket No. G–16117, *et al.*, and *Phillips Petroleum Company*, Docket No. G–11217, *et al.*

Producer	*Docket No.*
Aikman, Claude E	G–18466, RI60–73
Amerada Petroleum Corporation	G–19488**, G–19577**, G–20390, RI60–353
Amerada Petroleum Corporation, *et al*	G–19489**
Amerada Petroleum Corporation (Operator), *et al.*	G–19490**, RI60–354
Apco Oil Corporation, *et al.* (formerly Scott Hammonds).	G–16520
Apco Oil Corporation, *et al.* (formerly Scott Hammonds, *et al.*).	G–16521
Ard Drilling Company, The	RI60–90
Ashland Oil & Refining Company	RI60–329
Atlantic Refining Company, The (formerly Argo Oil Corporation).	RI60–177
Austral Oil Company, Inc., Agent for Oil Participants, Inc.	G–19540**
Aztec Oil and Gas Company	RI61–201
BTA Oil Producers (Operator), *et al.*, and Shell Oil Company (formerly BTA Oil Producers (Operator), *et al.*).	G–20525
Bakke, W. E. (Operator), *et al.*, Sohio Petroleum Company (Operator), *et al.*, and Abel & Bancroft (Operator), *et al.* (formerly W. E. Bakke (Operator), *et al.*).	G–16477**
Barnhart, Paul F., *et al*	G–13985, G–14017
Barnhart, Paul F	G–14018
Baxter, Murphy H. (Operator), *et al*	G–14181
Benedum-Trees Oil Company	G–12881**, G–20522
Bird, Ethel W., *et al*	RI60–190
Black, Henry, Drilling Company, Inc. (Operator), *et al.*	RI60–105
Blackwood, F. G., *et al*	G–18515
Blanco Oil Company, *et al*	G–20402
British-American Oil Producing Company, The	G–14028, G–19254**
Brown, H. L., Estate, *et al.* (formerly Brown and Wheeler, *et al.*).	RI60–4
Brown, Herman, Estate (formerly Herman Brown).	RI60–82
Brown, James G. & Associates (Operator), *et al.* and Tamarack Petroleum Company, Inc., Agent, *et al.*	RI60–346
Cabot Corporation (SW) (formerly Cabot Carbon Company)	G–18842 **
Cabot Corporation (SW) and Sinclair Oil & Gas Company (formerly Cabot Carbon Company)	G–18844 **, RI60–27
Callery, F. A., Inc., *et al*	G–19645 **, RI60–395
Charm Oil Company	G–19491 **, RI60–206

Producer	*Docket No.*
Cities Service Oil Company	G–20393, G–20395
Cities Service Oil Company (Operator), *et al.*	G–20394
Cities Service Oil Company (formerly Cities Service Production Co. (Operator), *et al.*)	G–20396
Connally, J. E. d/b/a Connally Oil Company (Operator), *et al.*	RI60–104
Constantine, S. T. (Operator), *et al.* and Roy E. Kimsey, Jr. (Operator), *et al.* (formerly S. T. Constantine (Operator), *et al.*)	RI60–43
Continental Oil Company	RI61–87
Continental Oil Company (Operator), *et al.*	RI61–86
Cox, John L.	RI60–115, RI60–321
Cox, John L. (Operator), *et al.*	RI60–272
Crumly, L. D., Jr.	RI61–42
Crumly, L. D., Jr. and Tom Schneider (formerly L. D. Crumly, Jr.)	G–20530
Culbertson, E. A. and W. W. Irwin	RI60–153
Dalport Oil Corporation, *et al.*	G–20397
Dalport Oil Corporation (Operator), *et al.*	G–20398
Davidson, Leland, *et al.*, Humble Oil & Refining Company and Continental Oil Company (formerly Leland Davidson, *et al.*)	RI60–467
Davidson, Leland, *et al.*, and Humble Oil & Refining Company (formerly Leland Davidson, *et al.*)	RI61–54
Davoust, Richard C. (formerly Stanton Oil Company, Ltd.)	RI61–106
Donnell Drilling Company	G–14736
Dorchester Gas Producing Company (Operator) (formerly Dorchester Corporation (Operator))	RI60–11
Elliott, Oil, Inc. (formerly Elliott, Inc.)	RI60–228
Elliott Production Company	RI60–212
Enfield, Robert N.	RI60–87
Eppenauer, A. R.	G–20524
Fleet, Howard W., *et al.*	RI60–157
Foree, R. L.	G–20539
Forest Oil Corporation	RI60–107
French, L. R., Jr.	G–19726
French, L. R., Jr. (Operator), *et al.*	G–17347**, G–19725, RI60–9
Gackle, Albert (Operator), *et al.*	G–13940, G–14045, RI60–151
Gackle, Albert, Agent, (Operator), *et al.*	RI60–117
General American Oil Company of Texas	RI60–248
Getty Oil Company	G–16533**, RI60–72**, RI61–19
Goldston, W. J., Independent Executor of Estate of W. L. Goldston, Deceased, *et al.*	RI60–343
Greene, James L., Jr., *et al.* (formerly Barron Kidd).	RI60–109[1]
Gruss, Joseph S.	RI60–74, RI60–461
Gulf Oil Corporation (Operator), *et al.*	G–20399

[1] Peter B. Smith has filed a motion to be made respondent in this proceeding.

Producer	*Docket No.*
Gulf Oil Corporation	G–20400
Hall, G. E. (Operator), *et al*	G–15175
Hamon, Jake L. (Operator), *et al*	G–18327**, RI60–112
Hamon, Jake L	RI60–106
Hanley Company (Operator), *et al.*, DST Exploration Corporation (Operator) *et al.*, and Humble Oil & Refining Company (formerly Hanley Company).	RI60–76
Hanley Company	RI60–75
Hanley Company, *et al*	RI60–77
Harper Oil Company (Operator), *et al*	RI60–200
Herd Oil and Gas Company	G–18769**
Horne, L. L., Estate of (formerly L. L. Horne)	G–18268
Hudson, W. H. Company	RI60–156
Humble Oil & Refining Company (Operator), *et al.*	G–16415**,[3] G–18172**, RI60–443,[3] RI60–473
Humble Oil & Refining Company (formerly Monterey Oil Company.	RI60–42
Humble Oil & Refining Company	G–16416**, G–19487**, RI60–430, RI60–444, RI60–447
Humble Oil & Refining Company (Operator), *et al.* (formerly Monterey Oil Company (Operator), *et al.*	G–17799**, G–18568**, RI60–28, RI60–80
Hunt, H. L.	G–16421**, G–18554, G–20527, RI60–84, RI60–324
Hunt, H. L., *et al*	RI60–110
Hunt-Margaret, Lyda, Trust, *et al.* (formerly Estate of Lyda Bunker Hunt)	G–18556
Hunt Industries (formerly Estate of Lyda Bunker Hunt)	G–16423**, G–20535
Hunt, Lamar	G–16418**, G–17424**, G–18847, G–20528
Hunt, N. B	G–16420**, G–16478**, G–18557, G–20533
Hunt, W. H	G–16419**, G–17425**, G–18848, G–20534
Husky Oil Company (formerly Husky, Inc.)	G–19722
Inland Natural Gasoline	G–19992**, RI61–91
Jocelyn-Varn Oil Company (Operator), *et al*	RI60–36
Johnson, J. Wes d/b/a Tower Oil & Gas Company of Texas, Jeanne Kerbs, W. A. Morel and Walter E. Heller & Company (formerly J. Wes Johnson d/b/a Tower Oil & Gas Company of Texas)	RI60–276
Jones, J. E., Drilling Company (Operator), *et al.*, and Sohio Petroleum Company (Operator), *et al.* (formerly J. E. Jones Drilling Company (Operator), *et al.*)	G–14762
Kewanee Oil Company	G–15235, RI61–155

[3] Amerada Petroleum Corporation has filed a motion to be made a co-respondent in this proceeding.

Producer	*Docket No.*
Kimbell, Kay, The Estate of, *et al.*, and Chase Petroleum Company (Operator), Agent for John M. Clark, *et al.* (formerly Kay Kimbell Oil Properties, *et al.*)	G–20538
Kirby Petroleum Company (Operator), *et al.* (formerly Toklan Production Company, *et al.*)	G–13838, RI60–311
Lakeland Petroleum Corporation (formerly Greenbrier Oil Company and Theo. Hamm Brewing Co.)	RI60–22, RI60–23
Latch, Leonard, *et al*	RI60–328
Late Oil Company (Operator), *et al*	G–14495
Leonard Oil Company	RI60–44, RI60–113
Leonard, J. M	RI60–226
Limpia Royalties, Inc	G–14761
Luse, W. P., *et al.*, and Jack L. Burrell (Operator), *et al.* (formerly W. P. Luse, *et al.*)	RI60–37
Lyle, W. M., et al	G–20419
MWJ Producing Company (Operator), Agent.	RI60–88, RI60–188
MacDonald Oil Corporation (Operator), *et al.*	RI60–258, RI60–419
Marathon Oil Company (formerly The Ohio Oil Company)	RI60–260
Marathon Oil Company (Operator), *et al.* (formerly The Ohio Oil Company (Operator), *et al.*)	RI60–259
Markham, Jack, *et al*	RI60–222
Martin, Williams & Judson (Operator), et al	RI60–89
McAlester Fuel Company	G–19324
McFarlin, E. B., and Ketchum, E. P	G–13161**, RI60–24
McGrath & Smith (Operator), *et al*	RI60–316
McGrath & Smith, Inc., Agent (Operator), *et al.* (formerly Carl J. Westlund, Inc. (Operator), *et al.*)	RI60–196
McKnight, William L. d/b/a La Gorce Oil Company, *et al.*	RI60–315
Meadows, A. H	RI60–33
Mendota Oil Company	RI60–314, RI60–351
Midhurst Oil Corporation	RI60–103
Monsanto Company (formerly Monsanto Chemical Company)	RI60–122
Moore, J. Hiram, *et al*	RI60–3
Moore, Wayne, *et al*	G–20416
Northwest Production Corporation (formerly Barnhart Hydrocarbon Corporation)	G–16417**, G–20418
Nueces Company, The (Operator) (formerly Santa Rosa Gas Company (Operator))	G–17165**, G–20412
Odessa Natural Gasoline Company	RI60–5
Oil Well Drilling Company, *et al*	RI60–152
O'Neill, Joseph I., Jr., *et al*	RI60–320
Pan American Petroleum Corporation	G–16480**, G–16532**, G–19998**, G–20452**, RI61–43, RI61–58

Producer	*Docket No.*
Pan American Petroleum Corporation (Operator), *et al.*	G–20008**, RI61–45
Pan American Petroleum Corporation (Operator)	G–16481**, G–20006**, RI61–53
Pan American Petroleum Corporation, *et al.*	G–20007**
Pan American Petroleum Corporation and Hanley Company (Operator), *et al.* (formerly Pan American Petroleum Corporation)	RI61–44
Pan American Petroleum Corporation (formerly Honolulu Oil Corporation)	G–16425**, RI60–32
Pan American Petroleum Corporation (Operator), *et al.* (formerly Honolulu Oil Corporation (Operator), *et al.*	G–17059
Pauley Petroleum Inc., *et al.*	G–20529
Pecos Company	RI60–34
Pecos Company (Operator)	RI60–35
Peerless Oil & Gas Company and The Fluor Corporation, Ltd. (formerly Peerless Oil & Gas Company)	G–20401
Phillips Petroleum Company	G–11849, G–13734**, G–15315**, G–18207**, G–18215**, G–20405, G–20523, RI60–2, RI60–15
Phillips Petroleum Company (Operator), *et al.*	G–14006, G–15314**, G–18206**, G–18418**, G–20403*
Phillips Petroleum Company (Operator)	G–14115**, G–17071, G–18417**, G–20404, G–20417, RI61–30
Pure Oil Company, The	G–16800**, G–17930, G–17937**, G–20005, G–20280, RI60–91, RI60–418
Redfern Oil Company	G–18770**
Reef Corporation (Operator), *et al.*	RI61–66
Reigle, E. E., d/b/a Richmond Drilling Company	RI60–38
Reserve Oil & Gas Company, *et al.*, Husky Oil Company, Haynes & V. T. Drilling Company and Reserve Oil & Gas Company (formerly Southern California Petroleum Corporation)	RI60–13
Reserve Oil & Gas Company (Operator), *et al.* (formerly Southern California Petroleum Corporation)	RI60–12
Resler & Sheldon (Operator), *et al.*	G–19492
Robertson, French M. (Operator), *et al.*	RI61–244
Robertson, French M., & J. P. Bryan (formerly G. Stratton, Jr. (Operator), *et al.*	G–16535
Rodman, E. G. (Operator), *et al.*	G–19994, RI60–7
Rodman, E. G., & W. D. Noel	RI60–6
Rodman, Late & Noel [3]	G–19952

[3] Motion filed for change of name to "Rodman and Late."

Producer	*Docket No.*
Rodman Petroleum Corporation (Operator), *et al.* (formerly Rodman-Noel Oil Corporation)	G–19996
Rosenthal, Jerome B., *et al*	RI60–414
Rutter & Wilbanks Brothers (Operator), *et al.* and DST Exploration Corporation (formerly Rutter & Wilbanks Brothers (Operator), *et al.*)	RI60–155
Schermerhorn Oil Corporation, *et al*	RI60–40, RI60–81
Schermerhorn Oil Corporation	RI60–41
Scott, Paul P. Trust, *et al*	RI60–108, RI61–98
Seagram, Joseph E., & Sons, Inc., d/b/a Texas Pacific Oil Company (Operator), *et al.* (formerly Jal Oil Company, Inc. (Operator), *et al.*	RI60–256, RI60–350, RI60–380
Seagram, Joseph E., & Sons, Inc., d/b/a Texas Pacific Oil Company (formerly Jal Oil Company, Inc.)	RI60–362, RI60–442
Seagram, Joseph E., & Sons, Inc., (formerly Olsen Oils, Inc.)	G–20003
Seagram, Joseph E., & Sons, Inc., d/b/a Texas Pacific Oil Company (Operator), *et al.* (formerly Olsen Oils, Inc. (Operator), *et al.*)	G–20002, RI60–118
Seagram, Joseph E., & Sons, Inc., d/b/a Texas Pacific Oil Company (formerly Texas Pacific Coal & Oil Company)	RI60–453, RI60–469
Seagram, Joseph E., & Sons, Inc., d/b/a Texas Pacific Oil Company (Operator), *et al.* (formerly Texas Pacific Coal & Oil Company (Operator), *et al.*)	RI60–470
Secure Trusts	G–16424**, G–18558, G–20536
Sharples & Company Properties (Operator), *et al.* (formerly Sharples Oil Corporation)	G–14253, G–14624
Signal Oil & Gas Company (Operator), *et al*	RI60–219
Signal Oil & Gas Company (Operator), *et al.* (formerly John I. Moore, *et al.*)	RI60–120
Signal Oil & Gas Company, *et al*	RI60–305
Simmons, Jay, *et al*	RI60–154, RI60–197
Sinclair Oil & Gas Company	G–16534**, G–16956, G–18326**, G–19723**
Sinclair Oil & Gas Company (Operator), *et al*	G–20082*
Sinclair Oil & Gas Company, *et al*	G–19724
Sinclair Oil & Gas Company and NE-O-TEX Corporation (formerly Sinclair Oil & Gas Company)	RI60–31
Sinclair Oil & Gas Company (Operator), *et al.* (formerly Texas Gulf Producing Company (Operator), *et al.*)	G–14066, G–16537**, RI60–25
Sinclair Oil & Gas Company and Amerada Petroleum Corporation (formerly Sinclair Oil & Gas Company)	G–20580, RI61–56*

Producer	*Docket No.*
Sinclair Oil & Gas Company (Operator), *et al.* (formerly Western Natural Gas Company)	G–19252, RI60–45
Sinclair Oil & Gas Company (formerly Texas Gulf Producing Company)	RI60–26
Skelly Oil Company	RI61–88
Slade, Inc	RI60–147
Slade, Inc. (Operator), *et al*	RI60–179
Socony Mobil Oil Company, Inc	G–12981**, G–12982**, G–13030**, G–15448**, G–15449**, G–15995**, G–20407, RI60–46
Socony Mobil Oil Company, Inc. (Operator)	G–20408
Socony Mobil Oil Company, Inc. (Operator), *et al.*	RI61–94
Socony Mobil Oil Company, Inc. (formerly Republic Natural Gas Company)	RI60–10
Socony Mobil Oil Company, Inc. (formerly Republic Natural Gas Company, *et al.*)	G–13311**
Socony Mobil Oil Company, Inc. (Operator), *et al.* and The Atlantic Refining Company (formerly Socony Mobil Oil Company, Inc. (Operator), *et al.*).	G–20406
Sohio Petroleum Company (Operator), *et al*	RI60–8
Southern Union Production Company (formerly Southern Union Gas Company)	G–19483**, RI60–242
Southland Royalty Company	G–19727**, RI60–119, RI60–148 RI61–50
Southland Royalty Company (Operator), *et al*	RI60–306
Standard Oil Company of Texas, a Division of California Oil Company	G–14059**, G–19583**, RI60–164**, RI60–337**, RI61–161
Standard Oil Company of Texas, a Division of California Oil Company	G–13187**, G–19664**, RI60–338
Street, Gordon, Inc	RI60–86
Street, Gordon, Inc. (formerly Gordon P. Street)	RI60–85
Sunac Petroleum Corporation (Operator), *et al.*, and DST Exploration Corporation (Operator), *et al.* (formerly Stekoll Petroleum Corporation (Operator), *et al.*	RI60–114
Sun Oil Company	RI60–123
Sun Oil Company (Operator), *et al*	RI60–124
Sunray DX Oil Company (formerly Sunray Mid-Continent Oil Company)	G–13160**, G–16884**, G–19090**, G–20537, RI60–14, RI60–29, RI60–101
Superior Oil Company, The	G–12949**, G–12950**,[4] G–15358**,[4] G–18771, G–20075
Tenneco Oil Company and Continental Oil Company (formerly Delhi-Taylor Oil Corporation)	G–19728**, RI60–278, RI60–322

[4] Amerada Petroleum Corporation has filed a motion to be made a co-respondent in this proceeding.

Producer	*Docket No.*
Texaco Inc. (formerly The TXL Oil Corporation)	RI60–224
Texaco Inc.	G–16414**, G–17159**, RI60–132**, RI60–137**, RI60–142**, RI60–466, RI61–33, RI61–74
Texaco Inc. (formerly Texaco Seaboard, Inc.)	G–14194
Tidewater Oil Company	G–14061**, G–14185**, G–16259**, RI60–71**, RI61–17
Tidewater Oil Company (Operator), *et al.*	G–16260**, RI60–70**, RI61–18
Todd, W. L., Jr., *et al.*	G–20415
Tri-Service Drilling Company	RI60–454
Trice Production Company (Operator), *et al.*	RI60–234
Turner, Fred, Jr.	RI60–83
Two States Oil Company	RI60–39
Union Oil Company of California (formerly Texas National Petroleum Company.)	RI60–325, RI61–27
Union Oil Company of California	G–13997, RI60–174, RI60–438
Union Oil Company of California (formerly Texas National Petroleum Company (Operator), *et al.*)	RI61–26
Union Texas Petroleum, a Division of Allied Chemical Corporation (Operator), *et al.* (formerly Texas Gas Products Corporation (Operator), *et al.*)	G–16888**, G–18952**, G–20420
Union Texas Petroleum, a Division of Allied Chemical Corporation (formerly Texas Hydrocarbon Company)	G–16889**, G–18951**, G–20421
Union Texas Petroleum, a Division of Allied Chemical Corporation (formerly Anderson-Prichard Oil Corporation)	G–19644, G–19651, RI60–121, RI60–149
Union Texas Petroleum, a Division of Allied Chemical Corporation (Operator), *et al.* (formerly Anderson-Prichard Oil Corporation, (Operator), *et al.*)	G–19638, RI60–150
Vaughn, G. H., Jr. & Jack C., *et al.*	G–20413
VEM Oil Inc. and B. W. P., Inc. (formerly VEM Oil, Inc.)	RI60–116
Warren Petroleum Corporation	G–12842**, G–15311**, G–16114**, G–18560**, G–20410
Warren Petroleum Corporation (Operator)	G–15304**, G–15310**, G–18467**, G–18471**, G–18517**, G–20409
Weier, A. D., Jr., *et al.* (formerly Weier Drilling Company (Operator), *et al.*	RI60–261
Westates Petroleum Company (formerly Hamilton Dome Oil Company, Ltd.)	G–20414
Western Petroleum Company and CRA, Inc., *et al.* (formerly Western Petroleum Company).	G–20411

Producer	*Docket No.*
Wilshire Oil Company of Texas (formerly Nemaha Oil Company).	RI60-78
Wilshire Oil Company of Texas, Agent for the Estate of Herbert W. Grindal, *et al.* (formerly Nemaha Oil Company, Agent, *et al.*)	RI60-79
Wrightsman Investment Company (formerly Charles B. Wrightsman).	G-20540

Part IV

The following certificate proceedings were also consolidated:

Name	*Docket No.*
Brown, Robert T., Operator, *et al*----------	CI61-733
North Central Oil Corporation (Operator), *et al.*	CI60-435
Nortex Oil and Gas Corporation & Socony Mobil Oil Company, Inc.—Temporary issued 7/10/64	CI61-34
TXL Oil Corporation, The (Texaco Inc. substituted as party 6/31/62)	CI61-879

Part V

Parties whose petitions to intervene were granted by orders dated May 31, 1961 and July 26, 1961:

Public Service Commission of Wisconsin
Minneapolis Gas Company
Public Utilities Commission of State of California and People of the State of California
David Fasken
Delta Drilling Company
W. H. Black (Operator)
DST Exploration Company
G. E. Marsh, II
J. H. Vandenbark (Operator)
The City of Los Angeles
Abel & Bancroft
James L. Green, Jr. and Thomas M. Sloan
J. H. Bartley, Norman Bock, A. W. Lasher, Jr. & William Moss
Dekalb Agricultural Association, Inc.
The State of Wisconsin
West Central Texas Oil and Gas Association
Iowa Public Service Company
Texas Independent Producers and Royalty Owners Association
City and County of San Francisco, California
San Diego Gas & Electric Company
Pacific Gas & Electric Company
State of New Mexico
Jeanne E. Krebs
Big Chief Drilling Company
American Liberty Oil Company
El Paso Natural Gas Company
Transwestern Pipeline Company
Minnesota Valley Natural Gas Company
Iowa Electric Light and Power Company
King-Stevenson Oil Company, Inc.
Pacific Lighting Gas Supply Company, Southern California Gas Company and Southern Counties Gas Company of California
Service Drilling Company
The State of Texas
Northern States Power Company
E. R. Bahan
Central Natural Gas Company
Metropolitan Utilities District of Omaha
Independent Petroleum Association of America
Fuels Research Council, Inc.
The City of San Diego
Woolaroc Oil Company
Iowa Power and Light Company
Central Electric and Gas Company (now Western Power & Gas Company)
Northern Natural Gas Company
J. M. Armstrong & W. A. Yeager
C. A. McClintic
Delfern Oil Company

APPENDIX B

Docket No. AR61-1, *et al.*

The following discussion from the presiding examiner's initial decision, Appendix B, pp. 383, 384, is adopted by the Commission:

E. DRY HOLE COSTS

Roseman and Park divide dry hole costs on the basis of the relationship between successful oil and gas well footage averaged over a period of years. While this method might not be suitable for dealing with the dry hole costs of an individual company due to the variations in annual success ratios and productivity of successful drilling, as Respondent witness Porter showed, these variations tend to be minimized in the magnitude of the industry's total effort over a period of years. Therefore these witnesses' basic approach is sound on the industry level.

For the period 1955–60, Park determines the average annual dry hole footage and successful footage, separately for exploratory and developmental footage. This shows that 6.4 feet of dry holes were drilled for each successful exploratory foot, and 0.3 feet per successful developmental foot. These numbers are multiplied by the average annual gas footage, broken down between exploration and development, thus arriving at the total dry hole footage to be borne by gas-well gas. The total is then multiplied by the JAS 1960 average cost per foot for dry holes. The result is divided by the average annual reserve additions of gas-well gas to produce 1.56 cents per Mcf for dry holes. Park thus allocates dry hole costs in proportion to the relationship between successful gas footage and total successful footage.

Roseman also divides his dry hole footage between gas and oil in proportion to successful gas and oil footage, separately for "wildcat"[8] and other footage. He derives a combined ratio of 0.898 feet of dry hole per successful gas well footage as the weighted average for the period 1951–61. (The corresponding ratio for Park for the period 1955–60 is 0.891.) Then he takes the cost per dry hole foot drilled from the Census for 1958 and after adjustment computes the cost per Mcf of dry holes drilled.

Roseman makes three adjustments to the dry hole foot cost figure of $8.91, the Census figure for 1958.

The Appendix figures show a decline of 3.5 percent in dry hole drilling costs from the peak year 1958 to 1960. For the reasons previously given, it is appropriate to adjust the 1958 Census level by the trend actually experienced by the constant sample of companies in the Appendix. This adjustment reduces the cost per dry hole foot to $8.60 per foot.

Roseman makes a second adjustment to take account of the fact that gas wells are typically deeper and therefore more expensive than oil wells. Using the *Oil and Gas Journal* figures which show drilling footage by depth and by well type, and Appendix data which shows the Appendix cost per foot for 1960 in the various depth ranges, he finds that the average cost per foot of dry holes allocated to gas was 12 percent greater than it would have been, if depth had been disregarded.

Again, analysis of the figures allocated to gas by Roseman on the basis of successful wells at various depth ranges, indicates that the footage allotted to gas is 4 percent less than if, disregarding depth ranges, the allocation were

[8] *World Oil*, on which Park and Roseman rely for allocating dry hole costs, provides a breakdown between "wildcat" and total drilling. It appears that the term exploratory as used here by Park corresponds to the term "wildcat" used in *World Oil*.

made simply on the ratio of total successful gas well to oil well footage. This is a statistical indication that deeper wells tend to have a higher success ratio.[4] The combination of the second and third adjustments, an increase in cost of 12 percent for greater depth and a reduction of 4 percent for greater success ratio, results in an upward adjustment of 8.28 percent.

The adjusted cost per foot figure is $9.31 per foot which produces a cost of 1.42 cents per Mcf.

Roseman's trended Census cost per foot is preferred to Park's JAS cost. The JAS sample average cost reflects the overrepresentation of large producers, their deeper than average drilling, and consequent higher than average cost per foot. Roseman's adjustments which reflect the effects of depth and success ratios for gas wells are sound refinements. For these reasons Roseman's estimate of 1.42 cents is accepted.

The following discussion from the presiding examiner's initial decision, Appendix B, pp. 379–383, is adopted by the Commission:

B. LEASE ACQUISITION COSTS

Park, Roseman and Sherwin estimate lease acquisition costs for gas well gas on the basis of the relationship between lease acquisition costs and successful well drilling costs.

Data on leasehold acquisition costs in relation to successful drilling costs are available from the Staff Appendices B and C, the *Joint Association Survey* and the Chase Manhattan Bank's *Annual Analysis of the Petroleum Industry 1961* (Chase). Ratios between leasehold acquisition costs and successful drilling costs cannot be computed from the Chase data alone because the Chase drilling costs include lease equipment costs which cannot be broken out. However, the Chase figures for lease acquisition costs are separate. Roseman used this data and related it to the trended Census drilling costs (the Chase-Census results). The ratios from the above sources are shown for recent years below.

There is difficulty in using the data on this subject.

1. Lease acquisitions vary considerably from year to year and are significantly influenced by Federal offshore lease sales at which large blocks are sold at irregular intervals, chiefly to large producers. As shown below, the expenditures for leaseholds by the small producers have been stable in relation to drilling costs, while the expenditures of the large producers have varied significantly. Given the variability in the ratios, it is desirable to consider the results for a number of consecutive years. The JAS does not report any results for 1957 and 1958. The Chase-Census figures are available over a span of years and the Appendix data covers 1956–60.

* * * * * * *

Ratio of lease acquisition costs to successful well costs (percent)

	JAS	Roseman	Staff summaries	
			Respondents over 10 million	Respondents under 10 million
	(1)	(2)	(3)	(4)
1955	36	36	N.A.	N.A.
1956	29	28	41	28
1957	N.A.	20	27	23
1958	N.A.	23	39	24
1959	30	28	43	28
1960	38	35	67	28
1961	26	24	N.A.	N.A.
Weighted average	33	[1] 26.4	42	26

[1] Years 1957, 1958, 1959, 1960.

Source:
(1) Joint Association Survey, 1961; and 137/14381.
(2) Exhibit 224, Sch. 5; and 173/20614.
(3) Exhibit 149, p. 32.
(4) Exhibit 149, p. 45 and Exhibit 153, p. 12. Data in Exhibit 153 adjusted to separate out related lease equipment from reported total of "well equipment and related lease equipment."
N.A.=Not available.

To relate lease acquisitions to drilling cost, Roseman estimated drilling costs for oil and gas separately from the Census for 1958 and trended these results on the basis of the Appendix A experienced costs from 1957–60. The per foot results for oil and gas were applied to the total footage drilled of oil and gas wells as reported in *World Oil*, to obtain the total drilling costs for each year. As previously discussed, trending the drilling data on the basis of the trends shown in the Appendix A is a sound method for determining trends in drilling costs. Trending the 1958 drilling costs downward increases the ratio of lease acquisition costs to drilling costs. Roseman then relates the industry wide lease acquisition data of the Chase analysis to the trended industry drilling costs. He considers the annual ratios from 1955–61 * * * and correctly found no trend. He then determines the weighted average ratio for the years 1957–60 to be 26.4 percent, which provides a representative sample of years in which lease acquisition costs were at high and low levels. Applying this percentage to his drilling cost of 2.88 cents per Mcf for successful gas wells, determined from the first step, yields 0.76 cents per Mcf.

Sherwin's estimate for the relationship between lease acquisition costs and successful well costs is in the range of 33 to 37 percent. He begins with the Appendix data which for the years 1956–60 average 42 percent for the large producers and 26 percent for the small producers. He also considers the lower estimates of JAS and Chase. JAS doesn't cover the years 1957 and 1958, which the other estimates show were the two lowest years in any of the series. It is evident from the preceding table that for all the years JAS is available 1955, 1956, 1959, 1960, 1961, its ratios are never more than two percentage points higher than the Chase-Census ratios.

Sherwin's major reliance is the Appendix data for the large producers. The ratios for these large producers are much higher than either the JAS or the Chase-Census ratios. The ratio of 67 percent for 1960 is 29 percentage points above the JAS figure for that year and 30 points above the Chase-Census ratio. This last variance is probably due in part to extensive purchases by large producers of offshore leases at the federal sales occurring that year. Such lease sales are in the main confined to large producers and their affiliates, and are generally in large amounts. These transactions are reflected to a greater degree

in the Appendix results for the large producers than in the JAS or the Chase-Census results, because the national Appendix data underrepresent the small companies to a greater extent than the other two. Sherwin's upper limit of 37 percent is based in the main on an apparent trend in the results for the large Appendix producers for 1958, 1959 and 1960, 39 percent, 43 and 67 percent, respectively, although on other occasions he criticizes the use of Appendix data even for trending purposes. During this same period there is no trend in the ratios of the Appendix small producers. That three years is too short a period to establish a trend for this purpose is shown by the downward movement in 1961 for both the JAS and the Chase-Census ratios. In March 1962 there were large sales of offshore leases, and the 1962 data will probably reflect this, but the whole picture still indicates variability but no trend. Sherwin's estimate, being based largely on the least representative data, is rejected.

Witness Park combines his estimate for lease acquisitions with that for lease facilities. He estimates that these two items should amount to 50 percent of his already determined drilling costs per Mcf. Park's estimate is based in large part on his judgment and experience as an official of Texaco. He considered the JAS average results for these items for the years when this survey was published and the 1956–60 Staff average results for all Appendix B producers. Both show a ratio of 59 percent for lease acquisition costs and lease production facilities in relation to drilling costs. Park first adjusts this percentage downward to reflect the fact that lease production facilities are more extensive on oil leases. He then adjusts the percentage upward to a lesser extent to take account of the fact that gas wells are more widely spaced and drain a greater acreage than oil wells. These two judgment adjustments resulted in a net downward adjustment to 50 percent, of which Park assigns 40 percent for lease acquisitions and 10 percent to lease production facilities.

Park's 40 percent figure is higher than the JAS average ratio. Moreover, as previously noted, the JAS was not published for the years which the Chase-Census and Appendix ratios indicate were the two lowest in their respective series, 1957 and 1958. And, as previously noted, the JAS average is probably too high because it is overweighted by large companies whose acquisition costs are a higher proportion of well drilling costs than is true for the small companies. The average ratio for the years 1956–60 for all the Appendix B companies is 42 percent. The upward bias in the ratios resulting from the unrepresentativeness of Staff's companies has been discussed.

Park's upward adjustment is based on his experience that the spacing of gas wells is typically wider than for oil and therefore uses more acreage. He also gives his opinion that gas acreage is not correspondingly cheaper than oil acreage. He cites no study or data in support of his conclusion. He does not appear to have considered the relative values of oil or gas prospects. Park does not mention the factor that the drilling cost for gas wells is typically greater than for oil wells because of the greater depth of gas wells. This would tend to offset the effects in the relationship of possibly higher acquisition costs for gas acreage.

The record contains a single study which indicates that the cost of lease acquisitions for gas has not exceeded those for oil. In Schedule 7 of his Exhibit 224, Roseman relates the capital accounts for lease investment to the investment in lease and well equipment plus drilling cost for successful wells, classified by lease types. In other words he takes the gross historical investment in lease acquisitions for successful gas and oil leases, and relates this amount to the corresponding gross historical investment in successful wells and lease equipment. The study shows that lease acquisition investment was 22 percent for gas leases and 20 percent for oil leases. There is no dispute that lease facility costs on

successful oil leases are generally considerably greater than on gas properties. Hence it is probable that if the ratios were limited to the capital accounts for lease acquisition and successful wells, excluding the lease facilities, they would show that the ratio for gas leases was the same as or lower than for oil leases. In any event, the study indicates that the ratio of investment in lease acquisitions to total investment for successful leases is not significantly greater for gas than for oil. This study covers productive leaseholds only. The witness concludes that this limitation doesn't affect the comparison. There is no reason to expect that the respective ratios for oil and gas leases would be changed if leaseholds which are acquired and never go into production were to be included.

There is no evidence that recent investment in gas or oil leases would change the above ratios.

While not conclusive, this study indicates that it is a reasonable hypothesis that the ratio of lease acquisition costs to drilling costs is not significantly different for gas than for oil leases.

It is concluded that Roseman's estimate based on the Chase-Census ratio furnishes the most reasonable estimate for lease acquisition costs. Applying Roseman's ratio to his drilling costs yields 0.76 cents.

An analysis of the percentages in the table at p. 293 of this appendix setting out ratios of lease acquisition costs to successful well costs indicates additional grounds for supporting the presiding examiner's determination of lease acquisition costs. As the examiner noted, in each year for which JAS percentages are available they correspond closely to the Roseman percentages. In 1955 the two figures were the same; in 1956 the JAS figure was one percentage point higher; in 1959, 1960, and 1961 the JAS figure is higher by two percentage points. For 1957 and 1958 no JAS figures are available but the close correlation of the figures of JAS and Roseman for the years in which data is available would indicate that if JAS figures had been available for 1957 and 1958, they would have been close to the Roseman figures of 20 percent for 1957 and 23 percent for 1958. This would indicate that an average of the available JAS figures would be misleading and that a more representative average could be obtained by including figures for 1957 and 1958, based on the observed relationship to Roseman's figures. With this adjustment, the average of the JAS figures would be 28.5 percent, as compared with the 33 percent which is the average of JAS figures actually available. It seems clear therefore that the Roseman figures of 26.4 are not too low and we agree with the examiner that they should be accepted for the purpose of computing the lease acquisition cost.

APPENDIX C

Docket No. AR61–1, *et al.*

DETAILED ISSUES IN COMPUTING THE COST OF OLD GAS-WELL GAS

In this appendix we shall discuss in more detail several of the issues raised in connection with the historical cost of service determination of the cost for flowing gas at pp. 212–218.

Gas-Well Gas Produced from Combination Leases

Basic to the determination of production costs for old gas-well gas is the question of which lease categories should be included in the determination of such costs. There is no controversy over the inclusion of leases covering dry gas as well as gas condensate with and without lease separation. An issue has been raised, however, with respect to the inclusion of the so-called "combination lease", a term used to classify leases producing, or capable of producing, from both oil and gas reservoirs.

In computing its composite cost of gas-well gas, the Staff included data relating to gas-well gas from the combination leases for both production costs and for its E&D allowance. The producers concur in Staff's method insofar as it relates to E&D but contend that data from combination leases should be excluded from consideration in the production expenses and investment costs of gas-well gas because they involve unnecessary and unreliable additional allocations. The examiner pointed out that large amounts of gas-well gas are produced from the combination leases and that there are economies of joint operation which should be reflected in the costs.

Our decision to base the price of flowing gas upon the cost of gas-well gas was based in part on an effort to minimize the number and complexity of the necessary allocations. Furthermore, because the liquids represent a much smaller portion of the total in gas-well gas than in oil-well gas, such a cost is less dependent on allocations and more nearly represents an objective cost for the gas. With this in mind we must observe that to compute the corresponding production expenses and investment costs attributable to gas-well gas on the combination leases will require two distinct stages of allocations. The first stage is to divide the combination lease costs between all gas and all liquids by the use of the relative cost method. This must be done for all gas-well gas. However, there must then be a further breakdown of the costs assigned to gas between dry gas, condensate gas, with and without lease separation, and casing-head gas. This is a complex process, involving allocation formulas which are necessarily subject to dispute. Only when this step is taken can costs related to gas-well gas from combination leases be computed. If combination leases are excluded from the compilation of production costs the more complex two-stage allocation is avoided.

To utilize the costs of combination leases in determining production costs would involve the additional allocations which we believed should be avoided and would thus defeat a major purpose of limiting the cost to non-associated gas. There is nothing in the record to support the examiner's suggestion that somehow gas-well gas can be produced more economically on a combination lease. We believe the production expense and investment data for gas-well leases which cover some two-thirds of the gas-well gas produced in the area is fully representative of the costs for gas-well gas. Accordingly, combination leases will be excluded from the production cost computation of gas-well gas.

The use of combination leases in the computation of E&D, however, presents no further allocation problem. There are no E&D expenses directly associated with the combination leases. All that is needed to make the E&D computation are the volumes of liquid and gas produced from each type of well, and such volumes are available. Accordingly, we find that the data from the combination leases should be included in the calculation of E&D, which is consistent with the positions taken by both staff and respondents.

Allocation of Overheads

In addition to the costs directly associated with the producing leases there are certain costs which are incurred in connection with the producers' overall activities. These are corporate general costs and expenses, area and district costs and expenses, prepaid taxes and insurance, corporate general net investment, area and district net investment, and materials and supplies. Such overheads must first be allocated between operating functions (such as production and E&D, then between lease types, and finally between the gas and liquid products. There is no controversy about the allocation between operating functions, which was performed in most instances by the reporting companies

themselves. The specific issue concerning these overhead expenses is the allocation of such costs between the various types of leases.

The Staff allocated these overhead expenses to leases on the basis of direct lease costs and expenses, exclusive of DD&A (depreciation, depletion and amortization) for items which are expensed, and on the basis of relative gross investment in the leases for capital items and the materials and supplies. On the other hand the Major Producer Group would add DD&A to the direct lease cost and expenses as a basis for allocating the common, or overhead, expenses and would use net investment in the leases as the basis for allocating capital items and the materials and supplies.

The examiner adopted staff's methods of allocation, and we affirm the examiner's finding. First, as to the issue whether the overhead expenses should be spread over all of the direct expenses including DD&A, it is clear that they should not. Overhead expenses are largely supervisory expenses and have no bearing on DD&A, which are bookkeeping entries to reflect the use of the investment. They should be allocated on the basis of direct expenses being supervised, which are exclusive of DD&A.

The second question is whether to use gross or net investment as the basis for allocating capital items and materials and supplies, two of the items in the overhead category. In allocating the common investment items, gross investment more closely reflects management supervision than net investment which is affected by the amount of gas or oil already produced. The same is true for materials and supplies because such expenses continue regardless of whether the investment has been reduced by depreciation and depletion. We shall, therefore, allocate these two items on the basis of gross investment.

Reinjected Volumes

An important question relating to the volumes used in computing the cost of flowing gas is the treatment of gas that is produced from the well, but is reinjected for the purpose of improving operating efficiency and increasing the recovery of liquids. If the reinjected volumes are included the effect is to reduce the unit cost of gas sold below what it would have been if costs were applied only to volumes sold, and the volumes produced but reinjected were disregarded. This is true because the same costs would be spread over a greater volume.

Respondents maintain that reinjection operations relate only to cash production expenses, and that except for these expenses all other costs should be computed on the basis of the volumes sold, which would be a smaller volume (and at higher cost) than if the total volume produced including the volumes subsequently reinjected were used. On the other hand staff maintains that all costs—cash productions cost, DD&A, return on investment and exploration costs—should be applied to total volumes produced regardless of their disposition.

The use of total production volume, rather than sales volumes, in computing the cost per Mcf assures that the share of total production costs related to the liquids derived from reinjected gas are in fact borne by liquids. For example, costs of recycling include investment in reinjection wells and other equipment, which should be borne by the liquids. In our opinion the use of production volumes, an approach which was adopted by the examiner, is the proper one. The cost of obtaining the liquids is not confined to the current expense of lifting, processing, and reinjecting the gas; all the other expenses, such as production investment and the like, are necessary as well. If they were not incurred, there would be no gas to recycle for the benefit of the liquids.

The conclusion is in accord with our prior decision on this issue in *H. L. Hunt, et al.*, 28 FPC 897 (1962). In that case the Commission stated that pro-

duction volumes rather than sales volumes should be used in cost computation, and specifically mentioned recycled gas as included in production volumes.

> * * * For example gas that is recycled, gas used for off-lease purposes, gas used by other departments in drilling or production, and gas shifted to company gathering systems or plants all represent situations in which substantial volumes of gas may have been produced but would not be included in sales volumes.
>
> The overstatement of the unit cost of single product gas inherent in the use of sales volumes also distorts the allocation of joint product costs. For example it is obvious that under the relative cost method too much of the joint production costs will be allocated to gas if the production cost of gas-well gas has been overstated. [p. 902]

Application of Relative Cost Method

A. *General Approach*

As a preliminary matter we are confronted with a dispute over methodology. Phillips' Witness Cramer presented a variant of the relative cost method which has been referred to as the "Y" Ratio method. The relative cost method relies on an allocation ratio based on single product costs, but the "Y" Ratio method includes in its base the costs and production of joint products, which are the very costs to be allocated by the ratio to be derived.

The "Y" Ratio method requires the use of a cubic equation and results in a mathematical formulation that is solved with a computer. Complicated formulas, even mathematical ones, do not necessarily produce meaningful results. We are persuaded that the method proposed by Witness Cramer creates only an illusion of precision and is less meaningful than the relative cost method of allocation. Under these circumstances we agree with the examiner that no reason has been shown to adopt this method.

In applying the relative-cost method there are three detailed issues on which staff and the producer-respondents differ. One is whether gas condensate leases should be included in the gas leg, a second is whether shut-in leases should be included in the oil and gas legs, and the third is whether the joint products should be allocated on the basis of gross investment rather than on the basis of net investment.

B. *Gas Condensate Leases*

The Staff in deriving a gas leg added to the dry gas leases, the gas-condensate leases without lease separation but excluded the gas-condensate where lease separation occurred. Respondents argue that all condensate gas, both where lease separation took place and where it did not, should be included in the gas leg. In support of their position respondents urge that there is no difference from an operating and well investment standpoint between gas condensate leases and the dry gas leases which were included, and that all the gas condensate leases should be included to reflect representative conditions relating to production on joint product leases, because otherwise the gas leg is too small to be representative.

Essentially the respondents argue that all gas condensate production should be included in the gas leg because gas condensate and dry gas leases are similar. Their argument misses the point. Obviously if there is sufficient dry gas to provide a representative gas leg, no gas condensate at all should be added. If not, the issue is the extent to which gas-condensate lease types need be added to achieve representative conditions.

Producers responding to the Commission questionnaire for the major producers (Appendix B) produced 41,652,569 Mcf of dry gas in the Permian Basin in 1960, about 4 percent of their total gas production in that area. In computing the Permian Basin gas leg of such producers, staff added to this dry gas production 1,271,495 Mcf of gas-condensate gas produced by them from leases without lease separation.

In the past, in cases dealing with individual companies, the Commission has considered that a dry gas leg representing as little as 4 percent of the total gas production of a company was an inadequate sample, and has indicated that there should be added to the gas leg a portion of the gas condensate production for the purpose of obtaining a larger sample. *H. L. Hunt, et al., supra; Hunt Oil Company, et al., supra; Union Producing Co., et al., supra.* In none of these cases, however, did the amount of dry gas production approach the 41,652,569 Mcf of dry gas which would be the sample here if the gas leg were restricted to dry gas. Also, in the three cases cited, we were dealing with the nationwide production of individual companies and the only practicable method of enlarging the sample was to depart from a strictly single product leg and include a portion of the company's gas condensate production. In the present proceeding, however, if it were determined that the 41,652,569 Mcf of dry gas produced by the major producers in the Permian Basin were an inadequate sample it would still be possible to maintain an all dry gas leg by using the national production of dry gas by the same companies. Although the nationwide production of dry gas by these companies is only approximately 13 percent of their total gas production, it amounts to 862,395,237 Mcf annually, a production several time larger than all of that used in computing the gas leg in *Phillips Petroleum Company, supra* (226,681,178 Mcf). There is no question that the 862,395,237 Mcf is a sufficient volume for an adequate sample.

The total costs allocated to gas by the relative cost method vary only in a negligible amount, whether national production or Permian Basin production of dry gas is used as the sample. The Staff's inclusion of gas condensate without lease separation also has little effect. The computations of production costs are as follows:

Type of gas leg used	*Gas-well gas costs in cents per Mcf (at 12% rate of return)*
Nationwide dry gas production [1]	9.136
Permian Basin dry gas production	9.157
Permian Basin dry gas + gas condensate without lease separation	9.161

[1] This computation has been made using Permian Basin cost data but applying an allocation ratio derived from national statistics. We reassert that for flowing gas the area costs are to be used in computing production costs. The use of the national dry gas volumes would be for the sole purpose of developing allocation ratios.

It will be noted that the costs, as computed on the basis of an allocation ratio derived from national production, differ by approximately 0.02 cent per Mcf from the computation of such costs derived from the ratio of dry gas production in the Permian Basin, and that the ratio derived from Permian Basin production is more favorable to the producer-respondents. The computation actually used by the Staff, which included gas condensate without lease separation in determining the allocation ratio, varies from the determination made on the basis of the Permian dry gas only by approximately 0.004 cent, and, again, the miniscule difference is favorable to the producer-respondents.

We think that if there is an insufficient area dry gas leg the use of national dry gas production would be preferable to the inclusion of gas condensate production for the purpose of determining the allocation ratio. However, where an area gas leg is derived from dry gas volumes of 41,652,569 and where the use of national dry gas production would produce a result equivalent to use of the area dry gas production, we believe it is proper to use the area production leg. Since the inclusion in the gas leg of the small amount of gas condensate by staff resulted in such an insignificant difference in cost, for the purposes of this case we will adopt Staff's computation. Regardless of which of these two computations we choose, it would not alter the cost sufficiently to affect the price of old gas-well gas as herein determined.

C. *Shut-in Leases*

Staff in computing its gas leg and oil leg excluded shut-in leases for purposes of determining the allocation percentages, although the actual cost of the shut-in leases in the joint lease category is, of course, included in the joint cost when the allocations are applied. Respondent-producers contend that shut-in leases should be included in determining the allocation percentages, because they are part of the cost of producing gas and shut-in oil leases are part of the cost of producing oil. The issue has been previously determined by this Commission. "Non-producing properties should not be included in ascertaining the oil and gas legs for allocation of the joint production costs." *Hunt Oil Co., et al.*, 28 FPC 623, 624 (1962). Shut-in lease costs are not representative of the production costs of either gas wells or oil wells because they are essentially non-producers. Their inclusion in the oil and gas legs would distort an otherwise representative single product cost factor and thus defeat the underlying principle behind the relative cost allocation method.

D. *Gross or Net Investment*

In computing the gas leg and oil leg for determining the relative cost of the joint production, the separate costs of each product must include an element of return on investment. Rather than using net investment, Staff would allocate the return allowance on the joint production on the basis of gross investment in leases producing separate single products. Respondents would use net investment. They argue that the use of gross investment overlooks the fact that this particular use of the relative cost theory is applied to production investment for the sole purpose of computing a return on investment, and that such return is computed on net investment, not gross investment.

The fact that the purpose of the allocation is to compute a return on investment is irrelevant, the test being which method more nearly reflects the operating facts of the joint production. The basic fact which raises the issue between gross and net investment is that oil-only leases are generally more depleted than dry gas leases.[2] Thus, using net investment would tend to assign less cost to oil and more to gas than if gross investment is used. On joint product leases (except some combination leases), the depletion rate is the same for liquids as for gas. Allocation on the basis of the gross investment more nearly reflects that fact. If net investment is used as the basis for the allocation it would impose a comparatively greater burden on gas than oil because of the relatively

[2] Oil leases average 62 percent depletion, nationally, and 55 percent in the Permian Basin, contrasted with an average depletion for dry gas leases of 40 percent nationally and 37 percent in the Permian Basin.

lower net investment of the oil-only leases which are more repleted. Its use would not reflect the true state of affairs on many joint product leases. We shall, therefore, use gross investment for this allocation.

Lease Play Allowance

In our calculation of working capital for new gas, we included an additional allowance for lease play over and above the working capital allowance which would be justified under the traditional utility method.[2] The question arises as to whether this additional allowance should be permitted in the cost computation for flowing gas. In *Hunt Oil Company*, 28 FPC 623 (1962) and in *Union Producing Company*, 31 FPC 41 (1963) the Commission denied lease play allowances on the ground that since a year-end rate base was being utilized such an allowance was unwarranted. The rationale for this finding was that any money expended to obtain leases during the year would receive a full year's return, even though such properties may have been purchased late in the year. These cases were not precedents for excluding a lease play allowance under our new gas calculation since an average-year rate base and not a year-end rate base was being used. However, in the development of our composite cost of service for flowing gas, we are using a year-end rate base. Accordingly, in view of the findings made in the *Union Producing* and *Hunt* cases no additional allowance for lease plays is included in the cost calculation for flowing gas.

Computation of E&D Allowance

The Commission utilized the modified Btu method in allocating E&D costs. In its application of this method the Commission used an economic factor of 3.5 for lease liquids and 1.0 for all gas. The E&D costs related to the Appendix "B" respondents are set out on the following page of this appendix. The results are summarized below.

E&D allocated to gas-well gas

	Cost (return at 12%)	Unit cost (return at 12%)
		Cent per Mcf
Expense	$167,036,961	3.46
Return [1]	30,010,322	.62
Total	197,047,283	4.08

[1] In the costing of old gas, certain costs classified as E&D costs are "capitalized" and made part of an E&D rate base, while certain items are "expensed." In deriving the cost of new gas, no items except "expensed" items were classified as E&D, and, therefore, no separate E&D rate base was developed. All new gas cost items which were capitalized, regardless of whether they were applicable to E&D or production, were put into the production investment rate base. This distinction between old and new gas is one of accounting classification. The final cost computation under either method is not affected by this difference.

[2] In our computation of the new gas cost, there is a separate classification for working capital. In the development of a composite cost of service the working capital allowance is not set out separately but is combined with investment in property under the separate cost computation for production cost and E&D cost.

Allocation of Appendix B respondents' E&D costs using economic factors of 3.5 for liquids and 1.0 for all gas

	Volumes [1]		Unit Btu [1] (Millions per Bbl or Mcf)	Total Btu's [1] (million Btu's)	Economic factor	Adjusted Btu's (million Btu's)	Allocated expense		Allocated return allowance		Allocated expense and return allowance	
	Lease liquids (Bbl)	Gas (Mcf)					Amount [2]	Unit (cents per Bbl or Mcf)	Amount [2]	Unit (cents per Bbl or Mcf)	Amount	Unit (cents per Bbl or Mcf)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)
Net working interest:												
Oil only leases:												
Lease liquids	328,551,303		5.872	1,929,253,251	3.5	6,752,386,378	$214,390,638	65.253	$38,518,014	11.724	$252,908,652	76.977
Raw gas		36,330,206	1.233	44,795,144	1.0	44,795,144	1,422,262	3.915	255,527	.703	1,677,789	4.618
Oil casinghead gas leases:												
Lease liquids	689,970,938		5.811	4,009,417,339	3.5	14,032,960,687	445,551,429	64.575	80,048,999	11.602	525,600,428	76.177
Raw gas		1,330,373,895	1.272	1,692,235,594	1.0	1,692,235,594	53,729,074	4.039	9,653,114	.726	63,382,188	4.764
Gas only leases:												
Lease liquids	48,650		5.426	263,968	3.5	923,888	29,334	60.296	5,270	10.832	34,604	71.128
Raw gas		862,395,237	1.042	898,615,837	1.0	898,615,837	28,531,368	3.308	5,126,024	.594	33,657,392	3.903
Gas-Condensate lease separation leases:												
Lease liquids	44,228,124		5.412	239,364,539	3.5	837,775,886	26,599,679	60.142	4,778,972	10.805	31,378,651	70.947
Raw gas		2,378,113,786	1.089	2,589,220,608	1.0	2,589,220,608	82,208,664	3.457	14,769,836	.621	96,978,500	4.078
Gas-Condensate no lease separation leases:												
Lease liquids	2,501,136		5.053	12,639,463	3.5	44,238,121	1,404,576	56.158	252,350	10.089	1,656,926	66.247
Raw gas		564,137,588	1.148	647,615,435	1.0	647,615,435	20,562,017	3.645	3,694,229	.655	24,256,246	4.300
Combination leases:												
Lease liquids	194,254,958		5.771	1,121,075,653	3.5	3,923,764,785	124,580,910	64.133	22,382,550	11.522	146,963,460	75.655
Raw gas produced from oil wells		532,697,791	1.187	632,312,278	1.0	632,312,278	20,076,137	3.769	3,606,934	.677	23,683,071	4.446
Raw gas produced from gas wells		147,813,158	1.091	161,264,155	1.0	161,264,155	5,120,194	3.464	919,908	.622	6,040,102	4.086
Raw gas produced from gas-condensate wells		874,984,057	1.102	964,232,431	1.0	964,232,431	30,614,718	3.499	5,500,325	.629	36,115,043	4.128
Subtotal, raw gas, combination leases		1,555,495,006	1.130	1,757,808,864	1.0	1,757,808,864	55,811,049	3.588	10,027,167	.645	65,838,216	4.233

Subtotals, NWI:												
Lease liquids	1,259,555,109		5.805	7,312,014,213	3.5	25,592,049,745	$812,556,566	64.511	$145,986,155	11.590 [1]	$958,542,721	76.102
Raw gas		6,726,845,718	1.134	7,630,291,482	1.0	7,630,291,482	242,264,434	3.601	43,525,897	.647	285,790,331	4.249
Royalties received:												
Lease liquids	22,522,451		5.805	130,748,135	3.5	457,618,473	14,529,547	64.511	2,610,418	11.590	17,139,965	76.102
Raw gas		180,295,367	1.134	204,509,849	1.0	204,509,849	6,493,259	3.601	1,166,597	.647	7,659,856	4.249
Total lease liquids	1,282,077,560		5.805	7,442,762,348	3.5	26,049,668,218	827,086,113	64.511	148,596,573	11.590	975,682,686	76.102
Total raw gas		6,907,141,085	1.134	7,834,801,331	1.0	7,834,801,331	248,757,693	3.601	44,692,494	.647	293,450.187	4.249
Grand total	1,282,077,560	6,907,141,085		15,277,563,679		33,884,469,549	[2] 1,075,843,806		[4] 193,289,067		1,269,132,873	
Appendix B gas-well gas computation [5]		4,827,443,826					167,036,961	3.460	30,010,322	.622	197,047,283	4.082

[1] Volumes and Btu's obtained from exhibit No. 170, schedule Nos. 8(A) and 9(A).
[2] Total distributed on basis of adjusted Btu's in column (7).
[3] Total expense data obtained from exhibit No. 168, schedule No. 7.
[4] Return allowance data obtained from exhibit No. 168, schedule No. 6, line 33 times 12%.
[5] Summary of gas-well gas costs as computed by combining applicable costs related to gas only leases, gas condensate with lease separation leases, gas condensate no lease separation leases, and combined leases.

APPENDIX D

Docket No. AR61-1, *et al.*

RATE SCHEDULE - QUALITY STATEMENT

1. APPLICABLE SECTION 4(e) DOCKET NO(S). (If any) (Use space below if needed)

2. PRODUCER NAME

3. RATE SCHEDULE NO.

4. TYPE OF GAS (Check one)

A. ☐ NEW GAS-WELL GAS
B. ☐ RESIDUE GAS DERIVED FROM NEW GAS-WELL GAS
C. ☐ RESIDUE GAS NOT DERIVED FROM NEW GAS-WELL GAS
D. ☐ OLD GAS-WELL GAS
E. ☐ CASINGHEAD GAS
F. ☐ MIXED GAS (Give proportion of types A and B) _____

5. PLACE OF PRODUCTION (Give State, County, Field and Municipality)

6. QUALITY OF GAS	PRODUCER'S STATEMENT OF QUALITY AND TREATING COSTS		BUYER'S STATEMENT OF QUALITY AND TREATING COSTS (If same as producer, indicate by check mark)	
	CONTENT OR PRESSURE	COST PER MCF OF TREATING GAS TO PIPELINE STANDARDS	CONTENT OR PRESSURE	COST PER MCF OF TREATING GAS TO PIPELINE STANDARDS
A. HYDROGEN SULPHIDE CONTENT (In grains per Mcf)...				
B. TOTAL SULPHUR CONTENT (In grains per Mcf).....				
C. CO_2 CONTENT (Percentage of volume sold).....				
D. H_2O CONTENT (In pounds per Mcf).....				
E. CONTENT OF OTHER IMPURITIES (Indicate whether above or below customary commercial and pipeline standards).....				
F. ACTUAL DELIVERY PRESSURE (Pounds per square inch)				
G. TOTAL				
H. BTU CONTENT PER MCF (New gas well gas only).....				

7. APPLICABLE AREA CEILING RATE

cents per Mcf

8. BTU PRICE ADJUSTMENT * (State whether plus or minus)

cents per Mcf

9. APPLICABLE RATE (Ceiling rate less treating costs, with Btu adjustments if any *)

cents per Mcf

10. RATE HERE ESTABLISHED (Not above applicable ceiling rate as adjusted)

cents per Mcf

NOTHING HEREIN SHALL PREVENT THE SELLER FROM FILING FOR ANY INCREASED RATE PERMITTED BOTH BY THE CONTRACT (IN THE ABSENCE OF THIS STATEMENT) AND BY APPLICABLE ORDER OF THE FEDERAL POWER COMMISSION.

12. SIGNATURE OF SELLER, AGENT OR OPERATOR

11. DATE OF STATEMENT

13. SIGNATURE OF BUYER

NOTE:
THE TERMS HEREIN ARE THOSE USED IN THE OPINION OF THE FEDERAL POWER COMMISSION IN PERMIAN BASIN AREA RATE PROCEEDING, AR61-1. NEW GAS-WELL GAS IS NATURAL GAS DERIVED FROM GAS WELLS MOVING UNDER CONTRACTS DATED ON OR AFTER JANUARY 1, 1961. THE BURDEN IS UPON A PRODUCER TO ESTABLISH THAT PARTICULAR GAS IS NEW GAS-WELL GAS OR RESIDUE GAS DERIVED THEREFROM, AND ALSO TO ESTABLISH THE PERCENTAGE OF SUCH GAS PRESENT IN A SALE OF MIXED GAS.

* Btu price adjustment to be applied in case of new gas well gas only.

APPENDIX E

Docket No. AR61-1, *et al.*

APPLICATION FOR SMALL PRODUCER
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
(Section 157.40 of Regulations)

NOTE: Independent Producers of natural gas whose total jurisdictional sales on a nationwide basis for the preceding year, combined with those of "affiliated producers," were not in excess of 10,000,000 Mcf may file the information called for in the following forms(in four copies, to the Federal Power Commission, Washington D.C., 20426.) include volume of gas paid for but not taken under prepayment clauses or otherwise, and volumes of gas sold under other independent producer rate schedules in the proportion that the independent producer seeking to come within Section 157.40 has an interest in such sales. Do not include sales made pursuant to percentage sales contracts. If insufficient space is given for a complete answer, continue the answer on the reverse side, noting the relevant number.

1. NAME OF APPLICANT

2. STATE OF ORGANIZATION

3. LOCATION OF PRINCIPAL PLACE OF BUSINESS

4. TYPE OF ORGANIZATION (Corporation, partnership, joint venture, etc)

5. NAMES OF STATES IN WHICH AUTHORIZED TO DO BUSINESS

6. NAME, TITLE AND MAILING ADDRESS OF PERSON RESPONSIBLE FOR APPLICATION

NAME AND TITLE

MAILING ADDRESS

7. TOTAL JURISDICTIONAL SALES VOLUMES AT_____PSIA FOR PRECEDING YEAR

8. LIST ALL CERTIFICATES PRESENTLY HELD BY DOCKET NUMBER AND ALL CONTRACTS ON FILE WITH THE COMMISSION AS RATE SCHEDULES BY RATE SCHEDULE NAME AND NUMBER

9. IF APPLICANT DOES NOT HAVE ANY OUTSTANDING CERTIFICATES ISSUED BY THE COMMISSION FOR THE SALE OF GAS, LIST FOR EACH JURISDICTIONAL SALE OR TRANSPORTATION CONTRACT: (A) NAME OF PURCHASER; (B) SOURCES OF PRODUCTION BY STATE, COUNTY AND FIELD; (C) ANNUAL CONTRACT VOLUME DELIVERY OBLIGATION (indicate psia per Mcf); (D) TOTAL PRICE PER MCF AT TIME OF FILING

10. LIST ALL OWNERS OF MORE THAN 5 PERCENT INTEREST IN APPLICANT: (A) INDIVIDUAL NAME; (B) PERCENT OF OWNERSHIP

11. LIST ALL INTEREST OWNED BY THE INDIVIDUALLY NAMED OWNERS IN OTHER NATURAL GAS COMPANIES: (A) INDIVIDUAL NAME; (B) COMPANY NAMES; (C) PERCENT OF OWNERSHIP

12. LIST ANY POSITIONS HELD BY THESE INDIVIDUAL OWNERS IN APPLICANT COMPANY OR ANY OTHER NATURAL GAS COMPANY

13. IS APPLICANT OR ANY INDIVIDUAL OWNER LISTED, AFFILIATED WITH ANY PURCHASER OF JURISDICTIONAL GAS FROM APPLICANT (If so list name of buyer and seller for each such sale and nature of affiliation)

14. LIST ALL OWNERS OF MORE THAN 1/8TH INTEREST IN EACH GAS SALE CONTRACT TO BE COVERED BY THIS CERTIFICATE AND THE AMOUNT OF THEIR INTEREST.

SIGNATURE	TITLE	DATE

(Use reverse side for additional comments and identify)

312-270—69——23

INITIAL DECISION

OF THE PRESIDING EXAMINER ON PERMIAN AREA RATES

(Issued September 17, 1964)

TABLE OF CONTENTS

	Page
I. The Economic and Institutional Factors Which Govern the Method of Establishing Area Rates	311
A. General Considerations	311
B. Joint Production of Gas and Liquids	311
C. The Rise in the National Price of Natural Gas	312
D. The Post War Increase in Demand	312
E. Gas Supply: Required Inventory	314
F. Recent Trends in Gas Inventory	317
G. The Nature of the Supply of Gas	320
1. Lag Between Investment and Income	320
2. Rise in Dollar Cost of Finding Gas, 1947–1960	320
3. Elasticity of Supply of Oil Well Gas	322
4. Supply of Gas Well Gas, Directionality and Elasticity	323
a. Directionality in Search for Gas Well Gas	325
b. Effect of Directionality on Elasticity of Supply of Gas Well Gas	329
5. Effects on Supply of Contractual Dedication of Gas	333
6. Conclusions on the Nature of the Supply of Gas	334
H. Gas Finding Cost and Price Trends	335
I. Recent Trend in the Cost of Finding Gas	335
J. The Two-Price System	336
II. The Cost of New Gas Well Gas	338
A. National or Permian Cost Basis	339
B. The Cost of New Gas Well Gas	342
C. The Rate of Return on the Production Investment in New Gas Well Gas	343
D. Lag and the Period over which Return is Allowed	352
E. Alternative Methods of Determining the Return Allowance	354
III. The Basis for Pricing Old Gas Well, Residue and Casinghead Gas	356
A. The Cost of Old Gas Well Gas	356
B. The Basis for Pricing Casinghead and Residue Gas	357
IV. Permian Area Rates for Small Producers	360
V. Permian Rate Design for Sales by Large Producers	363
A. Translating National Revenue Standards into Permian Pricing Standards—Geographical Discount	364
B. Price Structure for Old Gas	365
C. Minimum Rates	369
D. Prices for New Gas	369
E. Section 7 Certificate Applications	371
F. Changes in Specific Ceiling Prices for Old Gas Well Gas	371
G. The Staff Rate Design	371
H. Escalation	373
I. Provision for Relief	373
J. Scope of this Proceeding	374
K. Refunds	375

	Page
Additional Conclusions	375
Order	376
Appendix A. Analysis of Cost Estimate of New Gas Well Gas of CPUC Witness Doran	376
Appendix B. The Cost of New Gas Well Gas	377
A. The Cost per Mcf of Drilling and Equipping Successful Wells	377
B. Lease Acquisition Costs	379
C. Investment in Other Production Facilities	382
D. Production Operating Expenses	382
E. Dry Hole Costs	383
F. Geological and Geophysical Expenses, Lease Rentals and Exploratory Overhead	384
G. Adjustment of Net to Marketed Production	384
H. Regulatory Expense, Royalty Payments, and Working Capital	385
I. Allowance for Growth	386
J. Liquid Credit	386
K. Production Taxes	388
L. Federal Income Taxes	388
Appendix C. The Cost of Finding Old Gas Well Gas	389
Appendix D. The Historical Cost Presentations	392
A. Representativeness of the Appendix Questionnaires	392
B. Common Costs	393
C. Allowance for Joint Exploratory and Development Costs	394
D. The Various "Relative Cost Methods" for Allocation of Production Costs and Investment	397
E. Gas Well Gas Produced from Combination Leases	400
F. Relating Costs to Volumes Produced	400
G. Separate Costing of Appendix B and C Respondents	400
H. Gasoline Plants	400
I. Conclusions Regarding the Historical Cost Presentations	405
Appendix E. Parties and Proceedings Consolidated	407
Appendix F. Petitions to Intervene	415
Appendix G. Parties Filing Briefs	417

Wenner, *Presiding Examiner:* On September 28, 1960, in its decision in *Phillips Petroleum Company*, 24 FPC 537 (1960), *Wisconsin* v. *Federal Power Commission*, 373 U.S. 294 (1963), (*Phillips*), the Federal Power Commission decided that the characteristics of the natural gas production industry required the abandonment by the Commission of the individual company cost of service approach and that it adopt instead an area basis for regulating the price of gas sold in interstate commerce by independent producers of natural gas (gas). By order issued December 23, 1960, 24 FPC 1121, the Commission instituted the instant Permian Basin Area Rate proceeding. In that order the Commission defined the Permian Basin Area (Permian) as consisting of Texas Railroad Commission Districts No. 7–C and 8 and the New Mexico counties of Lea, Eddy and Chavez. The order named as Respondents those persons then having rate schedules on file with the Commission for the sale of Permian gas subject to its jurisdiction. The persons named therein are listed in Appendix E to this decision at page 407. The order of December 23, 1960, placed in issue the lawfulnes of the Permian rates of the Respondents so named, including the justness and reasonableness of such rates, and whether they were unduly discriminatory or preferential. There were also consolidated numerous pending proceedings involving suspended Permian rates and certain certificate applications of the Respondents.

Petitions to intervene were filed by some ninety parties of which forty-seven were granted and the rest denied. The petitioners and the disposition of their

requests are set forth in Appendix F. The Commission denied intervention to parties such as gas distributors which did not purchase gas produced in Permian. Among those denied intervention for this reason was the United Gas Improvement Company, a gas distributing company in Philadelphia, Pennsylvania.

A prehearing conference was held at Midland, Texas, beginning March 6, 1961.

In subsequent orders the Commission declared that cost of service studies of individual producers would not be received in evidence but that composite cost studies could be employed. *Cf.* orders dated April 5, 1961, 25 FPC 614, and May 14, 1962, 27 FPC 943.

A questionnaire regarding the operations of the Respondents was discussed and revised at several conferences among Staff and the parties to this proceeding. By orders dated August 2, 1961, 26 FPC 247, September 18, 1961, 26 FPC 514, September 25, 1961, 26 FPC 531, and January 11, 1962, 27 FPC 20, the Commission directed Respondents to reply to a revised questionnaire which consisted of three parts. Appendix A was directed to all Respondents and covered, in the main, drilling costs. Appendix B was directed to Respondents whose 1960 national company-wide jurisdictional sales were 10 million Mcf or more in the aggregate, and required the furnishing of data concerning national and Permian costs, revenues, and production volumes. Respondents whose company-wide jurisdictional sales were less than 10 million Mcf a year were given the option of supplying the data required by Appendix B or by Appendix C, a simplified version of Appendix B. The replies to these questionnaires were, in the main, received by the Staff by the spring of 1962. Staff tabulated the data so supplied and prepared composite data which it used as the basis for its major presentation in this proceeding.

In lieu of the disclosure of the individual producer reserve figures whose confidentiality the Respondents prize highly, Respondents agreed to submit an exhibit showing the estimated composite Permian reserves.

Since the composite cost of service type material could not be prepared until the Respondents had replied to the questionnaires, the first phase of the hearing was devoted to the presentation of economic and geological data, which were available. The hearing began on October 11, 1961, with the presentation of the economic case of various Respondents. In December 1961, the California Public Utilities Commission and the State of California (CPUC) and the California Distributor Interveners composed of the Pacific Gas & Electric Company, San Diego Gas and Electric Company, Pacific Lighting Gas Supply Company, Southern California Gas Company and Southern Counties Gas Company of California, (Distributors), presented economic evidence, and in May 1962 the Distributors made a further presentation of economic evidence.

The second phase of the hearing began in November 1962 with the submission by the Staff of the Federal Power Commission (Staff) of its cost case. Staff also submitted an econometric study in February 1963. In January and February 1963 various Respondents, Distributors and CPUC made further presentations based, in the main, on cost type evidence.

In the course of the second phase of the hearing the Presiding Examiner expressed concern that the subject of rate design was not being developed as fully and adequately as he thought desirable. In this situation, at the suggestion of the Staff, Mr. Charles H. Frazier, an official of the United Gas Improvement Company, but acting on his own behalf, offered, through Staff Counsel, to appear as an expert rate design witness to assist the Examiner in the solution of the problem, if the Examiner so requested. However, Mr. Frazier did not wish to appear on behalf of the Staff or of any party. Over the objection of certain Respondents, the Examiner permited Mr. Frazier to testify as the Examiner's witness and to present an exhibit on this subject. This witness was

fully cross-examined by those wishing to do so. This testimony stimulated other parties to submit rebuttal testimony and exhibits as alternative solutions, all of which were received in evidence.

The hearing was closed on September 12, 1963. On October 4, 1963, a briefing conference was held. Initial briefs were submitted on November 22, 1963, and reply briefs on January 15, 1964. The parties filing briefs are listed in Appendix G, page 417. Supplemental memoranda were filed thereafter by various parties in response to specific questions by the Examiner.

The numerous parties cooperated in procedures to facilitate the progress of the hearing. Various parties with common interests joined to submit a unified presentation. Thus the Distributors presented a single case and a joint brief. Sixty large producers combined to present a single case, with a few presenting additional evidence on matters of special interest to them. Twenty-two Respondents presented a joint brief, which was adopted by fifteen others. Some of the Respondents who relied on the joint brief also filed supplementary briefs limited to special points. Other Respondents filed briefs also confined to particular subjects. Warren Petroleum Company made a general presentation on Permian gasoline plant operations. Sun Oil Company participated on its own but avoided duplication. The small producers made a single presentation through the Texas Independent Producers & Royalty Owners Association and the West Central Texas Oil & Gas Association (TIPRO).

The attorneys for groups with respective common interests, *e.g.* Distributors and certain cities, Respondents large and small, pooled their efforts for cross-examination, different attorneys handling particular subjects, and in general, only a single attorney for each group cross-examining any one witness. Occasionally, when the interests of members of a group diverged or where the subject was extensive, there was cross-examination by several attorneys, but there was advance consultation and duplication was avoided. The coordination of the efforts of the large number of Respondents undoubtedly posed special problems, but it was accomplished with skill.

The attorneys engaged in substantial pretrial discovery, including conferences with opposing attorneys and witnesses to clarify exhibits and the extensive use of written interrogatories to prepare for and to shorten cross-examination. Work papers of witnesses were freely made available to interested parties, as were the compilations and machine runs of materials developed by Staff from the replies to the questionnaires. The attorneys are to be commended for their cooperation which materially assisted the trial of this proceeding.

The joint presentation by the group of Respondents referred to above and the joint brief presented by most of these Respondents seems to represent a consensus of the views of the Respondents. For convenience the term "Respondents" will often be used to refer to these two groups.

In general the position of the Respondent producers is: The national reserve-production ratio, the ratio of proved gas reserves to annual production, has fallen from 32.5 in 1946 to 19.9 in 1961 (18.7 in 1963). A ratio of 20 is the minimum level required to insure adequate supply. Present prices for gas, although arrived at after arm's-length negotiations, are insufficient to elicit the supplies needed to maintain this ratio. Respondents, in the main, support the directional hypothesis that gas reservoirs, as opposed to oil reservoirs, can be found by a search directed thereto. They contend that the trend in the cost of finding gas has risen substantially since World War II and that this increase is still continuing. Respondents also argue that, because of its joint cost nature, it is impossible to determine the cost of finding and producing gas, although they concede that the cost of finding and producing gas well gas can be estimated with a greater degree of reliability than the cost of oil well gas. On the basis of a consideration of the various economic and geological factors, Respondents' principal economic

witness, Dr. Foster, expressed the opinion that a single ceiling price of 20 cents per Mcf should be fixed in this proceeding.

TIPRO urges that prices be set between 17 cents and 21.8 cents per Mcf, with variations for physical or chemical qualities of the gas, if differing from pipeline quality. TIPRO also recommends that 13.5 cents be adopted as a minimum price, plus or minus quality differentials, and that all rates at that level be gradually raised by periodic escalation to the 17–21.5 cent level.

Distributors accept the directional hypothesis. They also concede that the cost of finding gas has increased materially during the postwar period, but they contend that the rise in the unit cost of finding gas has leveled off since 1958. Distributors advocate a two-price system: first a ceiling of 14.5 cents per Mcf for new gas well gas; second, a range of prices derived by adjusting existing gas contracts on the basis of an average price of 12 cents per Mcf and a ceiling price of 13.5 cents for residue gas and flowing gas well gas, and an average price of 9 cents per Mcf and a ceiling price of 10.5 cents for casinghead gas. Distributors make an independent determination of the cost of new gas well gas and of gasoline processing costs. Otherwise, they adopt Staff's "historical cost" basis for determining the price of flowing gas well gas, casinghead gas, and of the raw gas component of residue gas. Distributors deny that there is a shortage in gas supply. They contend that the Commission's reserve requirements for pipeline certification have been too high, artificially inflating the demand for uncommitted reserves; and that if these requirements be relaxed moderately, the present and future supply of gas will be sufficient to meet expected needs, and the cost of carrying gas inventory will be materially reduced.

Staff does not accept the directional hypothesis, and argues, that, in any event, gas supply is not significantly responsive to price. It also argues that finding costs for gas have not risen materially since the early 1950's. It proposes prices for gas based largely on a historical cost of service basis, derived, in the main, by applying the allocation methods used by the Commission in *Phillips* to the composite data of the Respondents contained in their replies to the questionnaire. In doing so, they arrive at fixed ceiling prices of 13.7 cents per Mcf for gas well and residue gas and 9 cents for casinghead gas. Staff also presents an econometric study whose thesis is that higher field prices for gas will tend to reduce consumer demand which will tend to reduce gas production, and in turn, exploration.

The CPUC proposes these price ceilings with this price structure: new gas well gas ceiling, 13.5 cents per Mcf; old gas well gas, average price, 11.95 cents per Mcf, with a ceiling of 13.5 cents; residue gas average price, 10.30 cents per Mcf, with a ceiling of 12 cents; casinghead gas, average price, 9 cents per Mcf, with a ceiling of 9.5 cents. The ceiling prices would be applicable only to pipeline quality gas, with lower prices for gas of lesser quality based on fixed differentials. It is intended that the application of these differentials produce average revenues equal to the average prices set forth above. CPUC's prices are based largely on Staff's "historical cost" studies. However, they present their own study of processing costs and of new gas well gas.

As an integral part of this decision, though placed in a separate section thereof and designated Appendices A, B, C and D, the Examiner has discussed the presentations of the several participants with respect to certain substantive issues.

The record contains much evidence relevant to the special institutions of this industry, which is necessary for an understanding and evaluation of the problems presented in this proceeding.[1]

---

[1] See *e.g.* the testimony of respondent witness, John F. Jones, and Exhibit 215, "Instruments in Common Usage in the Oil and Gas Industry."

I. The Economic and Institutional Factors Which Govern the Method of Establishing Area Rates

A. GENERAL CONSIDERATIONS

Natural gas presently supplies some 30 percent of the nation's energy requirements. Permian is one of the nation's major sources of gas. Though Permian supplies substantial amounts of the gas consumed in twelve states, physically, practically all of the gas sold in interstate commerce by independent producers in Permian flows westward to markets in California or smaller markets on the way.[2] The Distributors obtain more than 65 percent of their total natural gas supply from pipelines whose major source of supply is gas produced in Permian.

The production and sale of natural gas by independent producers is in many respects different from the operations performed by the typical regulated industry. The special economic and institutional factors affecting gas production must be considered to understand the problems presented; and any effective system of regulation must take into account these special circumstances. Some of these factors will be discussed in Part I of this decision; others will be considered later where appropriate. But the sum of these considerations is that regulation of this industry must be on the basis of its own unique characteristics. Techniques applicable to other industries cannot be rigidly applied to this industry.

B. JOINT PRODUCTION OF GAS AND LIQUIDS

Natural gas is produced to a considerable degree jointly[3] with liquids: with crude oil from oil casinghead reservoirs; with lease liquids from gas condensate reservoirs; and at natural gasoline plants, residue gas is a joint product with plant liquids. Even the gas from dry gas reservoirs is not produced entirely independently, as the search for oil and gas is still partly joint despite the industry's ability to direct its search between gas and oil in many areas. The joint production and joint nature of many of the finding and production costs of oil and gas are the source of many of the difficulties in the Commission's task of regulating the price of gas sold in interstate commerce.

The Commission does not have jurisdiction over the charges for the joint product liquids, which constitute in terms of value over 80 percent of the revenues of the oil and gas production industry. The Commission is thus in the position of regulating the price of a minor product of a substantially joint operation. The increasing development of directional finding, which will be discussed below, should ameliorate this aspect of the problem.

State prorationing regulations, reinforced by federal prohibition of interstate oil shipments in violation thereof, set standards for conservation practices for oil and gas production. Prorationing affects the supply and thus the price of gas. State regulations influence the rate of take from oil and gas reservoirs; and by restricting oil production to expected demand they affect the rate of production of oil well gas, the major gas produced in Permian. Thus in an economic sense the Federal Power Commission shares its pricing authority over interstate gas with the State commissions.

Although similar in many respects to other petroleum hydrocarbons, the gaseous nature of natural gas makes it much less valuable than liquid hydrocarbons with an equivalent energy value. From wellhead to burner tip it must be connected by an umbilical cord of pipes. For this reason it cannot be used efficiently

[2] The other states are supplied via exchange between El Paso Natural Gas Company and Northern Natural Gas Company.

[3] Products are produced jointly when they are produced together and when their respective output cannot be significantly varied.

as fuel for motor vehicles or for engines separated from a pipeline; and as a consequence, a Btu of crude oil or lease condensate is worth some 4 to 6 times the value of a Btu of gas, and a Btu of natural gas liquids some 3 times the value of a Btu of natural gas.

C. THE RISE IN THE NATIONAL PRICE OF NATURAL GAS

A significant economic factor has been the rise in the price of natural gas between 1945 and 1960.

Prior to 1945 natural gas had a low economic value. Its price averaged below 4 cents per Mcf. Vast amounts were flared from oil wells and from natural gasoline plants for lack of a market. Gas reservoirs found in the course of a search for oil were shut in.

Between 1947 and 1960 the average price paid by pipelines for gas trebled, from 4.95 cents to 15.61 cents. Even after adjusting for changes in the purchasing power of the dollar, prices in 1960 were some 2.3 times their 1947 level.

The record does not show comparable data for Permian, but the following gives some indication of the price trend. In 1945 El Paso purchased one-stage sour undehydrated residue gas at 5 cents per Mcf. By 1953 it was paying 7 cents; by 1958, 8 cents; and by 1960, 13.5 cents per Mcf for this gas. El Paso's purchase prices for three-stage sweet residue gas were: 1953, 10 cents; 1958, 11 cents; 1960, 17 cents. In 1959 Transwestern entered into contracts for three-stage sweet residue gas at an initial base price of 21.8 cents per Mcf.[4]

D. THE POST WAR INCREASE IN DEMAND

1. The Development of the Large Diameter Pipeline

The development of the large diameter high pressure pipeline during and after the war made it possible to transport to distant points the large amounts of gas which were already available or were being discovered primarily in connection with the search for oil. Vast networks of interstate pipelines increased the demand for gas by making it available to new markets. The average annual increase in net production between 1946–51 was 10 percent, and between 1951–56, 6.5 percent. The rate of increase slackened to an average annual increase of 4.3 percent for 1956–61. No party argues that the rate of growth will exceed Respondent witness Clark's estimate of a 3.5 percent annual increase through 1970.

2. Permian Pipeline History

About 50 percent of Permian production is consumed intrastate: in field use, local utilities and industries, and in the manufacture of carbon black. The other 50 percent is sold to three interstate pipelines. These interstate shipments are divided:

Name	*Percent total 1961*
El Paso Natural Gas Company (El Paso)	73
Northern Natural Gas Company (Northern)	18
Transwestern Pipeline Company (Transwestern)	9

El Paso began purchasing Permian gas in 1945 for interstate transmission in connection with its construction of the first pipeline from Texas to California. Although it was the sole interstate purchaser until 1954, El Paso's buying price increased several times during this period, but not to the extent it did later when it was faced with the competitive buying of other pipelines.

[4] The Commission, in certificating Transwestern, conditioned the initial prices to some 18 cents, the producer thereafter being legally able to file schedules for increases up to the contract prices, subject to suspension by the Commission.

Northern was certificated to buy in Permian in 1954. Permian Basin Pipeline Company and West Texas Gathering Company began purchasing in Permian in 1957, and prices advanced considerably during this period. Transwestern began its Permian purchases in 1958, and after its certification built the second pipeline from the Southwest to California. During the period of Transwestern's purchases the price of Permian gas rose substantially.

Under the two-party most favored nation clauses then in effect in most of El Paso's contracts, if El Paso had met Transwestern's competition in any one county in Permian, it would have affected all its existing Permian contracts, which in turn would have affected all its new contracts in any other county in Permian. Under the thrust of a threatened even greater increase in price due to favored nation clause operation, El Paso renegotiated almost all its Permian prices beginning in October 1959 and extending into 1960. Under this renegotiation, El Paso's purchasing prices were raised substantially and across the board. In return, the most favored nation clauses were replaced with a periodic increase of one cent every five years.

3. Commission Certification, Required Reserves, and the Position of the Pipeline Buyer

The buying position of the pipeline purchasers has been affected by these factors: The Commission for many years required pipelines seeking certification for new lines or extensions of old lines to show that they had under contract proved gas reserves amounting to approximately a 20-year supply for their jurisdictional sales over their entire system.[5] Since certification is a valuable privilege with a high market value, since pipelines are permitted to incorporate into their cost of service the price they pay for gas, and since the delivered prices for gas were not causing serious competitive problems with other fuels during the 1950's, pipelines vying for certification and seeking to sew up large blocks of uncommitted reserves necessary for this purpose were less sensitive to price considerations than they would have been under other circumstances. Also, it is reasonable to infer that Transwestern's bargaining and its attitude regarding the prices it was agreeing to pay for Permian gas in 1958 and 1959 were in some degree affected by these factors: 16 percent of Transwestern's stock was owned by Respondent Monterey Oil Company;[6] some 32 percent of Transwestern's stock was owned by Respondent Warren Petroleum Company (Warren), a subsidiary of Respondent Gulf Oil Corporation; Warren is the largest seller of three-stage residue gas in Permian.

More recently, as the Examiner's witness Frazier pointed out, the bargaining attitudes of pipelines have been changing. There is presently intense competition between pipelines for the limited growth in city-gate demand. And now that the city-gate price has advanced materially and distributors' costs have increased, competitive price pressures in the ultimate market have resulted in an added cost consciousness on the part of pipelines.

4. Relatively Inelastic Consumer Demand

Once residential and commercial consumers have installed gas using equipment, they are to a considerable degree locked in; their demand for gas tends to be fixed regardless of price *i.e.*, relatively inelastic. The demand of industrial consumers is generally more elastic because they usually have alternative sources of supply. However, in Los Angeles County, where a great amount of Permian

[5] The technical and economic considerations regarding the deliverability rule and its translation into required reserves will be discussed in the next section, E.

[6] In December 1960 Monterey's assets were sold to Humble Oil & Refining Company, but its interest in Transwestern was sold separately, apparently to Northern.

gas is consumed, natural gas is now virtually required throughout the entire year as a result of additional restrictions on the industrial use of fuel oil imposed in January 1964 to alleviate the smog situation. Also in California as a whole, industrial demand for gas is less elastic than in other areas of the country.

E. GAS SUPPLY: REQUIRED INVENTORY

The bulk of future supplies of gas, like oil, will come from future discoveries, from the results of the finding and development effort that will occur in the future. The reserves known today constitute the industry's current inventory. They serve as a base for new pipelines, as a cushion for the expansion of existing lines, and as a reserve tank to offset fluctuations in new findings. They are not a substitute for future production. If no reserves were to be found in the future, the industry would have to close down; and the size of existing reserves would merely determine the time when this would occur. As Messrs. Lyon Terry and John Winger, sometime vice-presidents of the Chase Manhattan Bank, have explained, "The proved reserves comprise only a small part of the total future supply—the more important part is that which is to be discovered in the future." *Future Growth of the Natural Gas Industry*, 1957, p. 15, published by The Chase Manhattan Bank. (66/7158–59.) The National Petroleum Council, the Oil Industry Committee set up officially to advise the Department of Interior, explains the significance of reserves for the oil industry in the following quotation, which is equally applicable to gas:

> Future supplies are not determined by the reserves known today . . . . A common mistake made in discussing future oil supplies is to consider only proved reserves. Frequently these proved reserves are compared with the current annual production to arrive at the number of years that supplies will last. By such calculation it would have seemed almost any time in the past that supplies could last only ten to twenty years. On this basis there have been many predictions that we are running out of oil. Such predictions have been false in the past. They are nonsense today because they fail to consider the rate of oil finding and development. It is future discoveries, not presently known reserves, that will determine available supplies for the long run. [Report of January 29, 1952, presented by Committee on Oil and Gas Availability to the National Petroleum Council, pages 40–41.] (66/7160–61.)

There are several measures of the adequacy of the industry's gas inventory. First, there is the Commission's deliverability rule. In the past, in certificating extensions by interstate pipeline companies, the Commission has in general required them to demonstrate that the volume of reserves which they control, whether by ownership or by contract, will be sufficient to maintain approximately 12 years' full deliverability of the total augmented volume of sales. Because deliverability declines after a certain number of years, the 12-year deliverability standard requires that a pipeline maintain committed reserves equal to some 20 times its annual sales. This requirement applies over the entire system of a pipeline even though it seeks certification of increased sales over only a part of its system, or even if it seeks only a minor extension. The original reasons for the rule were undoubtedly that in the early stages of a new, uncertain, and rapidly expanding industry the Commission felt it necessary to assure consumers who had purchased equipment that there would be adequate supplies; also a Commission certification of committed reserves of this magnitude would it was hoped, give assurance to investors in pipeline securities, reducing the cost of capital.

A second measure of the adequacy of the inventory is the pipeline life index, the ratio of the proved reserves owned or under contract by interstate pipelines

to their annual sales. A third measure is the national life index, the ratio of national year end proved reserves to annual production, or the R/P ratio. The pipeline life index can be lower than the national life index because there may be reserves which are not under contract to pipelines, and because intrastate pipelines may have a lower life index than interstate pipelines.

There is a further factor to be considered, the 20-year contract institution under which gas is typically sold. The 20-year contract implies an average rate of take from the reservoir of approximately one-twentieth each year. The 20-year contract has nothing to do with either the R/P ratio or the pipeline life index. It so happens that in recent years the R/P ratio has been approximately 20, and the Commission's deliverability requirement can be roughly translated into a 20-year pipeline life index. But it is perfectly possible to have 20-year contracts with a life index lower than 20 years. This can occur if the contracts are of different ages and the reserves are at different stages of exhaustion. Thus a 17.5 R/P ratio is consistent with the 20-year contract institution.

The maintenance of a 20-year inventory involves three consequences which should be considered in determining the necessity for maintaining this standard.

1. It inflates the demand by pipelines for new sources of gas and concomitantly reduces the immediately available supply, thus tending to raise the price for the supplies of uncommitted gas. For example, Transwestern's efforts to secure the contracts for a 20-year supply to obtain certification were a major factor in the rise in Permian gas prices during the period 1958–1959.

2. Carrying proved reserves for a period of 20 years is expensive. It locks up capital, the cost of which must be included in the price of the gas and thus ultimately be borne by the consumer. In Respondent witness Cram's model, the maintenance of a 20-year inventory of gas compared with a 17-year inventory increases the cost from 14 to 23 cents per Mcf. In Distributor witness Roseman's exhibit gas supply is carried for the 20-year contract period and a return allowed over this entire period. However allowing the national R/P index to decline from 20 to 17.5 by 1970 reduces his cost of new gas well gas almost a cent per Mcf. In Respondent witness Park's model, a reduction from a 20-year inventory to 17.5 reduces the cost per Mcf by over 2 cents per Mcf.

3. Under current purchasing and marketing conditions, and in the absence of a rapid rate of market growth, maintenance of a 12-year deliverability and a 20-year life index will tend to produce a serious situation of oversupply. This is evidenced in part by the take-or-pay situation of many pipelines, where they cannot currently absorb their contracted for deliveries. The testimony of Distributor witness Professor Kahn on this subject is persuasive. Intervener witness Grimm, manager of the gas supply department of Northern, and for 10 years assistant manager of Phillips' Reservoir Division, presented a study of this problem which merits careful consideration. It is not necessary to agree with all the details or assumptions in his study to accept the general thesis that, with the levelling off of the rate of increase in demand in recent years, constant maintenance of 12 years of deliverability (and 20 years of reserves) will lead to a considerable oversupply of gas and to unnecessary additional costs to carry this surplus. Grimm presented testimony to this same effect in another proceeding, *Northern Natural Gas Company, et al.*, 30 FPC 859 (1963). In its opinion in this case the Commission stated that Northern had showed "that if it is required to maintain 12 years of full line load at all times, it will accumulate excess supplies and will incur additional costs associated with maintaining an unneeded supply." (At p. 862). *Cf.* Order No. 279, 31 FPC 750, March 31, 1964.

Other witnesses for the three pipelines involved in this proceeding testified that the Commission's 12-year deliverability rule should be relaxed and that this

would benefit them. It would not result in a higher cost of money, nor would it trigger the acceleration clauses in their indentures. The requirements in the bond indentures of the several pipelines regarding maintenance of reserves are lower than the requirements imposed by the Commission, since, among other reasons, the indentures generally permit the inclusion of reserves which are reasonably expected to become available; and in some instances, for example Transwestern's, although there is an additional requirement for committed gas, the amount is lower than required under the Commission's rule. In arguing for the relaxation of the Commission's rule, it is clear that the pipelines desire to maintain lower reserves than are required under the Commission's existing rule; for if they intended to adhere to the same reserve levels, a change in the Commission's rule would be of negligible significance to them.

Referring to data published by the American Gas Association and the American Petroleum Institute respecting the reserve life index of oil reserves and gas reserves, Grimm testified:

> * * * Data published by these organizations indicate that the unregulated oil industry has maintained a reserve-life index which has varied between 11½ to 13½ years during the period from 1946 to 1961. The latest figure for 1961 is 12.1 years.
>
> In contrast to the history of the reserve-life index for the oil industry, the gas industry started with a high reserve-life index and has shown a declining index throughout the period with the exception of the year 1958. In 1946 the gas reserve-life index stood at 32½ years, whereas for 1960 and 1961 it was approximately 20 years. This is probably a healthy trend for it reflects a reduction in a superabundant gas supply, together with a smaller capital investment and lower unit cost than otherwise would be required. There is no practical reason why this index should not be permitted to decline to the 12- to 13-year ratio comparable to the oil industry. It is believed that it would stabilize at approximately this level if there were no pressure on the part of the regulatory authorities. The equivalent full-line-load life of gas supply with a 13-year reserve-life index is eight to nine years. (144/15,515.)

Messrs. Terry and Winger in their article *Future Growth of the Natural Gas Industry* state:

> Ten years ago reserves were 32.5 times annual production. As the gas business continues to expand, this ratio will no doubt continue to decline moderately. But a further decrease in the reserves-to-production ratio even below 20 should not be alarming so long as additions to reserves substantially exceed production. The proved reserves comprise only a small part of the total future supply—the more important part is that which is to be discovered in the future. [*Op. cit.* p. 15.] (66/7158.)

This view was adopted and quoted in part by Professor Kahn in his testimony on this subject in this proceeding.

The American Gas Association stated in its publication *Gas Facts*, 1957 edition, p. 6, with respect to the reserve production ratio:

> As long as new additions exceed production there need be little cause for concern about such an hypothetical ratio. (66/7159.)

The Distributors in this proceeding urge the Commission to accept an R/P ratio of 17.5 by 1970. This would be accomplished by relaxing the deliverability rule and permitting a slow drift downward to a 17.5 R/P ratio by 1970. The Staff argues that a 15-year R/P ratio with a 10-year deliverability index gives ample lead time to secure additional reserves if it is demonstrated in the future that greater reserves are needed.

It should be noted that the AGA's definition of proved reserves is conservative, and that a 15-year inventory of proved reserves indicates that probable reserves are greater.

Respondents, on the other hand, contend that a reduction in the reserve requirement would lead to "chaos" in the producing and pipeline industries. But aside from the matters discussed above, their arguments are insubstantial and unpersuasive, and are based in part on a failure to distinguish between the national R/P ratio, which relates reserves remaining at the end of a given year with the production in that year, and the rate of take under the 20-year contract which is based on the original reserves underlying the contracts. The two ratios need not coincide.

On the issue how much inventory is needed, the opinions of the purchasers, the pipelines and the distributors are more significant than those of the producers. The producers have an obvious interest in maintaining the required inventory at a high level. While the distributors and the pipelines will benefit from the lower costs of gas which a lightening of the inventory load will make possible, their views are also tempered by the need to protect their own enormous investments in gas facilities.

It is concluded that a 17.5 year R/P index in 1970 represents a satisfactory level for gas inventory and that this should be achieved by the Commission's relaxing its present reserve requirements. A decline in the R/P index to 17.5 by 1970 will be reflected in the requirement for growth in the cost determination for gas. If this is done, then some time prior to 1970 the Commission will have to decide whether to let the index continue to decline to an even lower level, maintain it at 17.5, or raise it. If it decides to maintain (or raise) the reserve level, the Commission will then have to increase the allowance for growth in cost and price levels. A 17.5-year reserve should afford adequate lead time to permit changes, if these prove necessary.

F. RECENT TRENDS IN GAS INVENTORY

Recent trends in gas supply are significant. The core of Respondents' case is that gas prices are so low that adequate supplies are not being found. This is coupled with an insistence that the R/P ratio must be maintained at 20 as a minimum.

Discoveries of gas additions in recent years have been substantially above current production. Discoveries consist of "new discoveries" and "extensions and revisions." The latter consist of revisions of findings in earlier years; on balance they generally amount to about twice the new discoveries. New discoveries provide a better picture of trends than total discoveries, because the data in the latter are often distorted by negative revisions which are concealed in the totals. For example, if it is found in 1958 that the 1954 reported findings for a reservoir were too large, the reduction is made in the 1958 findings, while the 1954 findings are not changed. Consequently, a negative revision will tilt a trend for a recent period downward for two reasons: the reported figure for the earlier year is not changed, even though it now appears that it was too large; while the later result is reduced, even though the reported figure for this period is regarded as correct. Negative revisions in some years are substantial; and a net positive figure for extensions and revisions may be lower than otherwise because additions have been partially offset by negative revisions. Thus the unusually low findings reported for 1960 were in part due to "tremendous" downward revisions in estimates made in earlier years by El Paso, particularly in the San Juan field. For this reason total findings are not an entirely reliable indicator of finding trends. This is indicated by the following recent results in Permian:

	New Discoveries MMcf	*Extensions and Revisions—MMcf*	*Total Findings MMcf*
1959	278, 523	1, 080, 311	1, 358, 834
1960	383, 531	661, 555	1, 045, 086
1961	405, 306	(16, 485)	388, 821

Here it is evident that new discoveries have been increasing while net extensions and revisions have been declining; in 1961 there was a net negative figure for extensions and revisions, indicating that negative revisions exceeded positive extensions and revisions for this year. The results for the total additions indicate a declining trend. More careful analysis suggests the contrary; earlier Permian findings were in fact lower than reported, and recent findings have been larger than indicated by the total findings. This is confirmed by the results for new discoveries the trend for which has been upward.

The table on page 319 shows the annual total year end reserves, annual procoveries, total findings, production, the ratio of new discoveries to production, and the ratio of total findings to production.

It is evident that the results vary considerably from year to year. But findings have continued to exceed production by a substantial amount; and while the trend of the findings to production ratio has been downward, the rate of decline has been decreasing. The 1961 and 1962 figures show a rise while the 1963 figure declines due to a fall in 1963 findings.

The table on page 319 shows the annual total year end reserves, annual production and the reserve production ratios. The national R/P ratio declined rapidly from 32.5 in 1946 to 23 in 1952, slowly thereafter to 21 in 1959, averaged about 20 for 1960, 1961 and 1962, and fell to 18.7 in 1963. The results are in part a function of the rate of total findings which vary erratically, so that the results of a single year have to be considered in the perspective of other years. The R/P ratio was high in the past when gas reserves were discovered, willy-nilly, as a by-product in a search for oil and the market for gas was limited by lack of transportation facilities. With the postwar expansion of interstate pipelines and the growth in consumer demand, the national R/P index declined. However, the rate of growth in demand has decreased from 10 percent annually during the period 1946–51, to 1.9 percent in 1961–62. At the same time the average annual rate of decline in the national R/P ratio was 5 percent for the period 1946–53, and only 1.6 percent for the years 1954–61, inclusive; from 1960–62 the R/P ratio was virtually constant at 20, falling to 18.7 in 1963. The decline in the national R/P ratio is a natural and expected result of the maturing of the gas industry.

Respondent witness Cram fits a "least-squares" trend line to the data for the period 1946–1960. Exhibit 1, Chart 5, Panel A. His trend line shows a definite continuous downward trend from the beginning to the end of the period, because the least squares method distributes the total change evenly over the entire period. The trend line suggests a further decline at the same rate if projected into the future. Yet visual inspection of the actual R/P ratios in the table on page 319 indicates that the rate of decline has been slowing up in recent years. The least squares trending method by its mechanical nature does not reveal a change in trend, and thereby distorts the results where a change occurs during an intermediate stage of a series.

Similar criticisms apply to the trend in the reserves added (findings) to production ratio shown in Cram's Exhibit 1, Chart 5, Panel B. Here the 1946 findings figure is unusually high, and the 1960 figure is low. The "least-squares" trend line is tilted downward by the height of the 1946 ratio and the depth of the 1960 ratio. That the downward trend line is questionable is indicated by the fact that the majority of observations for the first seven years are below

New discoveries and total findings of natural gas: Ratios to production, United States, 1947–63 (14.65 psia)

Year	New discoveries	Total findings	Net production during year	Ratio of new discoveries to production	Ratio of total findings to production
	Million cubic feet			(1)÷(3)	(2)÷(3)
	(1)	(2)	(3)	(4)	(5)
1947	3,410,170	10,980,824	5,629,811	0.606	1.95
1948	4,129,089	13,808,572	6,007,628	.687	2.31
1949	4,612,870	12,674,299	6,245,041	.739	2.03
1950	2,877,351	12,049,732	6,892,678	.417	1.75
1951	3,039,385	16,052,991	7,966,941	.381	2.01
1952	5,411,043	14,345,513	8,639,638	.626	1.66
1953	7,081,661	20,453,016	9,238,540	.767	2.21
1954	4,966,894	9,559,203	9,426,509	.527	1.02
1955	5,719,069	22,017,194	10,118,118	.565	2.18
1956	5,636,476	24,851,080	10,907,926	.517	2.28
1957	8,998,993	20,117,312	11,502,359	.782	1.75
1958	5,611,098	18,999,906	11,485,026	.489	1.65
1959	5,800,749	20,733,858	12,440,628	.466	1.67
1960	6,637,009	13,969,849	13,090,450	.507	1.07
1961	6,945,450	17,260,162	13,451,705	.516	1.28
1962	6,333,562	19,590,353	13,712,445	.462	1.43
1963 [1]	5,608,394	18,481,282	14,842,879	.378	1.24

[1] Figures converted from data reported at 14.73 psia.

Source: American Gas Association and American Petroleum Institute, *Proved Reserves of Crude Oil, Natural Gas Liquids and Natural Gas.* Exhibit 117, schedule 3, updated.

Natural gas reserves to production ratio in United States, 1946–63 (14.65 psia)

Year	Reserves as of end of year	Net production	Reserves to production ratio
	Billions of cubic feet		(1)÷(2)
	(1)	(2)	(3)
1946	160,576	4,943	32.5
1947	165,927	5,630	29.5
1948	173,869	6,008	28.9
1949	180,381	6,245	28.9
1950	185,593	6,893	26.9
1951	193,812	7,967	24.3
1952	199,716	8,640	23.1
1953	211,447	9,239	22.9
1954	211,711	9,427	22.5
1955	223,697	10,118	22.1
1956	237,775	10,908	21.8
1957	246,569	11,502	21.4
1958	254,142	11,485	22.1
1959	262,597	12,441	21.1
1960	263,759	13,090	20.1
1961	267,728	13,452	19.9
1962	273,766	13,712	20.0
1963 [1]	277,659	14,843	18.7

[1] Figures converted from data reported at 14.73 psia.

Source: American Gas Association and American Petroleum Institute, *Proved Reserves of Crude Oil, Natural Gas Liquids and Natural Gas.* Exhibit 26, schedules 5 and 16, updated.

the trend line, and the majority of observations for the most recent five years above the trend line. The trend lines in these exhibits show a continuous average decline in the ratio of reserves added to production and in the ratio of reserves on hand to production over the entire period 1946–1960. Similarly comparisons between the 1946 or 1947 figures and the 1960 or later figures which are made by

Respondents suggest that the decline in new supplies and reserves on hand to production will continue at the same average rate unless drastic increases in prices are made. But analysis of the figures and consideration of the factors behind them indicates that in recent years the rates of decline have been leveling off; and that the results have been what one would expect, where at the beginning of a period there was a large supply of shut-in reserves found as a by-product in a search for oil, a sharp increase in demand in the early part of the period, with a decline in the rate of this growth at the end. The results for recent years indicate that findings have been exceeding production despite the increase in production, and that, on the whole, the downward trend in recent years has been slight.

G. THE NATURE OF THE SUPPLY OF GAS

1. The Lag Between Investment in Gas Reserves and the Receipt of Income from the Flow of Gas

A significant supply characteristic of the gas finding industry is the length of time that elapses between the investment in finding gas and the receipt of revenues by the producer from the flow of that gas. Various producer witnesses have referred to a period of from 3 to 4 years as representing the time lag between the initiation of exploratory efforts and the commencement of sales, with the lag being as long as 15 years in some instances.

Pipelines typically buy gas under 20-year contracts, so a further period elapses until delivery of the gas is completed.

Gas wells generally take longer to deplete than oil wells. However, the prorationing rules that have been in effect in recent years in Texas and New Mexico have substantially lengthened the production period for oil well gas.

The consequence of this long production and delivery cycle is that most of the gas flowing today was found a considerable number of years earlier. In considering a specific unit of gas that is currently flowing, current outlays represent a small portion of the total outlays expended over time to produce this gas. A large proportion of the total outlays were incurred at some prior time to find the gas, with current operating expenses representing a small percentage of the total.

2. The Rise in the Dollar Cost Per Mcf of Finding Gas Between 1947 and 1960

Another relevant feature of recent gas production is the trend in the dollar cost of finding gas during the period 1947–60. Respondents list many factors which affect the cost of finding gas and show their cost trend, labor costs, the average depth of wells, the amount of gas recovered per foot, etc. The most significant index which reflects a variety of factors as well as changes in productivity is the drilling and equipping cost per Mcf of new gas additions during the period 1947–60. Two estimates, one by Dr. Foster for the Respondents and one by Dr. Joskow for the Distributors, have been presented. The results of these two estimates are shown in the table on page 321. It is unnecessary for the purpose of this discussion to decide which of the two indices is sounder because it is evident that, no matter which index one uses, the dollar cost of finding gas rose substantially between 1947–60. Dr. Foster's results show an increase of 88 percent over the period; Dr. Joskow's results show that 1960 costs exceeded those for 1947 by 61 percent, with the peak difference some years earlier than 1960.

Staff concedes that finding costs rose substantially during the years immediately following 1947. However, it argues that these "costs have not risen since the early 1950's," apparently since 1952 or 1953. (Brief p. 487.) Staff relies on the testimony and exhibits of several witnesses but the data do not sustain its thesis.

Indices of drilling and equipping cost per Mcf of natural gas reserves added—U.S. continental (1947–49=100)

	Foster [1]	Joskow [2]
1947	95.0	101.8
1948	100.8	100.2
1949	104.3	98.0
1950	108.7	102.6
1951	116.7	113.6
1952	124.9	114.1
1953	132.4	145.7
1954	139.7	154.5
1955	147.2	173.2
1956	156.6	159.2
1957	169.4	147.5
1958	174.3	140.7
1959	182.9	147.4
1960	187.6	160.6

[1] Exhibit 26, Sch. 37.
[2] California Distributor Intervenors' Response to Examiner's April 22, 1964 Request for Information Attachment; based on Exhibit 116, schedule 8, page 2.

Staff first cites the index of Distributor witness Joskow, which has just been referred to. This index was presented to show a long term trend. It uses moving averages of gas reserve additions which obscure the time when a change occurs. It is not cogent for the purpose for which Staff here relies on it and, in any event, it shows high points in cost per Mcf in 1955, 1956 and 1960.

The data of the other witnesses on which Staff relies are shown in the table below. Staff witness Loring's data on the drilling costs of the Appendix A respondents converted to an index show that drilling costs for gas well gas rose between 1955 and 1958, declining thereafter, but with 1960 higher than 1955. Staff witness Wein's data on the annual cost per foot of exploratory gas and gas condensate wells of the Appendix A respondents show a rise in costs until 1958, followed by a decline and a subsequent slight rise. Respondent witness Cram's annual cost per Btu shows peaks in 1954, 1957, and 1960 with dips in between.

Staff's selected indicators of recent cost trends

	Loring-Roseman gas and gas condensate wells cost/foot—total [1] (1958=100)	Loring-Wein gas and gas condensate wells cost/foot—exploratory [2]	Cram-Morton finding and developing expenditures per million btu's of reserves added [3]
1952			10.9¢
1953			9.2
1954			15.9
1955	88.3	$31.22	11.2
1956	94.8	30.83	10.9
1957	104.9	32.71	14.4
1958	100.0	29.80	11.0
1959	93.9	28.21	9.5
1960	94.2	30.26	13.5

[1] Exhibit 224, Sch. 3 (based on Exhibit 165, p. 44B).
[2] Exhibit 166, p. 22 (based on Exhibit 165).
[3] Exhibit 1, Sch. 3 as modified by Exhibit 220, Sch. 8.

Staff also compares the costs shown in CPUC witness Doran's cost of Permian gas well gas for 1960 with its own historical cost for such gas. This comparison is not significant for determining the year in which cost increases may have ceased.

Even if the exhibits and data on which Staff relies be accepted as valid for this purpose, they indicate generally a pattern of rising costs from 1953 to about 1958 with a decline thereafter until 1960. A description of this pattern as show-

ing simply that "costs have not risen since the early 1950's" obscures the significant fact that the data indicate a rise until about 1958.

In other sentences in its brief Staff seems to be arguing only that the unit costs of finding have shown "no upward trend" over the period 1953–60, or 1956–60. This is somewhat different than the conclusion that "costs have not risen since the early 1950's." It is important to make this distinction because the failure to do so obscures and reduces the period during which costs rose as well as the level to which they did rise. The first and last years of a series may be at the same level; but the events in between are also significant.

The second significant factor that has to be considered is therefore that finding costs for gas rose substantially between 1947 and 1960. This rise continued at least until 1958.

3. The Elasticity of Supply of Oil Well Gas

It will facilitate analysis if the terms "oil well gas" and "gas well gas" be defined as used herein. Oil well gas is gas produced from oil reservoirs. It is the same as casinghead gas, and includes associated and dissolved gas. Most Permian oil well gas is processed at natural gasoline plants; it is then included in the term "residue gas." In Permian 70 percent of production in recent years has been oil well gas. However, for the country as a whole, oil well gas constitutes only some 30 percent of total recent production.

Gas well gas is gas from gas reservoirs. It covers non-associated gas, gas from dry gas reservoirs and gas condensate reservoirs, and gas from gas cap wells.[7]

The discovery and production of oil well gas has been and will probably continue to be dependent on and controlled by the discovery and production of oil. There are two major reasons for this.

(a) Oil well gas is in joint supply with oil. It is physically found and produced jointly and inseparably from oil. The producer cannot direct his search toward either product separately from the other; the search is nondirectional. Also the production of oil well gas is governed largely by conservation practices established to encourage the maximum efficient recovery of oil.

(b) The value of oil well gas averages only some 1/17th the value of the products (oil and gas) of the oil reservoirs.

Because of these factors, joint supply and the low value of the oil well gas compared to the other joint product, oil, the price of gas has only a slight affect on the supply of oil well gas. The supply of oil well gas is governed by the supply and production of oil, just as the supply of sawdust is governed by the supply and production of wood, and not by the price of sawdust. It would take an extreme increase in the price of gas to affect significantly the supply of oil and oil well gas, an increase so large that it probably could not be carried out.

This does not mean that the price of oil well gas has no effect on the supply of oil well gas. In a marginal decision to drill for oil the price for oil well gas may have some influence. The price of the gas may also have some effect on a decision regarding the drilling of an existing oil well to a greater depth, or on the decision at what point an oil well is to be abandoned. Also the revenue from oil well gas becomes part of the total revenues of the producer and thus can be used to finance further search for gas, oil, or for any other purpose. But these factors exert only a minor influence on the supply of gas; hence the price

[7] Gas cap gas, gas from an oil well that can be produced free of the influence of oil production, is a special case. It is not found separately from oil; but it can be produced separately from oil and is not governed by the prorationing rules that affect the production of oil well gas. The statistics for gas well gas generally include production from gas cap wells and the definitions of the state regulatory commissions generally include gas cap wells in the gas well or non-associated gas classification. As a practical matter, it is expedient to include gas cap gas in the category of gas well gas.

of oil well gas will not significantly affect the supply of oil well gas. As Respondent witness Dr. Foster states:

> * * * An increase in gas prices would have no significant effect on oil drilling. * * * Well, I don't think price of gas is of sufficient incentive to drill for oil that there is much of a problem. * * * In general terms I would say that increase in gas prices would have a relatively minor effect on new supplies of gas from oil wells. (43/4,785, 4,786, 4,787.)

In technical economic terms, the supply of oil well gas is extremely "inelastic." The terms "elastic" and "inelastic" have been used by various parties with different meanings, resulting in some confusion. Thus Respondent witness Dr. Foster concludes that the supply of gas has been "elastic" and "relatively elastic" while Distributor witness Professor Kahn finds that "* * * there is no doubt at all that the supply of gas has been, at least until quite recently, markedly inelastic * * *" (1/494, 40/4542, 4553–4; 66/7102). The difference lies largely in the meanings they give the terms. Professor Kahn and Distributors use the terms elastic and inelastic in their technical sense, while Dr. Foster and Respondents use the terms to denote any degree of responsiveness of supply to price, or any significant degree of responsiveness. Elasticity of supply is a technical economic term expressing a specific relationship between changes in the price of a commodity and changes in the supply of that commodity. If a price increases 10 percent and the supply of that commodity also increases 10 percent, the supply is said to be price elastic, or to have unit price elasticity—that is, a one for one proportional change in both price and supply. A more than proportional increase is termed relative elasticity and a less than proportional increase relative inelasticity, *e.g.*, if the price increases 10 percent and the supply increases only 5 percent, the supply is relatively price inelastic. If the supply increases zero in the face of a price increase, the supply is termed "perfectly inelastic." To insure precision, further references to elasticity will use the term in its technical meaning.

It is evident that the supply of oil well gas is almost perfectly inelastic. Its supply is determined by oil supply and only to a negligible degree by the price of gas. In this situation, the price for gas will not be an effective instrument in eliciting the supply of oil well gas.

4. The Supply of Gas Well Gas, Directionality, and Elasticity

For the country as a whole, gas well gas constitutes the major source of present and future production. Gas reserves are an important aspect of gas supply and a considerable inventory of gas is required by the economics of the gas business. The percentage of gas well gas to total gas both with respect to production and reserves added has increased substantially during the period 1947–60. In 1960 gas well gas production constituted about 72 percent of gross gas production, an increase from some 64 percent in 1948. Proved reserves as of the year ending 1960 were 71 percent gas well gas and 29 percent oil well gas.

The statistics for gas reserve additions do not furnish a breakdown between gas well gas and oil well gas as such. The record contains two estimates of these respective annual reserve additions, Dr. Foster's and Dr. Joskow's, which are shown on page 324. Dr. Foster's method shows that gas well gas additions have grown from some 62 percent of total gas reserve additions in the period 1947–1949 to some 76 percent for the period 1958–60. Dr. Joskow's method shows that gas well gas has grown from 55 percent of the total to some 82 percent during the corresponding periods.

The situation in Permian differs from that of the country as a whole. In 1960, 30 percent of total Permian gas production consisted of gas well gas and some 70 percent of oil well gas.

Trends in U.S. continental gas well gas reserves added and gross production—1947–62

Gas well gas reserves added—million Mcf

Year	Total findings [1]	Gas well Gas [2]		Percent gas well gas	
		(Foster)	(Joskow)	(Foster)	(Joskow)
1947	10,981	7,284	6,463	66	59
1948	13,898	8,206	7,485	59	54
1949	12,674	7,892	6,846	62	54
1950	12,050	8,206	9,065	68	75
1951	16,053	9,432	8,470	59	53
1952	14,346	10,222	9,621	71	67
1953	20,453	15,509	15,368	76	75
1954	9,599	5,289	5,632	55	59
1955	22,017	17,711	12,747	80	58
1956	24,851	20,390	15,305	82	62
1957	20,117	16,480	16,207	82	81
1958	19,000	15,088	17,389	79	92
1959	20,734	15,234	15,138	73	73
1960	13,970	10,422	11,553	75	83
1961 [3]	17,262	13,274	15,149	77	88
1962 [3]	19,589	16,319	18,065	83	92

Gross production—million Mcf [4]

Year	Total	Gas Well Gas	Percent gas well gas
1947	6,733	3,770	56
1948	7,179	4,589	64
1949	7,547	4,986	66
1950	8,480	5,603	66
1951	9,689	6,481	67
1952	10,272	6,839	67
1953	10,646	7,095	67
1954	10,985	7,466	68
1955	11,720	7,842	67
1956	12,393	8,307	67
1957	12,907	8,717	68
1958	13,147	9,154	70
1959	14,229	10,102	71
1960	15,088	10,854	72
1961	15,460	11,195	72
1962	16,039	11,702	73

[1] Exhibit 117, Schedule 3.
[2] Exhibit 116, Schedule 7.
[3] Determined by examiner consistent with methods underlying Exhibit 116, Schedule 7.
[4] Bureau of Mines Fuels Yearbooks.

As noted above, during the period between the two World Wars, the price of gas well gas, like that of oil well gas, was extremely low, 1–4 cents per Mcf, because in most areas the gas could not be transported to the market on an economic basis. Producers hoped to find oil, but except in a few areas they were unable to direct their search between oil and gas reservoirs. Thus gas reservoirs were found largely as a joint and unwanted product, incidental to the search for oil. Many gas wells were shut in during this period, though producers sold whatever they could as long as the price exceeded the slight incremental cost of producing the gas, rather than sitting on it. The supply of gas well gas was relatively inelastic during this period, though not quite so inelastic as that for oil well gas, since it could be shut in for lack of a market.

So long as gas is purely a joint product with oil, *i.e.*, if no part of it can be found separately or directionally, its supply is likely to be relatively inelastic. At current prices, nationwide gas revenues (from both oil well gas and gas well gas) constitute only some 20 percent of the combined revenues from oil and gas. If gas supply is entirely joint with oil an increase of 20 percent in gas price will tend to produce an increase in this gas supply of some 4 percent. Such a supply

elasticity, 0.2, is extremely low, though not as low as the supply inelasticity of oil well gas.

But the problem of elasticity is a matter of degree; it is a quantitative problem. The supply of a product may be "relatively inelastic" in the technical sense, while its response to price may still be sufficiently great that the price for it can have a substantial effect on its supply. In this situation price can be a reasonably effective tool in eliciting supply.

Given the present range of economic prices for gas and oil the supply of gas can become elastic or achieve the lesser stage of being substantially responsive to price only if it can be found and produced to a considerable degree independently of oil. Directionality in the search for gas is thus a prerequisite to either supply elasticity or substantial responsiveness of gas supply to price. And so also is directionality prerequisite to the use of price as a tool in eliciting supply. The existence of directionality will not insure elasticity or responsiveness in supply; other factors may also affect the result. But a significant degree of directionality is a prerequisite to that degree of responsiveness which will permit the use of price as a tool in determining the economic behavior of supply.

It is obvious that directionality or the separate search for gas can apply only with respect to gas well gas. For physical reasons the search for and production of oil well gas must remain joint.

a. Directionality in the Search for Gas Well Gas.—The evidence in this proceeding indicates that sometime during the 1950's producers became able to direct their search to a considerable degree toward the discovery of either gas reservoirs or oil reservoirs. It is probable that this directional capacity was being increasingly developed during the early 1950's but it first becomes statistically apparent after 1956. The reason is that the search for oil rose rapidly until after 1956 when the current glut in oil began. During the period 1947–56 there was a substantial increase in oil exploratory drilling. During the same period there was also an increase in gas exploratory drilling, and also an increase in gas price. For the period 1947–56, it is impossible to determine from the evidence presented whether the increase in gas exploratory wells resulted from a nondirectional search for oil, where some of the exploratory drilling happened to produce gas reservoirs, or whether the increase in gas wells resulted from an independent search for gas reservoirs resulting from the higher price for gas. However after 1956 oil exploratory drilling began to decline rapidly, while gas prices continued to rise. It is the behavior of gas exploratory drilling during this period that suggests that many producers have developed the ability to drill directionally for gas, and that as a consequence the supply of gas well gas has become considerably more elastic than it had previously been. This matter warrants the closest analysis.

It is useful to begin by considering the economic changes in the fortunes of oil and gas during the period between 1947 and 1960. Domestic oil and gas revenues increased sharply after World War II, with oil revenues reaching their peak in 1957. The following table shows the abrupt change in the revenues of oil and gas thereafter:

	Oil Revenues	*Gas Revenues*
1957	$8,079,000,000	$1,202,000,000
1960	7,419,000,000	1,790,000,000

Between 1957 and 1960 domestic oil revenues declined 8 percent while gas revenues increased 48 percent. This change is reflected in the results of the industry's search and discovery efforts for oil and gas.

A convenient measure of the industry's efforts in searching for gas and oil is its drilling activities. These are divided generally between exploratory and developmental drilling. Exploratory drilling is a crucial facet in the long run

discovery of new reserves, whereas developmental drilling develops reserves connected with known reservoirs or formations. The future supply of gas depends on the exploratory wells the industry will drill. For these reasons, directionality when used herein will refer to exploratory drilling. The table below shows the industry's well drilling footage for the years 1950–61 for gas and oil, broken down between exploratory and developmental drilling.

U.S. continental successful well footage

[Thousands of feet]

Year	Exploratory Footage		Developmental Footage	
	Gas	Oil	Gas	Oil
1950	1,253	3,607	12,432	89,088
1951	1,502	4,767	12,444	90,339
1952	1,963	4,752	13,294	93,395
1953	2,160	5,322	16,088	96,813
1954	2,382	5,525	16,475	107,837
1955	2,251	5,626	17,680	115,523
1956	2,555	5,754	20,183	114,597
1957	2,426	4,724	21,410	105,319
1958	2,052	4,073	23,504	89,032
1959	2,606	4,003	24,001	90,607
1960	2,185	3,331	26,014	83,207
1961	2,109	2,922	27,070	82,586

Sources: Exhibit 21, Schedule 9. *World Oil*, February 15, 1962.

NOTE.—This table is copied from Exhibit 21, Schedule 9 and is updated from the source used in preparing that exhibit, *World Oil*. *World Oil* provides a breakdown between "wildcat" wells and total drilling. It appears that the term "exploratory" used in this table corresponds to the term "wildcat" used in *World Oil*.

As compared with the 1955–1956 peak, oil exploratory footage fell by 49 percent in 1961, while gas exploratory footage declined only 12 percent; the 1959–1960 average was 0.3 percent higher than the average for 1955–56. The footage of oil developmental wells fell 28 percent between the 1955–1956 peak and 1961, while gas developmental well footage rose by 43 percent. Two conclusions are suggested by these data: first, the stability of gas exploratory drilling relative to oil after 1956 reflects separability in the search for the two products; second, exploration is still markedly less completely directional than developmental drilling, as evidenced by the uninterrupted and continued sharp increase in developmental drilling of gas wells while exploratory drilling declined slightly.

That the search for gas can be made on a directional basis is supported by the testimony and exhibits of witnesses for six large producers, Phillips Petroleum Company, Pan American Petroleum Corporation, Socony Mobil Oil Company, Inc., The Atlantic Refining Company, Shell Oil Company, and Sun Oil Company. These witnesses testified that their geologists have been predicting prior to drilling whether exploratory wells would yield oil or gas, and have kept formal records of their results of their predictions in recent years. They have submitted data covering all the exploratory wells drilled over several recent years by their companies showing the predictions and their accuracy tested by the results. There is no challenge to the reliability of the data. The results show a high degree of accuracy, in the main from some 80 to above 90 percent. These predictions were analyzed by a mathematician whose testimony shows that the results could not have been achieved by chance.

Mr. Allen, general geologist for Respondent Phillips, testified that Phillips' geologists have found that:

> * * * below certain depths in some areas and at all depths in other areas the productive reservoirs which have been found are predominantly gas reservoirs. For example, below 8,000 feet in the Texas and Louisiana Gulf Coast, more than half of the producing reservoirs are gas and below 12,000 feet

approximately 70 percent are gas. In Pennsylvania and West Virginia, gas reservoirs predominate below 5,000 feet. In northeastern Ohio, from the Clinton formation on down, gas again predominates. In other areas, such as the Green River Basin, the Anadarko Basin, and the Arkoma Basin, gas reservoirs predominate at all depths.

Of more immediate interest to this particular Permian Basin hearing, as Mr. Hills has pointed out, in the Delaware and Val Verde Basins of Texas and New Mexico which comprise the southwestern part of the Permian Basin Area, few oil reservoirs have been found below 6,000 feet, but this is the area in which the deep Puckett and Brown-Bassett gas fields have been found. Anyone drilling below 6,000 feet in those basins, should, on the basis of experience, realize that he is spending his money primarily in the search for gas. Obviously, in these areas and at these depths, the primary objective of many of our exploratory expenditures must be for gas. (1/161–2.)

In the Permian area in the Delaware and Val Verde Basins gas predominates below 6,000 feet; even the few oil wells found there have been mostly commercially unimportant. In the remaining portion of Permian oil generally predominates at all depths. However, there are also many particular areas in Permian where gas predominates. See *e.g.*, Respondent witness Hill's Exhibit 2, a map showing the principal oil and gas fields in Permian.

Phillips' Midland Division covers the general area of Permian. Phillips submitted a breakdown showing the accuracy of its predictions for the entire Midland Division, for the Delaware and Val Verde portion of the Midland Division, and for the Midland Division excluding the Delaware and Val Verde Basins. The accuracy of the predictions for these three areas was 88 percent, 87 percent and 88 percent, respectively.

After analyzing the results of Phillips' predictions, Allen testified that "Phillips can focus its domestic exploration toward and does search independently for oil and for gas," and again:

> * * * most of the casinghead gas that is found in the future will be found as a result of the search primarily for the oil with which it occurs. However, with respect to the nonassociated gas which includes gas from dry gas reservoirs and from gas condensate reservoirs, the future discovery of that type of gas will depend to a great extent upon an objective search for that gas as such. (1/158.)

Allen states that in approaching a totally unexplored area he would not be able to make predictions with respect to finding oil and gas, but he adds that only a very small percent of the industry's exploratory drilling is in such completely unknown areas. Respondent witness Brackbill of Shell also states:

> * * * most of the areas of the United States have been sufficiently explored that when an operator goes in to drill a well, he pretty well knows that his major objective is some formation which is gas-bearing in such and such a location, or oil-bearing, or both, but just to say that he is going out and drilling for whatever he can find, this may have been true 20 years ago but I certainly don't think it is true today.
>
> I think Mr. Allen pretty well explained that. The industry is a lot wiser than it was just prior to the war. (Tr. 35/4147–8.)

Distributor witness Kahn after considering the testimony of the producers concludes that "* * * clearly we are at or have already crossed that threshold of a high degree of separability" in the search for gas, and "The industry has learned to a large extent, to divorce the search for gas from the search for oil. The preponderant amount of gas is now discovered in nonassociated form." (66/7,264, 7,291.) Distributor witness Netschert refers to "The very recent realization that nonassociated gas is a common hydrocarbon occurrence at depth

and the emergence of the ability of the industry to direct at least part of its search for natural gas alone * * *" (57/6,342) and again to "the search for gas for its own sake." (57/6,299.) The Distributors have accepted the validity of the Respondents' contention that they can successfully direct their search for gas or oil, stating on brief "There can be little question with the conclusion that producers have been increasingly successful in concentrating their effort in directionalizing their search and to a significant degree are now able to search for gas." (Distributor brief, p. 20.)

The Staff disagrees. It contends that "Directional ability, to the extent it exists, is not new" (Brief, p. 251), which is not relevant in disproving the ability. What is new is that this is the first case before the Federal Power Commission where producers have claimed that they could search for gas directionally.

Staff argues that the six Respondents have not shown themselves typical of the producing industry and that there is no indication that the industry in general can imitate them. These six companies are active in most of the gas-producing areas. Allen testified that "Any other producer that has available an adequate staff of geologists either internally or on a consulting basis, and adequate information can do what the six companies have done." (237/Appendix A, p. 32.) More importantly, the statistical evidence previously cited showing that gas exploration remained stable in the face of the oil decline indicates that the ability to search directionally is not confined to the six companies which decided to keep specific records of their directional predictions.

There is testimony that small producers often do less advance geological research than large producers, preferring to rely more on the results of drilling; hence in general they may be less able to direct their search than large producers. But some 75[8] large producers (those selling over 10 million Mcf of gas annually in interstate commerce) sold approximately 82 percent of the jurisdictional gas sold in the United States in 1960. And in Permian some 49[8] large producers sold approximately 87 percent of the jurisdictional gas sold in 1960. The large producers also drilled to greater depth than the small producers. The evidence indicates that the significant future discoveries of gas are likely to occur at depth below 6,000 feet. Thus they are more likely to be discovered by companies which are in a position to make the studies for directional drilling; or if drilled by small producers on farmouts, they will probably have the advantage of the large producer's research. In any event, it is unlikely that even a small producer would engage in expensive deep drilling without having secured the kind of geological research that would permit directional drilling in circumstances where such information could be obtained.

Staff also relies on the testimony of Texas Railroad Commissioner Murray and witness Abel, a small producer. Commissioner Murray conceded that directional drilling could be done in certain specific areas; and Abel testified that, like other small producers, he preferred to spend his money on drilling rather than seismic research. There is no indication that either witness was familiar with the extensive statistical data, testimony or analyses on this subject submitted by Respondents and the Distributors. These two are the only dissenting witnesses on this subject outside of Staff witness Wein.

Staff argues that the increasing proportion of gas successes to total wells in recent years does not result from the higher price for gas and directional ability, because there were several earlier periods, 1909, 1915, 1930, when the proportion of gas to total productive wells also increased. From this, the Staff witness concludes that the proportion of gas wells to total wells varies cyclically and that

[8] These figures include gasoline plant operators selling residue gas whose raw oil component is to a substantial extent produced by numerous percentage sellers.

the recent increase is merely the upswing of the most recent cycle with a downswing in the proportion likely in the future. No explanation is offered for this cyclical behavior. Staff's data does not relate gas exploratory wells to total productive exploratory wells; it relates total gas wells to total productive wells. Total productive wells are heavily weighted to development wells, more than 90 percent. Development wells are weighted to oil due to the more intensive spacing of oil wells than for gas wells. Moreover, in 1909, 1915, and 1930 producers who found gas reservoirs were not as likely to be drilling the full complement of development wells to prove the total reserves, as they would where they found oil reservoirs. Analysis of the absolute numbers of the gas wells for these earlier periods shows that there was no cyclical change in the number of gas wells drilled; the peaks for the percentage of gas wells to total wells simply reflect low points in oil development drilling.

With regard to the future, the ability to drill directionally is based on accumulated knowledge; so the ability is likely to increase with the geological knowledge that is always accumulating from drilling. Now that the directional hypothesis and the statistical results on which it is based have been made widely known, producers are more likely to seek the kind of knowledge that will permit such predictions. Finally, there is the element of incentive in connection with the directionality hypothesis. If price incentives are offered for new gas well gas, the only gas which can be sought directionally, producers are likely to be motivated by the profit prospects to acquire the knowledge and techniques to increase their ability to search for gas directionally.

The evidence adduced does not, of course, conclusively prove the validity of the directional hypothesis. But the industry statistics, the testimony of the witnesses for the six companies, and the fact that these companies explore on a national basis suggest that the ability is not confined to a single or a few areas. The Commission needs more data and study for a final evaluation. That can and no doubt will be furnished in future cases. But the preponderance of evidence in this proceeding is that there are areas and depths where gas predominates, and that the search for this gas is in large measure separate from that for oil. Accordingly, it is concluded that, to a very considerable though undefined degree, the industry can direct a substantial part of its exploration toward gas or oil reservoirs.

b. Effect of Directionality on the Elasticity of the Supply of Gas Well Gas.— The consequences of the directional hypothesis are most significant for regulatory method. So long as drilling is nondirectional the supply will tend to remain markedly inelastic, and the regulatory agency will not be able to employ price as an effective tool for eliciting supply. In that situation the Commission may have the power to control the price, but this power will not enable it to induce the needed supplies to be brought forth.

Since gas is still a minor part of the total oil and gas production industry, any attempt to push up the aggregate oil and gas effort by manipulating the gas price alone would be absurdly expensive in terms of the results it is likely to achieve. But if the producers can drill directionally for gas, the elasticity of supply will be substantially increased, because they will be able to direct their efforts toward gas when it is economic for them to do so. This will tend to reduce the time lag when new gas supplies can be made available. So even if the elasticity of supply remains below unit elasticity, if price will evoke a substantial supply response, it can be used as a reasonably effective instrument in eliciting supply.

The increasing proportion of gas well gas reserves added to total gas reserves added throughout the recent period of rising prices suggests a growing directional ability and responsiveness of gas well gas to price. The annual propor-

tions expressed as a percentage derived under the methods of Drs. Foster and Joskow are shown in the table on page 324.

Staff not only denies that the producers' directional abilities have been shown to be substantial, it denies further that "gas price has had or is coming to have a significant impact on exploration or gas supply even if the industry's exploratory ability is highly directional," because "the evidence instead demonstrates the absence of significant responsiveness of gas supply to gas price." (Brief p. 255.) "Gas supply (in the sense of reserve additions) [9] and exploration have not been responsive to price." (Brief p. 236.) Respondents, on the other hand, contend that "the supply of gas is price elastic" and "that the supply of gas is substantially and significantly dependent upon price." (Joint brief p. 60 and 40/4,553–4.)

The controversy between Staff and Respondents about whether the supply of gas is elastic, or alternatively, substantially responsive to price changes, centers about the parties' respective interpretation of Respondents' Exhibits 306 and 24.

Respondent witness Foster's Exhibit 306 is a study of the relationship between the average new contract price of gas and exploratory activity as measured by gas exploratory footage for the seven southwest states for the period 1945–62; these states produce 95 percent of the country's gas. Chart 1 of the exhibit expresses the results graphically and is reproduced on page 331. The Presiding Examiner has added to Dr. Foster's chart an index of oil exploratory drilling corresponding to the index of gas exploratory drilling shown in the exhibit. The data used in Exhibit 306 plus the additional data are shown below. The chart makes clear that there is a high correlation between the increase in gas prices, gas exploratory drilling, and oil exploratory drilling between 1945 and 1956. After 1956 the three indices diverge; gas contract prices continue to rise to 1959 and then decline slightly; gas footage begins to decline in 1957, rises again briefly in 1959 and then drops sharply till 1962, when it reaches the 1955 level; oil exploration begins to fall in 1956 and continues precipitously downward.

Relationship between average new contract price of gas and exploratory activity—seven Southwest States,[1] 1945–62

Year	Exploratory footage drilled				Weighted average initial base price	
	Gas		Oil			
	Thousand feet (a)	Index [2] (b)	Thousand feet (c)	Index [2] (d)	¢/Mcf (e)	Index [2] (f)
1945	1388	76	2978	73	4.1	69
1946	1377	75	2712	67	4.2	71
1947	1491	81	3284	81	5.2	88
1948	1984	108	3886	96	6.0	101
1949	2034	111	5032	124	6.6	111
1950	1912	104	5695	140	8.4	142
1951	2076	113	6586	162	8.8	148
1952	2796	152	6815	168	10.3	174
1953	3191	174	7612	187	12.2	206
1954	3520	192	7418	182	11.0	185
1955	4214	230	8781	216	13.8	233
1956	4477	244	9219	227	14.6	246
1957	5164	281	7758	191	16.5	278
1958	4720	257	6892	169	17.4	293
1959	5338	291	6826	168	18.1	305
1960	4561	248	5563	137	17.9	302
1961	4231	230	4861	119	17.0	286
1962	4232	231	4967	122	17.2	290

[1] Arkansas, Kansas, Louisiana, Mississippi, New Mexico, Oklahoma and Texas.
[2] 1947–49=100.

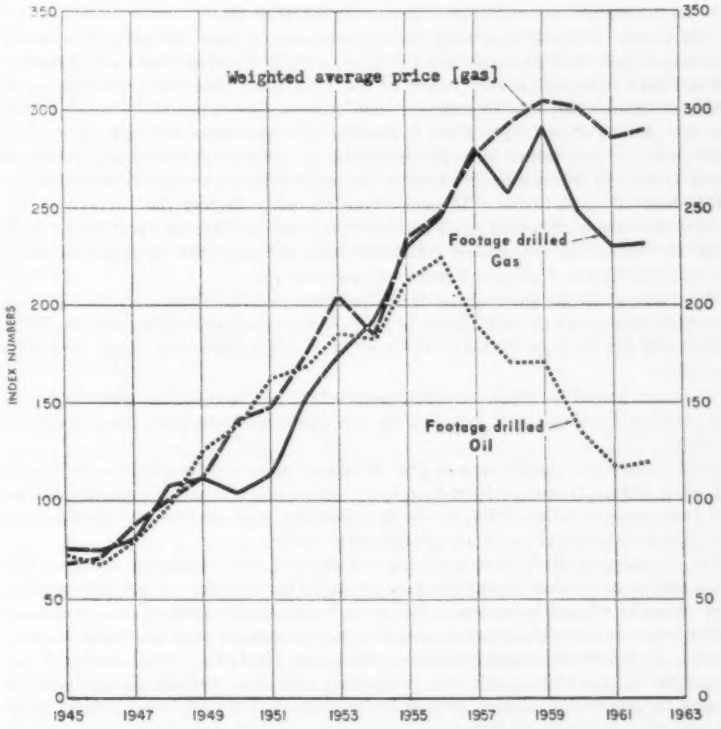
Source: Source material shown in Exhibit 306.

[9] Cited footnote omitted.

RELATIONSHIP BETWEEN AVERAGE NEW CONTRACT PRICE OF GAS AND EXPLORATORY ACTIVITY
(MEASURED BY GAS EXPLORATORY FOOTAGE)

SEVEN SOUTHWEST STATES, 1945-1962

(1947-1949=100)



The behavior of gas exploration footage throughout this period suggests that it has been a function of at least two major factors: first, the effects of a non-directional search whose major economic motivation was the increased demand for oil; second, the directional search for gas stimulated by the rise in the price of gas. Both factors pushed gas footage up from 1945 to 1956. After 1957 when oil exploration began to drop, gas exploration also fell, but not as much as oil. Gas price alone was not strong enough to hold gas to its level. But gas price was strong enough to enable gas exploration to resist plunging with oil. The supply of gas is not elastic, for if that were so, the correlation between the gas price index and the gas exploration index would continue after 1956. But the results suggest that the supply of gas was responsive to gas price to a considerable degree.

Dr. Foster's analysis of the data is:

> * * * the statistical correlation is quite high for each of these series. The mere fact of a close correlation does not, of course, indicate the existence of the cause and effect relationship. I made other studies bearing on this exercise of judgment as to the causal relationship, or rather the meaning of the correlationship. It is my belief that the increase in gas prices over this post-war period has had a strong and extremely significant affect on drilling activity in exploration for gas.
>
> The basic reason for that conclusion is that I can not explain the behavior of the data drilling activity productive of gas and productive of oil on the basis of any other hypothesis. (205/24759–60.)

Dr. Foster is sound in noting the high correlation over the entire period between gas price and gas exploration. Also sound is his view that an explanation of the data requires an acceptance of the hypothesis that gas price had a significant effect. But this hypothesis alone does not explain all the results, such as: the failure of gas exploration to continue its correlation with gas price after 1957; the rise and fall of oil exploration and its correlation with gas exploration until 1956; and the subsequent path of gas exploration between the orbits of gas price and oil exploration. If price were the only factor, the correlation between gas exploration and price should have been maintained after 1957. Note that Dr. Foster in the quoted statement does not deny the existence of other factors although he does not affirmatively mention any.

Staff examines the gas footage data since 1955 and concludes that "an increase in initial base price in new contracts was accompanied by little recent change in successful gas footage drilled." Brief p. 238. These comments apply to Staff's analysis:

It is not sound to reach conclusions about the existence of a relationship of this type without at least considering the available data over the full period 1945–62.

Staff misses the significance of gas' ability to maintain its level above that of oil after 1956. If gas drilling has been nondirectional and if gas supply has not been responsive to price, as Staff maintains, gas exploration should have paralleled oil exporation in its plunge after 1956.

Dr. Foster and Staff have each focused on half the significant results. The explanation of neither is sufficient to explain the behavior of gas exploration. The capacity of gas to maintain the level it did in the face of the oil decline indicates a considerable directional ability and responsiveness of supply to price, though an elasticity considerably less than unit elasticity. The supply of gas measured by gas exploration was "relatively inelastic" during the period; but it was far above the almost perfect inelasticity that would have characterized oil well gas, or all gas, if directional exploration and responsiveness to price had been negligible.

These conclusions are also applicable to Exhibit 24, which is similar to Exhibit 306.

Staff argues that its "econometric studies show that gas supply is not responsive to gas price." Brief p. 252. The Staff's pioneering econometric study is, however, based on a nondirectional hypothesis. The crucial exploratory equation is for total exploration, gas and oil. It does not differentiate between the relative effort directed toward gas or oil within a given total level of exploratory effort. Staff witness Wein acknowledged that if the directional hypothesis were to be accepted, a materially different equation would be required. Since the directional thesis has been found to be a valid working hypothesis, the results of the econometric study presented herein are not relevant or material to the problem.

Staff argues that gas well gas supply will not be affected by the price for gas because 23 percent of Respondents' revenue from gas condensate leases consists of liquids. But the substantial percentage of 77 percent of the revenues from gas condensate leases comes from gas.

Staff also contends that gas well gas supply will not be responsive to price even if the producers can drill directionally for such reservoirs because the size of the reservoir and its potential value is not predictable under the directional theory as thus far established; and in view of these circumstances and the other unknown factors which "enter the calculus of whether or not to drill on a particular prospect. . . . Price differences of a few or even several cents would not often be crucial in the decision making process". (Brief pp. 243–4.) The problem in this case does not concern the decision whether to drill a single prospect; it concerns the industry's decisions regarding thousands of prospects in a huge area. This whole industry operates on probabilities and the averaging of results over thousands of prospects. In considering over-all results, price differences of several cents are important, and knowledge of the probable product increases the producer's ability to respond to the economic incentive of price.[10]

During the period of rising gas prices between 1947 and 1960, the ratio of gas well gas reserve additions to oil well gas reserve additions increased substantially. The only reasonable explanation for this behavior is the existence of a considerable directional capacity and a consequent ability of gas supply to respond to price.

Staff's conclusion on brief at p. 243 "that despite the presence of some directional capabilities (as between gas and oil exploration) gas supply has not been and is not now responsive to price" is not in consonance with the weight of the evidence.

5. The Effects on Supply of the Contractual Dedication of Gas

Typically gas is sold under twenty-year contracts. After a producer enters into such a contract, he is legally obliged to deliver the gas contracted for, to the extent it is economically available from existing facilities. Generally a producer has found a considerable amount of gas before the contract is negotiated. An increase in price thereafter will not substantially increase the supply of gas that has already been found and made available. Sometimes the producer is obligated to undertake further development, more often not. However, even though the contract does not legally oblige him to continue to develop additional supplies, as a practical matter he has strong economic incentives to do so, if it is profitable. So long as the contract remains in existence, he cannot sell the gas which is subject to the contract to any other purchaser. The contract will continue for its full 20-year term unless the gas is exhausted, or unless terminated by mutual agreement. A purchaser is unlikely to agree to terminate a contract with a price advantageous to him if there are indications that additional reserves could be developed on an economic basis from the underlying dedicated acreage. Furthermore, if commercial production ceases, the producer is likely to lose his lease. Also most gas contracts cover sales from areas or acreage that has been explored to a considerable extent and partially developed. Where these costs have already been incurred for committed gas, the producer is likely to develop and deliver the additional reserves if it is profitable to do so on an incremental cost basis, rather than just sit on the gas. In these circumstances raising the price for committed gas is not likely to increase supply to a substantial extent, because the institutional and economic incentives will tend to induce the producer

[10] Staff's position here is inconsistent with its approach in other parts of its brief, that the industry and its behavior must be considered and analyzed on the basis of its over-all results, and not on the basis of individual prospects.

to obtain and deliver the gas anyway. As a result, the supply of committed gas tends to be much less elastic than the supply of new gas.[11]

There are marginal situations where the supply of gas will be considerably affected by price, even though the gas has been dedicated under a contract. Thus a producer may be at the marginal point where the cost of reworking a flowing gas well will not quite equal the expected revenues to be obtained under an existing price; or the price will not quite justify pumping a well whose pressure has reached the abandonment point. There are also situations where at a particular price, the cost of further exploration or development will not equal the prospective revenues. In these cases, even though the gas be committed, its supply can be affected to a considerable degree by the price, because the producer is, economically, at the marginal point of further investment, and, legally, at the point where he is under no further obligation to make an additional investment under the contract. These marginal situations will, of course, tend to occur at any price level. While they do and will continue to exist, in the main, the supply of committed gas is much less elastic than the supply of new gas. This is true of all gas, but the principle is most apposite for gas well gas. The supply of oil well gas is so largely dependent on the search for and production of oil that the additional effect of a "commitment" with respect to oil well gas is not nearly as significant as in the case of gas well gas. For a particular gas well prospect there is a point where supply will become responsive to price, the point at which prospective revenues are greater than prospective costs, (taking into consideration alternative opportunities); more technically this is the point at which marginal revenues equal marginal costs. At prices substantially below this point, an increase in price will not evoke additional supplies because the prospective cost of adducing this supply exceeds the prospective revenues. Respondents imply that there is a particular price at which the supply of gas in general will become elastic. However, for the industry as a whole, there is a range of points at which responsiveness to price will begin, depending upon the varied anticipated costs and estimated revenues of thousands of individual prospects. For the industry as a whole, which is what is being considered here, there is a supply-price schedule rather than a single point at which supply elasticity will increase.

6. Conclusions on the Nature of the Supply of Gas

The foregoing suggests these conclusions:

a. Discussion of the elasticity of the supply of gas as such is no longer meaningful. At the present time the subject is meaningful only when applied separately to gas well gas or oil well gas.

b. In the past, the supply of gas was extremely inelastic because gas was found largely as an incident to exploration for oil, except in a few areas.

c. The search for gas as such is a more recent development and that search has become directional to a considerable degree. There are definite areas and depths where gas predominates. If this gas is needed, it must be searched for and found separately from oil.

d. As a result of the ability separately to direct the search for gas well gas and the contemporaneous rise in the price of gas, the supply of new gas well gas has become responsive to price, though it has not achieved unit elasticity.

e. The supply of committed gas well gas is much less elastic than that of new gas well gas, though there are marginal situations where, it being no longer economic to continue further development or production under the contract, an increase in price will tend to elicit additional supplies.

[11] That economic and institutional factors tend to have certain consequences is not to say that they or their consequences are desirable or undesirable. It is just a matter of describing a situation.

f. The directional capacity and the responsiveness of new gas well gas to price are the elements that mark a sharp break with all earlier cases in the Commission involving producer gas rates. The evidence in this proceeding warrants the acceptance of substantial directionality and consequent responsiveness to price as a valid working hypothesis in dealing with costs and rate design in this proceeding. This breakthrough affords an opportunity for a new approach.

H. GAS FINDING COST AND PRICE TRENDS

The indices of cost per Mcf of reserves added for witnesses Foster and Joskow between 1947 and 1960 show increases of 88 percent and 60 percent, respectively. The index of the average price paid by interstate pipelines shows an increase of 215 percent over the same period. Even in terms of constant purchasing power, price per Mcf increased 134 percent, much more than the increase in cost per Mcf. That intrastate prices increased less is suggested by the index of average prices received at the wellhead, which shows an increase of 134 percent, compared to the 215 percent increase in interstate prices.

I. RECENT TREND IN THE COST OF FINDING GAS

The indices of Respondent witness Foster and Distributor witness Joskow of drilling and equipping costs per Mcf of gas reserves added are the best measures of the cost trend in finding gas over the whole period 1947–60. Both indices show a substantial increase in cost over the entire period. Dr. Foster's index shows a fairly uniform rise throughout the period, while Dr. Joskow's shows a slacking off in the last years, except for 1960, which results from the unusually low findings reported for that year. The statistical techniques employed in these exhibits for smoothing out the data are useful in presenting a description of the trend over the whole period. But they obscure short-term movements or intermediate changes that would indicate recent trends.

The IPAA index of drilling costs shows a rise in cost over the period 1947–60, but a slackening in the rate of increase after 1958. Moreover the actual rise in drilling costs since 1958 was probably less than shown by the index. This is because this index is based on posted or listed prices for various items. The upsurge in oil drilling from 1954 through 1957 was accompanied by a rise in drilling costs. The period since 1958 has been one of price weaknesses in the drilling contracting industry, reflecting the decline in oil drilling, and, because of the greater amount of oil than gas drilling, the consequent decline in total drilling. In such a period, discounts from list prices of industrial goods and services are common but these are not reflected in the IPAA index. If consideration is given to this factor, the actual rise in costs since 1958 was probably less than shown by the IPAA index.

Dr. Foster's index of drilling costs per foot 1947–60 shows a generally uniform increase over the period, but a negligible rise between 1959 and 1960. This index is based in part on the IPAA index and on the American Association of Oilwell Drilling Contractors prices.

The Staff Appendix A results show the costs of drilling and the footage drilled for each of the years 1955–1960 for some 240 companies which accounted for about one-third of the industry's well drilling activity in 1960. These companies were not selected on a random basis. That the sample is not representative of the level of industry costs is shown by the fact that in 1960 these companies accounted for 24 percent of the wells drilled in the United States but 34 percent of the total footage drilled. This indicates that these producers drilled deeper wells than the average producer. The data show the annual drilling costs over a 5-year period for a large sample of identical companies, many of which operate in many areas of the country. The results of a group of this type and size are

likely to reflect the general forces making for changes in costs. Hence, the Appendix A sample can provide a sound indication of relative drilling costs during the different years, even though these results are not representative of the absolute level of these costs. Supporting this conclusion is the trend for the years 1955–60 in depth of wells, which shows an increase for the Appendix A companies of 7.3 percent; this parallels the industry-wide increase in depth shown in the more complete World Oil Series of 8.2 percent. Also the figures for the Appendix A companies show that the drilling costs of most types of wells and at most depth ranges rose between 1955 and 1957 or 1958 and declined thereafter. The wide range and general consistency of the over-all results suggest that these results are indicative of a general trend for this period.

The tendency shown by the Appendix A results for the cost rise to level off during the period immediately preceding 1960 is in consonance with the general pattern of the IPAA index and Dr. Foster's drilling index. This is also consistent with the general price trend. The Bureau of Labor Statistics Wholesale Price Index for all commodities rose from 66.1 to 100.7 between 1946 and 1960 (1957–9=100). Between 1955 and 1960 it rose from 93.2 to 100.7. But between 1958 and 1960 its rise was only from 100.4 to 100.7. Other general price indices also show that the rate of increase in general costs and prices slackened after 1958.

The conclusion is warranted that the rise in the cost of finding gas tended to level off during the period immediately preceding 1960.

J. THE TWO-PRICE SYSTEM

The economic and institutional factors previously discussed suggest several conclusions regarding the design of a price system.

The largest future source of supply of gas will probably consist of new reserves of gas well gas. There are certain areas and depths where this gas predominates. The supply of gas from oil wells and from gas wells found only as an incident in a search for oil will probably not be sufficient to meet demand. The bulk of the gas well gas, coming from gas predominating areas will become available only if the separate economic cost of finding and producing this gas is met.[13] As Respondent Texaco's witness Park stated in referring to his exhibit on new gas well gas:

> One of the basic reasons for making this analysis on gas well gas is that in 1961, nonassociated gas constituted 89 per cent of the natural gas reserve additions and about 72 per cent of the gross production of natural gas.
>
> While these percentages are for the most recent year, both percentages have been increasing for the past several years and are expected to be maintained if not increased in the future.
>
> In addition, there has already been testimony in this record by producer management to the effect that the domestic oil situation is such that if consumer demands for continued, adequate, expanding natural gas resources are to be satisfied, the brunt of the task will fall to the search for and development of nonassociated natural gas supplies. (158/17,659.)

Since costs for gas have increased during the period 1947–60, additional supplies of gas well gas require that the current costs for such supplies be determined and used as the initial basis for the price of this gas. An allowance below the economic cost will not be effective in eliciting the supply of gas well gas. A cost based solely on averaging the historical costs of all flowing gas, or even on all flowing gas well gas, may return to producers as a group the sum of the costs they have incurred in the past and render them whole. But such a cost

[13] In some respects the search will probably always be joint.

allowance on an area basis will not provide the incentive for producers to seek new supplies of gas well gas whose current cost exceeds the average historical cost. Therefore the cost for new gas well gas must be independently found and used as a basis for the price of new gas well gas.

Because of the time lag in finding and producing gas, the rise in costs over time, and the change in the nature of the search, most of the gas now flowing was discovered many years ago, and to a substantial degree, as a by-product in a search for oil, or at a time when it took a much lower gas price either to elicit the required exploratory efforts or to induce the commitment of those supplies. If the price for new gas well gas were to govern all old (flowing) gas, an unnecessarily high price would be paid producers. Furthermore, this high price would not serve to any great extent to elicit new supplies of gas well gas, because producers receiving this high price for old gas would be free to reinvest it in oil, chemicals or real estate.

For these reasons, the basis for pricing flowing gas and future supplies of oil well gas should be determined on a different basis than for new gas well gas.

The primary basis for the two-price system is that in the special economic and institutional background of the gas finding industry, it uses price more efficiently than a one-price system as a tool to bring gas to market. It pays the current economic price required to elicit new supply and this payment is made only for results achieved. For other gas, the price is determined on a different basis. The producer is paid for what he produces.

The two-price system is fairer both to the producer and to the consumer: the producer receives the current economic cost for gas for which he incurs the expense of a separate search at today's price level; and the consumer pays the premium price only for that gas which will tend to be found as a result of the separate higher cost search. The producer will receive and the consumer will pay a lower price for the old vintage gas, or the gas found jointly with oil.

Staff advocates a one-price system, *i.e.*, a pricing system under which the price for new gas well gas is determined on the same basis as for old gas well gas, in this case, historical cost. Staff's rationale is threefold: (a) gas well gas cannot be found directionally to any significant degree; (b) gas (including gas well gas) is not responsive to price; (c) costs have not risen since early in the 1950's. A further reason might be that gas well gas supplies which might be found directionally are not needed because adequate supplies of gas will be found as an incident to the search for oil. Under these conclusions, the average historical cost for gas well gas will return to producers their average costs. The price won't significantly influence the supply; but under Staff's view no price (in the range of reasonable probabilities) for gas can do this.

Respondents advocate a one-price system, Distributors and CPUC a two-price system.

The Presiding Examiner concludes that the rise in the price of gas in recent years has been due largely to the substantial increase in demand acting upon a sluggish supply. He further finds that gas well gas will be the major source of future gas reserves and that this source will be discovered in major part through the directional search for gas reservoirs. Because of the substantial rise in the cost of finding gas over the past two decades, a one-price system for currently flowing gas and for new gas well gas will either not be high enough to influence the search for and eliciting of the gas well gas supply to the extent needed; or it will provide an unreasonably high price for old gas or new gas found in a directional search for oil. Against the background of the economic and institutional factors governing the finding and production of gas, equity and efficiency of price as a tool indicate that a two-price system be adopted in the establishment of a rate system in this proceeding.

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II. THE COST OF NEW GAS WELL GAS

The first requirement for determining the price for Permian new gas well gas is to determine an appropriate cost. After that, other relevant factors can be applied to determine the price.

First, it is necessary to make clear the term "cost." As an economic matter, cost is the measure in dollars of the effort needed to elicit the supply of a product. Economic cost is sometimes termed "alternative opportunity cost" or "avoidable cost." These phrases refer to methods of determining economic cost by measuring the supply that would not be elicited if the particular cost effort were devoted to the next most profitable activity.

In the case of a purely joint product, it is impossible to isolate a portion of the total costs and use this portion as the separate cost, in the economic sense, of one of the products. The expenditure of that amount of effort will not produce the separate product. Only the expenditure of the total joint costs will produce both joint products.

For various purposes it is sometimes necessary to divide joint costs among the separate products. One can divide or allocate total joint costs by various accounting methods or physical formulas: for example, according to the relative sales receipts from each product, according to the ratio of the cost of producing each product separately, though under different circumstances, according to some physical measurement such as weight, volume, Btu's, etc. But the division of joint costs into separate parts by these methods does not measure the cost of producing the separate products. The results attributed to the separate products will not, if expended separately, elicit the supply of the product. Much, much confusion in this case results from the practice of certain parties of referring to and treating the results of their allocations of total joint costs as the cost of the separate items. They aren't. If oil well gas is being sought, the expenditure of the dollar amounts which represent the division of total costs that have been allocated to oil well gas, won't yield much of this gas; the incurring of this cost in a search for oil well gas (or in a non-directional search for gas) may well produce a good deal of oil, but only incidentally, some gas.

For many products a part of the costs are joint, and reasonable allocations are used to divide these joint costs. The problem is more difficult in this industry. Where, as in the case of oil well gas, all of the costs are joint, and the gas is the minor product produced with oil, the results of allocations of total costs have little economic meaning.

In the past, one of the problems in determining the price of gas has been that since the search for all gas was in the main joint with oil, the cost of gas could not really be determined. What was attempted in the *Phillips* case was to determine an equitable, reasonable, fair division of total costs. So long as these costs were not regarded as influencing supply, the only requirement was the reasonableness and fairness of the division of the total burden between gas and oil. But no matter what the answer, the price for the minor product, gas, would not significantly influence its supply under the theories then existing. But in the instant case the problem is of a different dimension. Because gas well gas can now be found separately to a significant degree and because its supply can now be influenced by price to a degree warranting the use of price as a tool in eliciting this supply, it is necessary as an economic matter that its price be related to cost, so that the price paid measures the cost to elicit units of supply. Therefore, the first and most important task in this case is to determine the cost of new gas well gas on an independent basis.

Because gas well gas can now be sought and found separately, the expenses and expenditures relating to it can also be separately determined to a greater degree than was possible when the search was nondirectional or joint. While

the ability to search for gas well gas directionally reduces the allocation problem to a considerable extent, it does not eliminate it entirely, partly because at this stage statistics on many separate items of cost are not available, and partly because the search is not yet completely directional and probably never can be. When it is said that the cost of gas well gas must be determined independently and as a separate item, it is not meant that a pure cost can be refined. What is meant is that a reasonable approximation of the separate cost for new gas well gas should be determined. In a large industry it is only rarely that the pure cost of a single product can be isolated. There is almost always the burden of some joint costs and common costs in the form of overhead. But reasonable approximations of costs are used as working tools in most industries. So here, even though the separate determination of the cost of new gas well gas may not be precise, it can approach to a considerable degree the cost of finding new gas well gas. In comparison, the divisions which result from the allocations of the joint historical costs relied on by Staff bear much less relation to cost. As explained by Respondent witness Sherwin:

> Coming back to my illustration, if you take the cost of non-associated gas and compare it to the cost of associated gas, or perhaps to the traditional cost of service, including those that have been introduced in this proceeding by parties testifying prior to February 28, you can see the results, you can measure the impact, I will say.
>
> Now, in my study, for example, on the cost of non-associated gas, the proportion of cost that is directly identifiable with gas, and therefore requires no allocation in the sense that the cost of associated gas does, is 45%, as indicated at transcript 14,376.
>
> The joint costs, as there stated, are 31%. The remaining costs which are in part in the nature of common costs and in part in the nature of joint costs, are 24%. But when you come to the cost of associated gas, 100% is joint. To that extent there is a very significant difference in terms of reliability between the cost of non-associated gas as presented by myself and Mr. Roseman, and, for example, the Staff's cost of service. (164/19,171.)

Estimates of cost for new gas well gas were submitted for the Respondents by Dr. Sherwin and Mr. Park, for the Distributors by Mr. Roseman, and for the CPUC by Mr. Doran. The Staff rested on its presentation of allocated historical cost because it did not accept the validity of the directional hypothesis and, in its view therefore, the determination of the current economic cost of gas well gas is of little significance.

A. NATIONAL OR PERMIAN COST BASIS

In determining the cost of new gas well gas, the first issue is whether the cost for new gas well gas should be determined on a national or a Permian basis. The question is not whether a national price should be established and then applied to Permian; it is whether national costs should be used as the point of departure in determining Permian prices.

The considerations in favor of using national instead of area costs as a basis for pricing here are:

1. A pricing system based on national costs will tend to induce capital to flow into areas where unit costs are low. A system based on area costs will tend to produce a high price for a high unit cost area and will tend to make investment in such an area as attractive as in a low unit cost area. This will tend to shunt capital away from areas where its marginal efficiency is high.

2. The supply area for the West Coast is broader than the Permian area. West Coast supplies come from the San Juan Basin, the Rocky Mountains,

California and Canada as well as from Permian. These alternative sources affect the demand for and the value of Permian gas. The increase in the mobility of gas supplies causes gas discoveries in any part of the country to have an impact on the market for gas in other parts, if only by backoff. In general it would be desirable to use costs which are based at least on an area as extensive as the market and the value factors affecting it.

3. National costs are likely to be more accurate than area costs because of the geographical fragmentation of company-wide costs required by area costing. Even where the company has local divisions, costs are interrelated and many costs are common.

4. Much information and many factors to be considered are more available on a national than on an area basis. Thus the growth allowance for the country is related to the needed future national R/P ratio. But there is little evidence here of the appropriate future R/P ratio for Permian gas. Such a factor could only be determined in relation to all the other areas from which the West Coast draws its supplies.

5. The principal economists for Respondents, Distributors and Staff, Dr. Foster, Professor Kahn, and Professor Wein all testified that costs should be determined on a national basis. No economist testified to the contrary.[12]

6. All parties agree that exploration and development costs should be determined on a national basis. This is necessary to take account of dry hole costs incurred outside the specific areas enumerated by the Commission, exploration in new areas such as Florida, Oregon, etc. Thus the Staff's historical costs are a synthesis of national exploration and Permian production costs. The same is true for CPUC witness Doran's cost of new gas well gas.

7. The only estimate of the cost of Permian new gas well gas, that of the CPUC, is not acceptable as an estimate of the separate cost of this gas. Doran's estimate is analyzed in detail in Appendix A, p. 376. The major reason why it cannot be used as an estimate of the separate cost of new gas well gas is that it is largely based on Staff's allocations of the joint costs instead of being an independent determination of new gas well gas costs. Thus Doran's results reflect Staff's allocation of exploration and development expenditures (E&D) to gas well and gas condensate well gas by the modified Btu method; his allocation of production operating expense, return, and depreciation, depletion and amortization (DD&A) allowance between liquids and gas from the condensate wells is governed by the results of Staff's relative cost method. These Staff allocations produce results which may be equitable divisions of the joint costs. But, as will be explained in Appendix D where the Staff costs are discussed, so far as determining the separate economic cost, they are fictions. Doran's reliance on Staff's allocated data is so great that his results are too far removed from an economic cost determination for new gas well gas to be acceptable.

We turn therefore to the determination of the current economic cost of gas well gas on a national basis. There are three current national cost studies for gas well gas, those by Respondent witnesses Sherwin and Park, and by Distributor witness Roseman.

Dr. Sherwin relates all costs incurred during a year (which are termed expenditures) to production for that year. He treats all these expenditures as current expenses whether they are typically capitalized or expensed. These

[12] The only witness who testified in favor of using area costs as the point of departure in determining prices was CPUC witness Doran who is a rate engineer. The Staff witnesses presented area costs exhibits, but they did not present any testimony supporting the use of area instead of national costs.

expenditures are related to current production of gas, not reserves added. Consequently, the study does not show the cost of providing new gas supplies, but only an artificial relationship between current expenditures and gas currently sold. Sherwin's study is based on the hypothesis that in the course of the year, the producer will receive back all the expenditures he has made during the year; hence there is little justification for a return element; nevertheless, a return margin on expenditures of from 13 to 15 percent for cash dividends is allowed. His study does not reflect the traditional accounting method used by the industry for treatment of capital. Also many of the items he uses are close or similar to those used in the presentations of Park and Roseman, which represent the major presentations on this subject by Respondents and Distributors. In the interest of clarity attention will be focused on the exhibits of witnesses Roseman and Park, although note will be taken of a few special items in Sherwin's estimates.

Distributor witness Roseman presents a computation of the national industry wide average unit cost of 1960 levels of finding and producing new reserves of gas well gas. He relies on the general industry accounting practice, whereby exploration and development expenditures (E&D)[14] are charged off as current expense, and production investment is capitalized.

Respondent witness Park presents an estimate of the financial requirements of the cost of financing new supplies of gas well gas on an industry basis. He capitalizes all E&D expenses, although this is not customary in the industry. The basic difference between the Roseman and Park studies lies in their respective treatment of capitalized items and the return on capital. Roseman illustratively applies the Staff's 9½ percent rate of return to his capitalized costs. Park applies a discount rate of 10 percent to his equivalent of Roseman's capitalized costs plus the E&D which he also capitalizes. Initially, it will be useful to analyze Roseman's estimates comparing these with the corresponding estimates of Park, leaving till later Park's special treatment of E&D and certain other aspects of the capital problem.

The studies of Roseman and Park differ from Staff's historical cost of service study. The latter uses the average historical investment for the capital costs, regardless of vintage. The current cost studies of Roseman and Park deal with current costs as a measure of the current requirements of producers for finding additional gas well gas supplies. These studies are concerned only with recent cost incurrence and the recently experienced gas productivity because that is deemed reasonably representative of what the average cost will be for supplies brought forth in the near future. Roseman and Park are seeking not 1960 cost figures, but a normalized estimate centering around 1960 which will reflect the average expectation of cost for this period and the near future. Of course, such an estimate would remain valid only to the extent that there are no significant changes in future costs of finding and producing reserves.

The second difference is that the Roseman and Park studies are concerned with determining the cost of gas well gas additions. Lacking direct data for certain items they resort to estimating techniques, generally relating the known to the unknown by establishing certain normalized relationships. For example, Roseman and Park estimate lease acquisition costs and investment in other production facilities by determining the relationship of these items to successful well drilling costs. In their expert opinion, the relationship is indicative of the respective costs. The results are an estimate—but an estimate of cost. In contrast, the Staff cost of service presentation is the product of successive allocations of joint costs the results of which are remote from economic cost.

[14] E&D includes principally dry hole expenditures, geological and geophysical expenses, and lease rentals. Production investment includes successful well costs and lease facilities.

B. THE COST OF NEW GAS WELL GAS

In this section a computation is made of the national industry-wide average unit cost at 1960 cost levels of finding and producing new reserves of gas well gas. For convenience of analysis all costs will be expressed in cents per Mcf.

The cost estimates that are adopted below are based largely an a study of the estimates for new gas well gas costs by Distributor witness Roseman and Respondent witness Park. In the main, the analysis and the conclusions follow that of the Distributor witness. His study follows the customary industry accounting practices of expensing exploration and development expenses; his analysis is based on the theory that funds for exploration at any given time are derived from then current production. Park capitalizes his exploration expenses; his model is based on the assumption that the cost of current exploration should be borne largely by future gas production. This is not the usual industry accounting practice. The items comprising the respective specific cost estimates of Park and Roseman are examined in detail in Appendix B. The conclusions regarding the estimates for specific items are presented below. The table on the following page summarizes the estimates of these two witnesses and the estimate which the Presiding Examiner adopts. The major items in the analysis are:

1. Capital recovery charges. These production investment costs cover the tangible and intangible costs of successful wells, lease acquisition costs, and the cost of other production facilities. It is customary in the industry to capitalize these charges, for they represent long-term investment in the industry and produce revenues over time. This capital investment is recovered annually through charges to depletion, depreciation and amortization (DD&A), on a unit of production basis. Thus for each Mcf of gas produced, as shown on the table, the DD&A charges will amount to 3.95 cents.

2. Return on capital. In this analysis it is estimated that the reserves are depleted at an even rate over a twenty-year period. On this basis, the average net investment in the unrecovered capitalized costs per Mcf of gas produced would be 10 times the gross investment per Mcf of reserves added. Pending the recovery of capitalized costs through DD&A charges as the gas is produced, the capitalized items earn a return. The average investment per Mcf of gas produced is 3.95 cents $\times$ 10=39.50 cents. It is determined below that the return on investment in this proceeding should be at the rate of 12 percent and that this return should be allowed for a period of twenty-one years to account for the depletion period plus a one-year lag between productive investment and the initiation of revenues. Hence the return on fixed investment per Mcf produced is 5.21 cents. The return on working capital at 12 percent is 0.20 cents, making a total return allowance of 5.41 cents.

3. Production Operating Expenses. This item covers direct and indirect operating expense related to current production and is estimated at 2.88 cents per Mcf.

4. Exploration and Development Expenses. Exploration and development expenses (E&D) include geological and geophysical expenses and lease rentals at 1.05 cents, dry hole costs are 1.42 cents, and exploratory overhead at 0.54 cents, totaling 3.01 cents per Mcf.

E&D expenses are customarily expensed by the industry. As they are incurred each year they are charged against current production. But demand is growing, and over the years a greater amount of reserves must be found than an amount needed merely to replace current production. Hence exploration outlays must be at a rate which takes account of this growth. It has previously been determined that a national life index of 17.5 years by 1970 will be satisfactory. To achieve this result, annual reserve additions as shown by Roseman have to be 1.37 times annual production until 1970. Hence the E&D expenses must be

Current national cost of new gas well gas

	Respondents	Distributors	Examiner
Production investment costs:	*Cents*	*Cents*	*Cents*
Successful well costs	3.10	2.88	2.88
Lease acquisition costs	1.24	.76	.76
Other production costs	.31	.31	.31
Return [1]	8.45	3.90	5.41
Exploration and development costs:			
Dry holes	1.56	1.42	1.42
Other exploratory costs	1.56	1.58	1.59
Allowance for growth	2.15	1.11	1.11
Production operating expense	2.62	2.88	2.88
Adjustment of net to marketed production	1.05		
Net liquid credit [2]	(3.27)	(2.38)	(2.68)
Regulatory expense [3]	.14	.14	.14
Subtotal	18.91	12.60	13.82
Royalty @ 12½%	2.91	1.92	2.11
Production tax [4]	1.42	.87	.95
Total	23.24	15.39	16.88
Recapitulation:			
Production investment costs	4.65	3.95	3.95
Return	8.45	3.90	5.41
Dry holes and other exploratory costs	3.12	3.00	3.01
Allowance for growth	2.15	1.11	1.11
Royalty and production tax	4.33	2.79	3.06
Other	.54	.64	.34
Total	23.24	15.39	16.88

[1] *Respondents*—Carrying Cost at 10% compound interest on all finding and development expenditures. *Distributors*—Return at 9½% on average investment and working capital. *Examiner*—Return at 12% on average investment and working capital. (Return on average investment adjusted to reflect one-year lag.)

[2] *Respondents*—Net lease credit from Exhibit 250 plus stipulated 0.2¢ plant credit. *Distributors*—Gross lease credit from Exhibit 224 reduced by 12½% royalty and 5% production tax, plus 0.2¢ plant credit. *Examiner*—3¢ gross lease credit reduced by 12½% royalty and 5% production tax, plus 0.2¢ plant credit.

[3] Staff estimate.

[4] *Respondents*—7% on ⅞ net working interest. *Distributors and Examiner*—6.42% on ⅞ net working interest.

increased 37 percent to cover the required growth. This additional cost is termed the "allowance for growth", and amounts to 3.01×37 percent=1.11 cents per Mcf.

5. Liquid Credit. In addition to the revenues to be received from the sale of the gas, the producer of gas well gas can expect to receive revenues from lease condensate and from plant liquids estimated to average 2.68 cents per Mcf after royalty and production tax. After crediting the liquid revenues, the balance plus an allowance for regulatory expense, royalty and production tax, represents the total current cost of new gas well gas.

6. Regulatory expense. An allowance of 0.14 cents per Mcf is made.

7. Royalty and Production Tax. Royalty at 12.5 percent of the selling price must be paid to the lease owner and this item is treated as a cost, 2.11 cents per Mcf.

The average Permian production tax rate in effect at the close of 1963 was 6.42 percent which results in an allowance of 0.95 cents per Mcf. No federal income tax is allowed because the gas production industry does not pay federal income tax on its gas production.

The national cost of new gas well gas is thus determined to be 16.88 cents per Mcf.

C. THE RATE OF RETURN ON THE PRODUCTION INVESTMENT IN NEW GAS WELL GAS

We turn now to the question of the rate of return on the production investment in new gas well gas. This investment includes the cost of successful wells, lease acqusition costs, and the cost of other production facilities. The rate of return being considered here is the appropriate rate of return on capital invested in finding new gas well gas, which it has been previously determined can to a

considerable degree be found by a directional or directed search for this gas as such.

Only Staff and Respondents presented evidence on rate of return. The Staff proposes a rate of 9.5 percent on all gas. The Staff, it will be recalled, rejects the directional hypothesis. The CPUC and the Distributors accept the directional hypothesis and also recommend that the Staff rate be adopted in computing the return for new gas well gas as well as for all other gas. Respondent witness Morton proposes a rate of 16–18 percent for all gas. Respondent witness Park also presents evidence on return based in part on capitalizing the E&D expenditures which are normally expensed. This second presentation will be discussed after the analysis of return on the traditional basis is completed.

Rate of return deals with the earnings the investor expects to receive on the capital he invests in the enterprise. The two major standards for determining the rate of return have traditionally been:

1. The capital attraction standard. The return should be based on the anticipated cost of obtaining or retaining the investor's capital.

2. The comparable earnings standard. The investor should have an opportunity to earn what he would reasonably expect to earn in other businesses or industries of comparable risk.

Rate of return concerns the future, what prospective earnings the investor should have an opportunity to earn from capital he embarks in the enterprise. The method of analysis both for the capital attraction and the comparable earnings standards considers the results of the present and the recent past; but the purpose is to evaluate the future on the basis of the present and recent past: to estimate the probable future cost of capital, or the reasonably anticipated earnings of comparable industries.

With regard to the capital attraction standard, Dr. Shaffner for the Staff, relying on a study of the Chase Manhattan Bank, indicates that the cost of equity capital for the petroleum industry declined some 1.5 percent between the period 1951–1955 and 1956–1960, from about 8–10 percent to approximately 7 percent. If the traditional earnings-price ratio method for determining the cost of capital is considered, the earnings-price ratio for the petroleum industry for the years 1956–1960 inclusive was 6.8 percent. This is evidence of the then current cost of equity capital, though the capital attracting rate of return may be above or below the earnings-price ratio, depending on whether investors are anticipating higher or lower earnings in the future. The petroleum industry largely generates its own capital from depletion and depreciation allowances and retained earnings.[15] Thus the cost of equity capital is to a considerable extent the cost of retaining earnings in the industry, rather than the cost of obtaining new capital from outside investors. For this reason, in using the earnings-price ratio method of determining the cost of capital for the industry, it is questionable whether it is appropriate to make allowances for flotation costs or discounts for market pressure in connection with floating new issues of stock. The basic evidence of the capital attracting rate is thus 6.8 percent for the industry. Whether and to what extent a premium ought to be added to take account of the factor of investor anticipations regarding future earnings cannot be determined from this record.

However, both the Staff and the Respondents rely on the comparable earnings standard to derive their rate of return. Using this standard, the Staff rate

[15] The generation of capital to a substantial degree from internal sources has been a common feature of large scale American corporations, except for utilities, during the post war period. See *Economic Report of the President*, 1964, p. 285, Table C–66, indicating that, of the funds obtained by United States corporations (including utilities) between 1952 and 1963, some 24 percent were from external sources and some 76 percent from internal sources.

is derived as follows: A selection was made of all producers selling two million Mcf or more to interstate pipelines in most years, which have issued stock held publicly and traded in recognized markets, and which regularly issue public reports on their earnings. Twenty-six integrated [16] companies and nine non-integrated companies meet these standards. The years 1957–1961 were selected as representative of a recent period since they reflect the high returns for 1957, the low returns for 1958 and three average recent years. The results for the 35 companies for the five-year period show that the average return on capitalization weighted by the companies' average 1960 capitalization was 9.3 percent. The average earnings on capitalization for the non-integrated producers on the Staff list for the period 1957–1961, weighed by their 1960 capitalization, were 12 percent.[17]

The capital structure of the industry is a relevant factor in considering the rate of return, for it determines the proportion of total earnings that go to debt and to equity. The capitalization of the petroleum industry is substantially equity with a low debt component. The percentage of debt to total capitalization for the industry has been decreasing since the peak of the oil boom in 1956. The integrated companies on the Staff list have an average debt of some 15 percent, while the debt of the non-integrated group averages 17 percent. Respondent witness Scott's study shows that 12 percent is more typical for the non-integrated producer. A consequence of the low debt of the petroleum industry is that there is little apparent leverage in its capitalization, particularly in comparison with a pipeline where the debt component, sometimes as large as 70 percent of total capitalization, permits trading on the equity. The capital structure of the petroleum industry resembles manufacturing rather than pipelines or electric utilities. On the basis of the average capitalization of the companies in the Staff list, an overall return of 9.5 percent will return approximately 10.5 percent on equity, and an over-all return of 12 percent will yield some 13.5 percent on equity.

The Chase Manhattan Bank in its annual study *Financial Analysis of 33 Petroleum Companies—1962* points out that various industry practices provide capital comparable to debt in giving leverage to the equity capital of producing companies:

> At the end of 1962 the Group's ratio of debt to total capital employed was 13 percent—the lowest since 1946. The 5.1 billion dollars of stated debt does not, however, include capital made available for the Group's benefit through the means of long-term lease rentals and production payment loans. From incomplete data currently at hand it is estimated that the Group's debt would be almost double the stated amount if these additional sources of financing were included. On that basis, the ratio of debt to capital employed would be close to 25 percent. The Group is also contingently liable for guaranteed loans and other obligations amounting to approximately 525 million dollars. [At pp. 19–20.]

[16] Integrated companies are those which engage in the refining, processing and the distribution of petroleum products, in addition to finding and producing oil and gas. There are no large companies which produce oil exclusively or gas exclusively .

[17] Dr. Shaffner defines his Group I companies as "principally producers of gas and oil." Their weighted average earnings during the five years 1957–61 were 12 percent. Two of his nine companies derive a slightly greater percentage of their revenues from gas gathering activities than from oil and gas production. If they are omitted, the earnings of the group will be increased 0.2 percent. The two companies are non-integrated companies, since they do not refine or market their products. The major financial difference between these two companies and the other non-integrated companies lies in the greater percentage of debt in their capitalization. The inclusion of these two companies increases the percentage of debt of Dr. Shaffner's Group I companies from 12 percent to 17 percent. However, witness Scott's estimate of 12 percent debt for non-integrated companies has been adopted for this purpose.

Witness Scott's testimony suggests that these practices are used by petroleum producers other than the 33 companies in the Chase Manhattan study.

Another factor is the dominating position of the integrated companies. They produce the bulk of the gas. As Respondent witness Morton says, "the typical oil and gas producer is, of course, the large integrated company." (168/19,810.) In Permian the integrated companies sell 70 percent of the estimated amount sold to interstate pipelines. To an even greater extent the integrated companies are the predominant factor in the Staff earnings study. This results from the fact that a good proportion of the integrated companies meet the standards for inclusion in the Staff list: they sell two million Mcf interstate, have stock publicly traded on recognized exchanges, issue regular annual reports; whereas only nine of the thousands of non-integrated producers meet these standards. As a result, the weighted average return for both the integrated producers and the combined integrated and non-integrated producers is the same, 9.3 percent.

It is probably impossible to use the earnings of the production departments of the integrated companies as a basis for determining the earnings of the oil and gas producing industry. Intracorporate sales of oil reflect company policy, market strategy, and tax considerations. No party proposes using the earnings of the production departments of the integrated companies, and there is no data on this subject in the record.

The Staff recommends that the comparable earnings standard be determined from the weighted average earnings of the integrated and non-integrated producers on its selected list, where the size of the integrated group counts heavily. The earnings of the petroleum industry itself are thus used as the standard to determine the appropriate earnings on gas production. This avoids the difficult problem of comparing the risks and earnings of other industry groups. However, it raises the question of the use of the over-all earnings of the integrated companies to determine the appropriate earnings for gas production.

Basic to the Staff proposal is its view that: Gas is found largely as a by-product in the search for oil; and the rate of return serves little function in eliciting supply. The problem is largely one of determining a "fair rate." Thus, Staff witness Shaffner states:

> * * * this rate is, in my opinion, arrived at from the point of view primarily of fairness, in providing a return on oil-well gas which is produced primarily as a result of the production of oil, it is assumed that if there was any incentive involved in drilling a well, there was an incentive to drill for oil rather than for gas.
>
> Now as to gas well gas, the question depends on these contingencies I have developed towards the end of my testimony, and there is a question in my mind as to whether that is something the industry can find if it wants, or if this is something which they may happen upon accidentally when drilling for either oil or gas, whichever they happen to find in an exploratory sense. . . .
>
> * * * since this is geared primarily to oil well gas, that is, gas which results from wells that are producing primarily oil, or in the alternative, to gas in general, if it be assumed and established that the industry is unable to direct its exploratory drilling to finding either oil or gas on the basis of a prior determination that they know what they are going to find when they prepare to drill. . . . (133/13,758–60.)

Dr. Shaffner recommended a return of 12 percent, the earnings of the non-integrated producers, for new gas well gas. if it were determined that gas well gas could be searched for directionally and if it were determined to be "in the public interest to provide a 'gas production inducement' rate of return in excess of the fair rate of return needed to attract capital." However, Staff seems to have abandoned this proposal on brief, in consonance with its view that the search for

gas well gas is not significantly directional and that the price of gas cannot significantly affect its supply. The Staff's final recommendation is therefore a rate of 9.5 percent.

The other Staff arguments in favor of using the earnings of the integrated companies as the essential standard are that the integrated companies produce the bulk of the gas; the investor can invest only in the whole integrated company; and so his risk is diversified among the various company operations;[18] the return of 9.5 percent is high in relation to the return on most utilities; and finally that it is taken as "axiomatic that other things being equal, the rate of earnings experienced by the going petroleum industry indicates at least an adequate return for any part of the industry." (Brief, p. 410.)

There are several objections to the Staff's inclusion of the integrated companies in determining the comparable earnings standard. First, there is little evidence of comparability between the average of the risks and operations of integrated companies—refining, petro-chemicals, marketing gasoline—and the risks and operation of finding and producing gas. Second, there is no evidence that integrated companies earn at the same rate for their various operations. Third, it has been determined that gas well gas can be found by a directional search and that the supply of gas well gas, while not elastic, will be influenced by its price. If the return from gas well gas is less than the return from oil, producers will be induced to slant their search for oil compared with gas; also if the return from gas well gas is insufficient, producers can refrain from searching for gas, to a considerable extent. Thus the rate of return for gas well gas must be enough to induce the partly separate search for gas. For this purpose the average earnings of the integrated companies are economically irrelevant.[19] The Staff's inclusion of the returns of the integrated companies in the comparable earnings standards is therefore rejected for the instant purpose.

Respondent witness Morton's presentation is partly statistical and partly based on his analysis of the nature of the risk of the industry. His conclusion is that the appropriate rate of return should be 16–18 percent.

Dr. Morton first considers the average rate of return earned by various industry groups for the years 1947–1961 inclusive. The averages for this period are unduly influenced by the abnormally high earnings experienced by most industries immediately after World War II and during the Korean War period due to shortages and inflated demand. The earnings of the petroleum industry during the years 1947–1957 were higher than its earnings before or since, as shown by the history of the earnings of the industry from 1925–1961. The period after 1960, which is the period for which earnings are being projected, can reasonably be expected to reflect lower and more stable earnings. This is indicated by a comparison of the earnings on capitalization for the most recent five-period compared to the earnings for the period 1947–1961 for several of Dr. Morton's groups, which is shown below:

Group	Percent of return 1947–61	Percent of return 1957–61
FPC Class A & B electric utilities	6.0	6.1
FPC pipeline companies	6.3	6.3
Fortune's 50 largest manufacturers	11.8	9.7
Fortune's 50 medium size manufacturers	12.0	9.4
13 oil and gas producers (non-integrated)	18.1	14.5
Chase Manhattan 33 Petroleum companies	11.9	9.6
14 Petroleum refiners	11.2	8.3

[18] Natural gas does not pass through the gamut of an integrated company's operations as, it is arguable, is the case with crude oil.

[19] In the *Phillips* case the Commission considered the earnings price ratios of the integrated and non-integrated companies, but the underlying principle in *Phillips* was that the search for gas was substantially non-directional.

The earnings for the full period 1947–61 are higher than those for the recent period 1957–1961 because of the distorting effects of the high earnings during the earlier years. Also Dr. Morton's exhibit shows that there was a steady downward trend in the earnings of the industrial group from 1947–1958, after which earnings leveled off. Consequently the 1947–1961 averages used by Dr. Morton are not representative of a recent period and are not a sound basis for predicting earnings in the near future.

Dr. Morton's group of thirteen oil and gas producers does not purport to be a representative sample of non-integrated producers. They were selected by Dr. Morton and his associates, who tried to include some small and some large producers, but "the main consideration was the availability of data." As Dr. Morton states:

> But when we deal with oil and gas producers, we are dealing with a relatively small number of companies that are constantly being diminished. The typical oil and gas producer is, of course, the large integrated company. They do most of the oil and gas production, but we do not have a breakdown of their earnings from the viewpoint of gas production and oil production and other types of operations which would require allocation, so we used the 13 small oil and gas producers not because they are the best representatives of oil and gas production in the United States, but because it was practically the only information available that did not require allocation. (168/19,810.)

Also for the critical recent period, Dr. Morton's group of thirteen is not even a sample of identical companies: there is no 1960 data for one company and no 1961 data for four of the companies, because they were acquired by integrated companies.

Dr. Morton also shows earnings on equity for a selected group of non-integrated producers, supplied privately to him by the First National City Bank. Dr. Morton did not know the basis for the selection. These figures show return on beginning year equity for the period 1947–1961. The arithmetical average for the entire period is 17.4 percent. The rates for 1947, 1948, and 1949 were 19.9 percent, 35.9 percent, and 21.7 percent; after that they decline. The number of companies in the group varies from 71 to 88 for the years 1957–1961. For this later period, the average return on beginning year equity is 13 percent. On the basis of Respondent witness Scott's testimony of an average of 11.6 percent debt ratio for non-integrated producers, this translates into approximately 12 percent return on total capitalization. If an adjustment is made for average instead of beginning year equity, the rate is slightly below 12 percent.

In the extensive collection of data on earnings presented in Dr. Morton's exhibits, there is a single instance of earnings on capitalization as high as 18 percent: the average earnings of this 13 non-integrated companies for the years 1947–1961. This is an unrepresentative sample for an unrepresentative period. There is only one other case of earnings on capitalization as high as 15.5–16 percent. This result may be inferred from the results of the First National City Bank study for the period 1947–61.

On brief Respondents emphasize the results for these two groups to support their conclusion of a 16–18 percent return. This contrasts with Dr. Morton's reiterated refusal to stress these particular results. Thus he indicates that the 18.1 percent average return for his group of thirteen companies was not a crucial factor in his recommended rate of 16–18 percent. Its contribution is similar to that of his other data and its particular significance is stated to be largely that of an indicator of a downward trend in earnings:

> Every figure contributes something. It is used as part of my judgment, but the important thing here, again, as I have indicated, is that in recent years the rate of return has been down. * * * (168/19,805.)

Dr. Shaffner's selection of non-integrated companies does not involve the same degree of judgment that was used in making up Dr. Morton's list. Dr. Shaffner set definite standards: companies selling 2 million or more Mcf annually, publicly held, traded on recognized stock exchanges, issue annual reports. He included every company that met these requirements. There were nine such companies, eight of which sell interstate over 10 million Mcf annually. The average return on capitalization for this group for the most recent five-year period 1957–61 was 12 percent, which is in consonance with the First National City Bank results.

The earnings of Dr. Shaffner's group of nine non-integrated companies are probably not typical of non-integrated producers, or of small producers who are of course non-integrated. The nine producers whose stock is traded on the stock exchanges are an unusually successful group of non-integrated producers whose success has permitted them to become public companies listed on major stock exchanges. This conclusion finds support in Respondents' Exhibits 254, Schedule 7, and 255, Schedule 4, which analyze revenue and capitalized investment data for the year 1960 from the Staff questionnaire. These exhibits show that the ratio of net revenues to net capitalized investment was about one-third as much for the Respondents selling under 10 million Mcf compared to those selling over 10 million Mcf—4.0 percent vs. 15.0 percent. The absolute numbers reflected in these ratios are not comparable to earnings on capitalization. But the relative values of the two ratios suggest that the small producers are earning less than the large producers and that the earnings of the three groups of non-integrated producers, Dr. Morton's thirteen, the First National City Bank list, and Dr. Shaffner's list of nine, are not representative of small oil and gas producers selling under 10 milliion Mcf annually. This conclusion is consistent with the testimony of the small producers, such as Scott Hammonds, that their earnings have been low in recent years (though the reason would appear to be the oil glut rather than a decline in the price of gas). The Staff Appendix includes the results for 1960 for approximately 136 companies including some 94 selling less than 10 million Mcf annually. These results may not be representative of the earnings of small producers. But they are hardly less representative on this score than the earnings shown in the other three selected lists of non-integrated producers.

With regard to the comparable earnings standard, it is concluded:

1. The over-all earnings of the integrated companies are not relevant for the purpose of determining the return of directionally found new gas well gas.

2. The earnings of the production departments of the integrated companies are not usable, and there is no evidence regarding them.

3. The over-all earnings of the non-integrated producers are the relevant earnings.

4. No representative group of non-integrated producers has been presented.

5. The standards for selection of Dr. Shaffner's group of non-integrated producers are known and objective, and all companies meeting these standards were included.

6. The earnings of this group are higher than those of the typical non-integrated producer.

7. The best evidence in this record regarding the earnings of non-integrated producers is the 12 percent average earnings on weighted average capitalization for the years 1957–61 for Dr. Shaffner's group of non-integrated companies.

Turning now to the intangible factors connected with rate of return, Respondent witness Morton states that:

> The special or unique risk of the gas producing industry is the exploratory risk. It is the risk created by the lack of predictability between input and output, both in physical and value terms. (137/14,476.)

Respondents argue that this risk should be reflected in a rate of return from 16–18 percent.

Dr. Morton's first proof of the unpredictable relationship between imput and output in the industry is a study of the ratio between new field wildcats and total dry holes drilled as new field wildcats for the years 1945–61. He also makes the same study for all exploratory wells. Inspection of his Exhibit 220, Schedule 7, shows that the ratios are stable. The success ratio has been consistently about one out of nine for wildcats, and about one out of five for all exploratory drilling.

Dr. Morton then shows the cash outlay per million Btu's of oil and gas reserves added. Since the problem in this case concerns gas, the emphasis should be on gas; measurement in terms of Btu's of oil and gas combined is not significant. Also aggregating gas and oil in the form of Btu's of itself introduces additional elements of variability: the product mix between oil and gas is not the same each year; and the validity of the method subsumes that the cost per Btu of gas and oil is the same. In any event Dr. Morton's table shows that while the results for particular years vary, the average of a series of years is not unstable: the average for the five years 1952–1956 is 11.6 cents per MMBtu; for 1957–1961 it is 11.9 cents. Respondent witness Cram uses five-year averages of this same data to indicate cost trends, indicating he believes they are sufficiently stable for statistical comparisons.

Finally, Dr. Morton shows a table indicating annual variability between dollar outlays per million Btu's of gas and oil for seven companies. The companies do not purport to be representative and the exhibit is entitled to little weight.

On brief Respondents also argue that "Reserves added by a given exploratory and developmental effort fluctuate widely over time . . . . (Brief p. 90a). Respondents then compare the reserves added in certain high years with other low years. But the results referred to by Respondents are irrelevant as proof of the proposition cited above because they do not relate the reserves added to a "given exploratory and developmental effort." And if the exploratory and developmental effort is to be related to gas reserves added, the appropriate measure of reserves added, for this particular purpose, would be the new discoveries rather than the total findings, the majority of which consist of extensions and revisions, which involve substantial corrections for previous years. Also an appropriate series of years and a proper measure of the exploratory and developmental effort would be necessary. These elements are lacking in Respondents' comparison.

Respondent witness Porter places the problem of the risk of unpredictability between effort and output in perspective. So far as the chances of success are concerned, the results of drilling any one well or the results of the efforts of a company that drills a few holes per year are unpredictable. For the industry as a whole over a series of years, the results are reasonably constant and predictable because here one is dealing with large numbers which tend to average out. Thus Porter points out:

> The risks of an individual company may vary considerably from the risks of the total industry. A single company, because of limited funds, may be precluded from achieving over-all industry average success ratios merely because it may exhaust its funds before it can approach a program anywhere near an industry average of experience. . . . The relationship of results to

> the amount of finding effort for individual companies is erratic whereas for the industry as a whole some fairly consistent relationships exist. This is true because of the magnitude of the total industry's undertaking and because of the group nature of the effort. . . . During the years 1956 to 1960 the entire industry has drilled between 11,704 and 16,173 exploratory wells per year. I understand that no one company drills more than two or three percent of those wells. Of the total exploratory wells drilled in those years, the successful wells in terms of achieving some production ranged within the narrow limits of 18.7 percent to 19.8 percent. Stated another way, the number of dry exploratory wells for each producing well was between 4.04 and 4.35 wells. Footage of exploratory wells drilled indicates the same consistency in results on an industry composite basis. . . . The individual company results range from complete failure to more successful than the industry, depending upon the luck or skill of the individual company. . . . This wide range of possible reserve additions leads me to believe that there is not necessarily a consistent relationship of an individual company's results to its effort. However, for the entire industry there do seem to be some consistent results to effort in relationships. (158/17,392 *et seq.*)

Thus the results of a single effort or a small number of efforts may well be erratic either measured in terms of successful wells drilled, or in terms of reserves added for successful wells. But the average results of the industry's activities measured over several years are predictable. For the industry there is a fairly consistent efforts-to-results relationship over time.

What is true for the industry is also true for the larger companies though to a lesser degree. The larger the company the more its results will tend to approximate those of the industry.

The risk of the individual producer may be viewed as partly subjective in that it is a function of the ability of the person subjected to the risk to sustain the risk until such time as he can achieve average results. The history of the large producers indicates that over time they have been uniformly profitable. No major producer has undergone the experience of Studebaker in recent years.

The nature of the risk is quite different for the small producer because he may not be able to continue operations until he achieves average results. Even here it should be noted that small producers do not customarily put all of their resources into drilling a single hole. They are skillful in sharing risks and dividing their resources among a number of operations. Not only do wildcatters share their risks with each other, but they frequently share them with outside investors in high income tax brackets who are risking, to a large extent, dollars which would be subject to high tax rates. Nevertheless, the nature of the risk of the individual wildcatter is of a different order than that of the large producer. It is partly for this reason that the decision is made in Part IV herein to create a separate class of Small Producers.

With regard to elements such as dry holes and wells which while technically successful do not yield gas in commercial quantities, the industry wide method of pricing gas well gas takes these factors into consideration by aggregating industry costs and setting a price under which aggregate industry revenues will cover these costs. Treated as part of industry costs and revenues, these factors do not involve substantial industry risk, so long as the industry is reasonably sure of having income against which to charge off exploratory losses. Therefore, it would be improper in determining the industry return to consider factors such as dry holes and low yield holes as an extra element of risk because they have already been included in the industry costs and revenues.

In comparison with other industries, gas production enjoys several favorable features.

Producers do not generally pay federal income tax on their gas production. This doesn't necessarily mean the industry can keep the resulting profits; under competitive conditions these would tend to be dissipated in lower prices along the line. But the industry need only earn 12 percent to net 12 percent instead of having to make some 24 percent before taxes to net 12 percent, as is true in most other industries. The lower target necessary to achieve equivalent results reduces the risk; it also reduces chances of variability in net earnings.

The demand for gas has been growing so rapidly that in general there has been little marketing problem in recent years for gas which is accessible to a pipeline or a processing plant.

In comparison with oil, two factors favor gas well gas production. First, gas is sold under long term contracts which provide an element of stability in comparison with oil. Thus gas reserves for which a long term sales contract has been negotiated are regarded as a more bankable security for loans than oil reserves. Second, prorationing limits the earnings of oil and gas from oil wells, and reduces the asset value of oil investments. Current prorationing limiting production to some ten days a month reduces earnings by approximately two-thirds. Gas well gas is only slightly affected by prorationing. On the other hand, gas is subject to the offsetting factor of FPC regulation.

Consideration of these various intangible factors does not indicate factors unfavorable to gas sufficient to warrant returns above those earned by the oil and gas producers. Accordingly, it is concluded that the rate of return should be 12 percent for new gas well gas.

D. LAG AND THE PERIOD OVER WHICH RETURN IS ALLOWED

In Distributor witness Roseman's model exploratory costs are treated as expensed in the year incurred. Since these E&D items are expensed there is no problem of lag between the time of their outlay and their recovery. Roseman capitalizes the production investment costs, which are generally capitalized by the industry. These are recovered through amortization charges (DD&A) over the life of the contract, twenty years. This is the equivalent of a depletion rate of 1 Mcf per day for each 7,300 Mcf of reserves, which is a common rate in the industry. Respondent witness Park uses a depletion rate of $\frac{1}{8000}$ which is equivalent to a twenty-two year depletion period. Neither Roseman nor Park gives strong reasons for his respective selection. No great criticism has been levelled at the use of either period. It is reasonable that the depletion period selected should coincide with the term of the contract which is typically twenty years. Accordingly, a twenty-year depletion period is adopted.

Is there a time gap between the outlay in the productive investment and the initial receipt of income from the investment? Roseman makes no allowance for such a lag. But if there is a time lag, it represents a cost for which an allowance must be made.

Roseman's capitalized costs represent a cross section of the industry's investment in a current year for finding and producing gas well gas. Two questions regarding time are raised with respect to Roseman's model: (1) Do production and revenue begin as soon as the investment is made? and (2) Is the entire investment completed before production begins?

Regarding the first question there is little specific data on the revenue lag associated with the investment in successful wells. Staff witness Lyon refers to four years as the average time lag between the beginning of exploration and the commencement of production, but he is referring to exploratory activity which includes expenditures for the earliest geological exploration and the first exploratory dry holes in an area, as well as the successful well investment which tends to come later. Respondent witness Hudson refers to a time lag of 3–5 years'

average; he also includes expenditures for both E&D and successful wells. Hudson's testimony was not supported by any study; it was only a rough estimate. Respondent witness Hinton states that contract negotiations for the sale of reserves may consume a year. Respondent witness Park, relying in part on Hudson, uses a three-year lag, but this lag also covers E&D as well as expenditures for successful wells. The testimony relating to the time lag involved in the investment in successful wells is general, vague and of little probative value insofar as it concerns a specific time period. The lag for successful wells is less than for E&D, but there is no definite evidence on the difference.

There is a waiting period after reserves are first discovered and the receipt of income. This period covers negotiations with the pipeline, construction of pipeline facilities, and the time required for certification by the Commission. For reserves produced from the initial wells in a field, this period can be longer than a year: for reserves added by later development, wells which are drilled after the main line is laid but which are covered by the original certification, the waiting period will tend to be short. Forty percent of the total outlays capitalized by Respondent witness Park are of the type expensed by the Distributor witness. If the over-all weighted lag is three years, the period Park uses, and if the lag on E&D is six years, then the lag on production investment will be one year. This conclusion and the assumptions on which it is based are reasonable.

Turning to the second question, whether the entire investment is completed before production begins, Roseman's model represents a cross section of total current industry expenditure in finding and producing gas well gas during a current year. The investment in successful wells includes all development wells and facilities that will be constructed in connection with the reserves which will be produced from the investment over the entire contract period of twenty years. In actual production conditions, during the course of the production period for the reserves, some development wells will be drilled primarily to increase deliverability, rather than to find new reserves; some equipment will be added that will relate to production for only part of the twenty-year period. Under Roseman's assumption that all development costs and all equipment costs are capitalized in advance of any production, it is evident that a return will be allowed for the full twenty-year period on some production investment that is used for only part of the twenty years. Thus a return is earned on these items for a longer period than appropriate. There is no way to estimate the extent of this extra return. It may be regarded as a kind of "negative lag," counteracting the positive lag during the period after the investment and prior to the receipt of income.

Taking the negative lag into consideration, it is concluded that an over-all lag of one year is proper.

There are four ways in which the cost effect of this lag can be handled:

1. It can be treated as inherent in the business, and as having been included in the allowed rate of return.

2. It can be regarded as similar to "construction work in progress" and an interest charge of some six percent allowed on the investment during the one-year period of lag.

3. The investment can be increased by a year's return on the investment at the appropriate rate of return, and the return allowed on the enlarged investment.

4. The return on the investment can be allowed for an extra year. The additional year's return is on gross investment as DD&A charges do not accrue until production begins.

Distributors contend that there is no net lag, and that in any event Roseman's exhibit reflects a one-year lag. In Schedule 10 of Exhibit 224 he uses a one-year lag in an illustrative study purporting to show that at a 9½ percent dis-

count rate, estimated future net operating income has a present worth roughly equivalent to his production investment cost. This study is the only place where he includes lag as a specific cost item. Respondents argue that there is a lag and that it should be computed in the manner of alternative 3 above, increasing both the capital investment and the return. Staff implies that there is a lag, but it argues that no allowance should be made for this lag because (a) it is wholly or partially offset by the negative lag, and (b) because Staff's historical cost of gas includes a return allowance on lag-reflective investments such as shut-in leases, undeveloped acreage, and incomplete construction. This latter point is valid only if Roseman's cost for new gas well gas is combined with Staff's historical cost for flowing gas well gas in establishing appropriate rate levels. If an allowance is to be made for lag, Staff argues that the proper method is alternative 4 above, increasing the return allowance to reflect a longer economic life of the investment.

Gas producers include undeveloped acreage in their asset accounts. Their books do not typically show a charge for waiting, not even the interest charge utilities make for "construction in progress." Hence it is arguable that the book return which has been adopted here reflects an implicit recognition by investors that this factor is included in the return. Analytically the situation resembles construction work in progress which has not yet been dedicated to the public interest. An interest charge is customarily allowed for this period for pipelines and electric utilities.

The problem of lag between the time of productive investment and the receipt of initial income was not raised at the hearing or on briefs. It was first explored in supplemental memoranda at the request of the Presiding Examiner. While the treatment of this item is not free from doubt, it is decided in the interest of conservative treatment specifically to allow for a one-year lag in computing the return allowance.

Lag does not increase the capital cost of the productive investment. It lengthens the period over which the dollars invested are recovered. Therefore full allowance for a one-year lag will be accorded by providing for a return for a twenty-one year period on the productive investment. The one-year lag does not apply to working capital as this allowance is not dependent on the economic life of the investment.

E. ALTERNATIVE METHODS OF DETERMINING THE RETURN ALLOWANCE

Respondent witness Park refers to earnings as the "carrying cost on finding and development expenditures." He says that the industry should receive net earnings of 8.45 cents per Mcf (after deducting 2.15 cents from 10.60 for growth). Park bases his return on a twenty-five year period, twenty-two years for depletion and a three-year lag. It has previously been determined that a twenty-year depletion period and a one-year lag are appropriate.

Park applies a ten percent discount interest rate to total finding and development expenditures to determine the cost of carrying reserves over their economic life. His reason is that he is relying on Respondent witness Terry. Terry testified that the industry must be afforded an opportunity to earn a discount rate or "true yield" of ten to twelve percent. By discount rate, Terry means a compounded interest rate which will equate future net revenues to present worth. He relies mainly on his judgment. Terry presents no studies of the industry cost of capital or of industry earnings such as are included in the Chase Manhattan annual publications with which he was associated for many years. He refers to the discount rate of eight percent which has been used in determining market value in certain sales of developed properties and argues that exploration is riskier and should earn more. In support of his judgment, Terry gives hypo-

thetical cases showing that, when the market value of a developed property is determined at an eight percent discount rate for an "ABC transaction," the anticipated yield to the operator who purchases the residual equity interest is estimated to be about twelve percent. He also refers to an actual 1956 ABC transaction where it was estimated that the purchaser of the equity interest will realize 11.6 percent.[39]

The risks and problems in dealing with future interests in a single project are different from the continuing processes of the gas industry's operations. In this industry, investment is continually occurring and producers are continually hedging by selling reserves for long-term contracts, continually exchanging past risks for future income; each transaction in the continuing process gives a chance for reappraisal in the light of then current factors, an opportunity which is denied the parties to a single long-term transaction. The industry's risks and operations are not analogous to those of an isolated purchaser in a single project.

Terry said that it was his "understanding" that the term "true yield" as used by Respondent witness Solomon "serves the same function as the term 'discount rate' in computing the value of producing properties." Solomon analyzed a series of hypothetical investment projects to show that a "true yield" on outlays can be less than the apparent yield on unrecouped investment where factors such as time lag and expensing instead of capitalizing occur, and where annual revenues are equal over the life of the investment. The true yield can also be greater than the apparent yield where growth is rapid, as it has been in the gas production industry, where wellhead revenues have increased from $344 million in 1949 to $1,790 million in 1960.

Respondent witness Solomon was unable to evaluate the various factors to show the true yield of the gas industry. There is no evidence that there is an actual disparity between the book yield and the true yield for this industry as it actually operates, or what the disparity is, if it exists. Regarding the usability of his true yield concepts, Dr. Solomon testified:

> Until somebody undertakes to find out what the true yield of this industry is, I can not tell if they are usable because I can not tell the problems that would be involved in ascertaining the true yield of the industry. They might be insolveable problems and therefore the true yield concept is only of theoretical interest or value. (169/20,040.)

With regard to Park's application of his proposed rate to both production investment and E&D, as has been pointed out earlier, it is general industry accounting practise to charge E&D expenditures against the revenues for currently flowing gas. Park's capitalization of E&D is a departure from general practise for which no warrant has been shown in this case.

The industry's books do not customarily include E&D in its assets or capitalization. The industry's earnings are not stated in terms of discounted revenues, or on the basis of some "true yield." Financial publications report the industry's book yield on its book investment and evaluations are made in the light of the many circumstances affecting the industry, just as for other industries. Return deals with the earnings investors receive from the enterprise. The standard adopted in this case is the actual published book earnings of a select group of oil and gas producers, twelve percent.

It is concluded that the appropriate rate of return is 12 percent on the average production investment and that on this basis the national average cost of new gas well gas is 16.88 cents.

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[39] The accuracy of these estimates of yield, made at the time of the transaction, will depend upon the accuracy in estimating the proved reserves and the future net revenues to be realized over a period as long as twenty years. The yield on the equity interest for the 1956 transaction will not be known until 1976.

III. The Basis for Pricing Old Gas Well, Residue and Casinghead Gas

A. THE COST OF OLD GAS WELL GAS

It has previously been determined that the current national average cost of finding and producing new reserves of gas well gas is 16.88 cents per Mcf. This cost applies to new gas well gas, the gas well gas that will flow in future years from the reserves found in 1960 and thereafter.

We turn now to the determination of the cost of old or flowing gas well gas, which for purposes of this costing analysis will refer to gas well gas flowing in 1960 (and thereafter) from reserves found in the main prior to 1960.[21]

The cost for old gas well gas is determined here by its relationship to the cost of new gas well gas. For this purpose the cost items for new gas well gas are divided into two categories, finding costs and other costs. Finding costs are determined by relating the average cost of finding old gas to the average cost of finding new gas. For the other cost items the same costs for old as for new well gas are used because they reperesent current costs.

The method used for relating the cost of finding old gas well gas to the cost of finding new is described in detail in Appendix C page 389. The general procedure follows these major steps: (1) The total volume of gas well gas produced in 1960 is distributed according to its estimated years of discovery; (2) the volume associated with each year of discovery is weighted by an index of drilling cost per Mcf of reserves added for that year (1960=100); and (3) a weighted average finding cost is then derived for gas well gas flowing in 1960 relative to the cost of finding gas well gas in 1960. The result is expressed as a percentage of the finding cost of new gas well gas.[22]

The record contains two separate estimates of annual additions of gas well gas reserves, one by Dr. Foster, the other by Dr. Joskow. It also contains two indices of drilling costs per Mcf of reserves added, one by Dr. Foster, the other by Dr. Joskow. Since both these indices show the trend in cost per Mcf of reserves added, they tend to reflect changes in productivity as well as changes in the cost and price level. For this reason these indices are more significant than indices which merely show changes in cost level.

To determine the finding cost relationship between old and new gas well gas, two separate computations are made, the first using Dr. Foster's estimates of annual findings of gas well gas and his index of drilling cost per Mcf of reserves added; the second computation uses Dr. Joskow's estimate of the annual findings of gas well gas and his index of drilling cost per Mcf of reserves added. Using Dr. Foster's data and index, the average cost of finding gas well gas flowing in 1960 is approximately 69 percent of the cost of finding new gas well gas in 1960. Using Dr. Joskow's data and index, the average cost of finding gas well gas flowing in 1960 is approximately 74 percent of the 1960 cost of finding new gas well gas. A conservative conclusion is that the average finding cost of the gas well gas flowing in 1960 is 75 percent of the estimated 1960 cost of finding gas well gas.

The table on the following page shows the computation of the cost of old gas well gas. The finding costs (production investment and E&D) are derived by discounting these items for new gas well gas by 25 percent. A return of 12 percent is allowed on gross production investment for one year and on average production investment for twenty years. The 12 percent return is allowed on old gas, although when discovered some of it was considered an almost worthless product

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[21] Gas flowing in 1960 typically comes from reserves found prior to 1960. These reservoirs will continue to flow until they are exhausted. The gas flowing from these old reserves in future years will also be old gas. The technical coverage of the term old gas will be discussed below in the section on Rate Design, Part V.

[22] *Cf.* 220/26,049.

and much of it was found as an incident in a search for oil, and although the price for committed gas does not serve the supply eliciting function that it does for directionally found new gas well gas. The current costs (production operating expense, liquid credit, regulatory expense, and working capital) are not discounted; these items are the same as those used in the cost of new gas well gas. The result is 12.82 cents as the national average cost of old or flowing gas well gas.

Examiner's national cost of new and flowing gas well gas

	New gas well gas	Flowing gas well gas
	Cents	*Cents*
Production Investment Costs	3.96	2.96
Return @ 12% with one-year lag:		
On average investment	5.21	3.91
On working capital	.20	.20
Exploration and development costs	4.12	3.09
Production operating expense	2.88	2.88
Net liquid credit	(2.68)	(2.68)
Regulatory expense	.14	.14
Subtotal	13.82	10.50
Royalty	2.11	1.60
Production tax	.95	.72
Total	16.88	12.82

The cost of old gas well gas determined here is the analogue of the cost of service used by Staff to determine the cost of all gas well gas, old and new. Under both the cost of service method used by the Staff and the cost method used here, current costs are combined with historical average investment costs.[23] The method used here is simple and relies substantially on publicly available data. Since it is based on estimates of real costs and real cost relationships, and since it minimizes the cost allocation problem, it is more meaningful as a cost than the results produced under the allocation methods employed in the cost of service studies of Staff and Respondents.[24]

The significant difference between the cost of old and new gas well gas under the costing procedures used here is that the finding cost of the new gas is based on the current finding cost and a reproduction cost rate base is used for the capitalized production; whereas for old gas well gas the finding cost and the rate base are based on historic cost.

The procedures here applied afford a simple and reasonable method for determining the historic cost of flowing gas well gas by its relation to the cost of new gas well gas. The cost used for new gas well gas is a reasonable estimate of its real cost. Thus the method provides a reasonable estimate of the real cost of old gas well gas.

B. BASIS FOR PRICING CASINGHEAD AND RESIDUE GAS

Casinghead gas as used herein refers to raw oil well gas sold directly to a pipeline. Residue gas is gas which has been processed at a natural gasoline plant where liquids are extracted and where other processing is performed. In Permian, ninety-six percent of the raw gas delivered to gasoline plants is oil well gas.

The supply of casinghead gas is less reliable than that of gas well gas, because it is produced only in the course of oil production, regardless of the demand for gas. Nationally casinghead gas which is at low pressure or whose quality is otherwise inferior commonly sells at a lower price than gas well gas or residue gas. Permian casinghead gas is not of pipeline quality; it is at low pressure and

[23] In Staff's historical cost presentation, E&D is determined on a current basis in accordance with its allocation method. In the Examiner's determination of the cost of old gas well gas, the E&D allowance is based on average historic E&D cost; consistently, in the Examiner's current cost study for new gas well gas, current E&D is used.

[24] These will be discussed in detail in Appendix D, p. 392.

otherwise generally inferior in quality except with respect to Btu content. Permian casinghead gas has always sold at a lower price than Permian gas well or residue gas. Permian casinghead is of sufficiently poorer quality than residue gas to warrant its being classed in a separate category for pricing purposes to reflect its lower value.

Like casinghead gas, the supply of most Permian residue gas is less dependable and less responsive to the demand for gas than gas well gas because the supply of oil well gas from which it is derived also depends on the demand for oil and the prorationing rules, not on the demand for the gas. Oil allowables expire at the end of each month, and the purchasing pipeline frequently suffers shortages of residue gas at that time. Freeze-ups in oil production in winter sometimes interfere with residue gas supplies. The supply of gas well gas is more regular and can be increased to meet changes in residue gas supply and also to meet peak demands. On the other hand, residue gas is delivered in large quantities by the gasoline plant at a single point, whereas typically the pipeline has to obtain gas well gas at the wellhead and do its own gathering.

The historic price relationship between gas well gas and residue gas is indicative of the relative values of these two gases. Nationally, gas well gas and residue gas commonly sell at about the same price for supplies of equal quality under equal conditions. In most areas gas well gas is dominant and governs the market price. In Permian this relationship is somewhat clouded by two factors: gas well gas is not the dominant gas in Permian; and the competitive struggle between Transwestern and El Paso with respect to price and supply has distorted some price relationships.

Prior to 1945, El Paso used gas well gas almost exclusively, the residue gas from Permian being largely vented, used by the producers, or converted into carbon black. With the construction by El Paso of its pipeline from Permian to California during the post war period, the demand for Permian residue gas expanded. The historic average price relationship among Permian gas well, residue and casinghead gas is indicated by two studies of the weighted average initial base rates. (Initial base rates are a better indicator of bargained-for price relationships than average prices because they avoid the distorting effects of escalation resulting from the action of third parties and uneven escalation.) The first study, using the initial base rates[25] of all Permian contracts on file with the Federal Power Commission during 1960 shows the relationship among gas well, residue and casinghead gas as (using the average price of gas well gas as an index of 1) 1.0, 0.75, and 0.66, respectively.[26] The second study shows the weighted average initial base price by type of gas for all Permian contracts filed by El Paso during the period 1957–1960. This relationship, again using gas well gas as an index of 1, is 1.0, 0.88, and 0.72 for gas well, residue and casinghead gas.[27] These and other pertinent price data are shown on the table on page 359. El Paso is by far the largest pipeline purchaser in Permian and its purchase price pattern is significant.

In the El Paso renegotiation the price of pipeline quality residue gas was established at 17 cents with similar grade gas well gas at about 15.5 cents. These prices are in part the result of Transwestern's efforts, beginning in 1958, to "blast" its way into El Paso's supply area by acquiring large blocks of residue gas controlled by the gasoline plants, which it needed for its certification. The El Paso renegotiation was made under the thrust of an even greater threat-

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[25] Contracts on file June 7, 1954, were priced at the rate in effect on that date.

[26] Distributors' memorandum, dated August 30, 1963.

[27] Distributors' memorandum, dated August 30, 1963. Whether the average quality of residue gas has been improving in relation to gas well gas is not shown.

Relative prices of gas well, residue and casinghead gas sold under Permian basin FPC rate schedules

	Gas well gas	Residue gas	Casinghead gas
A. Initial base rates (or June 7, 1954 rates) under rate schedules on file in 1960:[1]			
Average price	*Cents* 11.70	*Cents* 8.80	*Cents* 7.60
Index (gas well gas=1)	1.0	0.75	0.66
B. Initial base price under El Paso purchase contracts entered into 1957–60:[2]			
Average price	12.5	11.0	9.03
Index	1.0	0.88	0.72
C. 1960 Actual revenues under rate schedules on file in 1960:[3]			
Average price	13.12	12.85	9.98
Index	1.0	0.98	0.76
D. Revenues under rate schedules on file in 1960 at rates in effect on 12/31/60:[4]			
Average price	13.91	14.44	11.57
Index	1.0	1.04	0.83

[1] Distributors' memo dated 8/30/63 and Exhibit 289, Table 1.
[2] Distributors' memo dated 8/30/63 and Exhibit 22.
[3] Exhibit 289, Table 1.
[4] Exhibit 289, Table 1.

ened increase in price due to favored nation clause operation. The price for the dominant residue gas was thus subjected to intense upward pressure.[28] The price relationship between residue and gas well gas in Permian represents something of an anomaly. The increase in the proportion of gas well gas in Permian due to recent discoveries at depths below 7,000 feet as well as the lessening of this competitive pressure would tend to equalize the prices for similar quality Permian gas well and residue gas.

Many Permian contracts permit the seller to deliver either residue gas or gas well gas to the pipeline, provided that processing by the seller does not reduce the Btu content below a specified minimum. Thus the largest sales contract in the Staff's compilation in terms of 1960 deliveries is a Phillips rate schedule for a sale to Northern from four gasoline plants and two extensive gas well gas producing areas. Under this contract Phillips has the option to deliver raw gas at the well-head or to process the gas and deliver the residue therefrom. When the buyer permits the seller to substitute one gas for the other, it is an indication that the two types of gas have equal value.

Turning now to the cost aspect, casinghead and residue gas are produced jointly with oil and liquids, respectively. As has been discussed previously, joint costs can be divided on various bases for specific purposes. The various allocated historic costs for residue gas and oil well gas submitted by the parties are discussed in Appendix D. It is there concluded with regard to the aggregate of the allocations used by each of the respective parties in their various estimates of the "cost" of residue[29] and of casinghead gas, that none of these results is

[28] As an instance of this, Transwestern in 1958 contracted to pay 21.8 cents for a certain residue gas supply a portion of which was then being sold to El Paso for 10 cents. The Commission authorized abandonment of the sale to El Paso and certificated the sale to Transwestern at a conditioned initial price of 18 cents. This residue gas supply contributed nearly 24 percent of Transwestern's total dedicated reserves at the time the pipeline was first certificated. *Transwestern Pipeline Company, et al.*, 22 FPC 391, 398–399 (1959).

[29] The problem here is not just determining the "cost" of residue gas on the basis of dividing the joint costs of the gasoline plants between the residue gas and the liquids. There is also the problem of piling these divisions high on the aggregate of the divisions used to divide the joint costs of the oil wells between the oil well gas and the oil. While Warren submitted a division of the gasoline plant joint costs, it relied on the contract price of oil well gas to determine the cost of the joint intake gas cost.

meaningfully representative of or related to cost, or is intellectually satisfying as a rational, equitable or fair division of the total joint costs.

Because of the fictional nature of the separate "costs" for residue gas; because of the pre-eminent position in the national market of gas well gas; because nationally, gas well gas and residue gas commonly sell at about the same price for comparable supplies; because the historic average initial base price in Permian for residue gas does not exceed that for gas well gas; because the higher price for Permian residue gas in relation to that for gas well gas of similar quality is anomalous, of relatively recent origin, and reflects temporary economic factors whose significance is waning; because the growing unity of the southwestern gas market and the increasing importance of gas well gas in Permian would tend to equalize the prices for Permian gas well gas and residue gas of similar quality and value in a free market; and because of the general superiority in value of gas well to residue gas (except with respect to gathering), it is concluded that Permian residue gas should be priced on the basis of an equal value relationship with gas well gas.[30]

Permian casinghead gas is of distinctly poorer quality than Permian gas well and residue gas. This physical inferiority has always been reflected in a substantially lower average price, and this relationship would undoubtedly continue in a free market. A relative value of 0.75 to Permian gas well gas reasonably reflects the lower average quality and market value of this gas, as measured by the historic Permian price relationship.

In determining the basic or average prices and price relationships for the various types of gas, emphasis has been placed on four factors: cost, relative value, supply, and quality. The situation in this industry does not lend itself to the general application of a single factor, such as cost, to all situations. Meaningful costs can be determined in this case only for gas well gas. The influence of price on supply is significant only for new gas well gas. Value in relation to gas well gas has been used to determine the price basis for residue and casinghead gas, because here cost and supply factors are not meaningful or significant. Quality has also been considered, particularly for casinghead gas.

IV. Permian Area Rates for Small Producers

There are some 350 respondents in this proceeding. There are some 1,400 producers in Permian including those whose sales are not subject to the Commission's jurisdiction. If percentage producers are included, the number of those having direct interests in Permian gas production totals some 2,600.

The basic difference between the small and the large producer is that the risks of the business are materially different for each. The small producer's exploratory activity is not extensive enough to afford him the likelihood of achieving average results, whereas the large producer over the years can approach this result. As TIPRO witness O'Hern points out "* * * a series of dry holes are costly to the major producer, but generally fatal to the smaller producer." (2/1004.)

The information in the record is much more complete for the large producers, those making jurisdictional sales of 10 million Mcf annually on a national basis,

[30] Faced with a similar problem, the impossibility of determining a meaningful cost of freight carried on passenger planes, the Civil Aeronautics Board fixed minimum rates for such freight on the basis of the cost of freight carried in freight planes. *Air Freight Rate Investigation*, 9 C.A.B. 340 (1948).

than for the smaller producers. The Staff exhibits based on the results of the Appendix B and C questionnaires sent to the Respondents include the results for all but one of the large producers. For the approximately 300 respondents in the under 10 million Mcf group, the Staff exhibits include the results for only 94 producers. Of these, 76 were based on Appendix C which is less detailed than the Appendix B required of the large producers.

While the cost and income data shown in the Appendices for the small producers is less representative than for the large producers, comparisons between the two groups are significant. On a per Mcf basis, the small producers had relatively larger dry hole expenses, a smaller proportion of geological and geophysical expenses, and a smaller proportion of lease acquisition expenditures. On a unit basis smaller producers had a relatively larger DD&A expense than the larger producers.

The comparative ratios regarding income and net investment for the two groups of producers are also different. Exhibit 255, schedule 4, shows that the ratios of income available for income taxes, cash dividends and working capital to total revenues were 16.2 and 7.3 for the large producers and the small producers, respectively, with the weighted average ratio of the two combined, 15.7. The ratios of net revenues to net investment were 15.0, 4.0, and 14.1 for the large producers, small producers and the weighted average. The ratios of income available for income taxes, cash dividends, and working capital to net investment were 7.8, 2.5, and 7.4 for the large producers, small producers and for the weighted average. The descriptions of the way they operate by the witnesses for the small producers also suggest that they are engaged in a business that differs in material respects from that of the large producers.

Staff argues that differences in cost vary with the lease and not with the size of the producer.[31] But the operations prior to drilling are different, the large producers spending a greater proportion of their finding expenditures on lease acquisitions and scientific activity, and the small producers preferring to test by the bit. Thus even if the lease costs of the two groups be similar, the operations of the large producer who participates in the drilling of large numbers of wells annually is different than that of the wildcatter.

The burden of complying with the rate filing and certificate regulations is onerous for the typical small producer. The administrative problem of administering rate schedules and certificate applications for hundreds of additional producers is not light.

The impact upon the consumer results only from the average price paid by the pipeline for all of its gas, and the amounts of gas sold by small producers do not substantially affect the results as a whole. A few large producers[32] dominate the market. Fewer than 50 of them, each with national annual jurisdictional sales of over 10 million Mcf, sell 87 percent of the jurisdictional gas sold in Permian. Nationally some 75 large producers make 82 percent of the national jurisdictional sales.

The class of small producers might be limited to those selling nationally 2 million Mcf or 5 million Mcf annually. While there are a considerable number of producers in the 5–10 million Mcf category, their interstate sales represent only 2 percent of Permian jurisdictional sales, and only 5 percent of national jurisdictional sales. The practical dividing line seems to be at the 10 million Mcf level.

Under Section 154.91(e) of the Regulations the Commission has already created a special class of producers: sellers under percentage type contracts have

[31] The testimony of TIPRO's witness Abel indicates that even in the matter of lease operations the small producer's methods differ.

[32] As used here, producers include sellers of residue gas from gasoline plants.

been relieved of the rate filing and certificate requirements under Sections 4 and 7 of the Act on their percentage sales.[32]

Section 16 of the Act provides:

> For the purposes of its rules and regulations, the Commission may classify persons and matters within its jurisdiction and prescribe different requirements for different classes of persons or matters.

Because of the circumstances described above, particularly the special nature of the risks affecting their operations, the limited scope of their individual operations and the limited impact on the interstate gas market of their combined operations, and because of the undue burden which complete compliance with the regulatory system entails, it is concluded that the public interest and the public convenience and necessity require the classification of producers between small and large producers. Those producer respondents whose national jurisdictional sales for 1960 and for each year thereafter were less than 10 million Mcf shall be designated for rate and certificate purposes as "Small Producers", except that this class shall not include sellers of residue gas from gasoline plants. Gasoline plant sellers are not included in the class of Small Producers because they are not subject to the special risks of small producers, because it is not an undue burden on such operators to comply with the Commission's filing requirements, and because special treatment for a gasoline plant would tend to disrupt the supply arrangements of other gasoline plants by affording opportunities to percentage sellers with their short term contracts to switch to small producer plants. For rate and certificate purposes a second class of respondents will be designated "Large Producers", which will include all respondents herein who do not come within the classification of "Small Producers."

An appropriate regulation defining more specifically the classes of Small Producers and Large Producers should be issued. For purposes of this classification, a producer will include partners, substantial stockholders or holders of beneficial interests. In determining classification, the sales of a producer will be aggregated with those of affiliated or related producers including, without limiting the generality thereof, producers that to a material degree are under common ownership or control or operated in a common interest.

Any producer desiring to be included in the class of Small Producers may file an application with the Commission for such classification. Classification as a Small Producer will be granted to those meeting the qualifications for this class. It is concluded that the public convenience and necessity require that members of this class be granted a general certificate authorizing jurisdictional sales of natural gas. The certificate will cover all jurisdictional sales made by a Small Producer while it is validly outstanding. If in any year a Small Producer makes jurisdictional sales of 10 million Mcf or more, he shall cease to be a member of the class of Small Producers at the close of that calendar year, and his general certificate shall not apply to new contracts entered into thereafter. In appropriate circumstances the Commission may reinstate such a producer to the class of Small Producer. These general certificates issued on the basis of this hearing would eliminate the delays involved in certificate hearings, which TIPRO has emphasized constitute an undue burden on Small Producers.

It is further concluded that, taking into consideration the special circumstances surrounding the operations of the Small Producers, the facts of record show that the Permian area rates of this class are and have been just, reasonable and not unduly discriminatory or unduly preferential.

With respect to the certificate applications of the Small Producers consolidated herein, their applications should be granted subject to the same conditions re-

[32] Percentage sellers as such are primarily producers of oil.

garding the proposed initial prices as for the Large Producers, prescribed in Part V at page 371 below. However, upon request filed within thirty days of the Commission's decision herein, any person whose certificate application has been consolidated herein may petition to make the sales therein applied for pursuant to the general certificate to be authorized for Small Producers, instead of under the certificate specifically applied for. This petition will be granted if the person is determined to be eligible for the class of Small Producers.

In view of the circumstances peculiar to their operations, the class of respondents designated Small Producers are relieved of the requirements of filing rate schedules and specific certificate applications under Sections 4 and 7 of the Act, except that they will be required to obtain a general certificate, which will be issued when their eligibility as a Small Producer is determined. Small Producers will be required, pursuant to appropriate regulations, to file simple annual statements with respect to their jurisdictional sales. Such a regulation would also require the pipeline customers of Small Producers to include in their annual reports information with respect to their purchases from this class.

As a practical matter, it is not likely that pipelines entering into contracts after the date of decision herein will, except in unusual cases where gas is otherwise unavilable, pay more to Small Producers than the ceiling prices established herein for Large Producers. In an unregulated market under normal conditions, the Small Producer would tend to receive the same price as the Large Producer. The pipelines are only interveners and cannot therefore be directly governed by rules laid down in this proceeding. However it is appropriate to let it be known that as a matter of policy a pipeline paying more than ceiling prices for new gas after the decision herein will be expected to justify its action in any future rate case where its costs are in issue.

With respect to old gas sold by percentage sellers, there is a possibility that pipelines whose rates are regulated on an individual company cost of service basis could invade the territory of established gasoline plants and offer higher prices to Small Producers to induce them to switch. However, Section 154.91(e) of the Regulations specifically makes percentage sellers subject to Section 7(b) of the Act requiring permission to abandon a sale.

Permitting the rates of Small Producers to be determined on a different basis than that used for large producers will not result in triggering favored nation clauses in the contracts of the latter. In the first place, only a tiny portion of Permian contracts now contain favored nation clauses. Second, the rates for all old gas sold by Large Producers, which will be established below, are fixed and are not subject to change without the permission of the Commission. Third, favored nation clauses in contracts presently on file are found below to be contrary to the public interest and are made prospectively inoperative and of no legal effect. Fourth, under Section 154.93 of the Regulations, favored nation clauses have been made inoperative and of no effect at law in any contract executed on or after April 2, 1961. *Federal Power Commission* v. *Texaco Inc.*, 377 U.S. 33 (1964).

It should be noted that, in determining the cost of new gas well gas, the essential cost items were determined on an industry wide basis. Thus the costs of the class of Small Producers were considered in the basic computations used herein.

Differentiating the class of Small Producers from large Producers for area rate purposes is in consonance with the economics and institutions of the industry.

V. Permian Rate Design for Sales by Large Producers

As used herein the term "rate design" covers both the method for translating national revenue standards to a Permian area basis, and the determination of the

appropriate distribution of the resulting revenues in the form of rates for gas sold by Large Producers.

A. TRANSLATING NATIONAL REVENUE STANDARDS INTO PERMIAN PRICING STANDARDS—GEOGRAPHICAL DISCOUNT

We turn to the first problem, translating the national average revenue standards into Permian standards. There are two area value factors for which adjustments to the national standards should be made: (1) Location value, the value to the consumer of gas supply that is adjacent to the consumer market, resulting in savings in transportation costs; and (2) Relative demand on the producing area from the marketing areas it supplies. Area value differentials reflect the relative value of gas in different areas arising from geographical and economic factors. The economic function of area differentials is to promote exploration for gas in and the flow of capital to areas where gas is of greater value to the economy than in other areas.

As to location value, Permian gas is 900 to 1,300 miles distant from its principal points of interstate use in California, which is an average haul considerably longer than the average haul from the Gulf Coast to its markets. Of course, a considerable amount of Permian gas is consumed locally, in field use, by local utilities and in the manufacture of carbon black. While some Gulf Coast gas is transported all the way from Mexico to Boston, much more of the gas produced in that area is locally used; much of it goes to the middle west and the south at a relatively short haul. Permian is in a section of the country which is not now and does not appear to be in the process of becoming a major industrial center, whereas the Gulf Coast is experiencing rapid industrial growth. For these reasons Permian gas is less valuable than gas discovered on the Gulf Coast and other areas nearer to their markets, and therefore less valuable than the average for the nation.

The California market is important and growing. But it is difficult to evaluate the demand-supply relationship for this market: first because this involves the over-all determination of factors such as potential Canadian supplies, and supplies from the Rocky Mountains and other western areas, and second because Permian is only one of several sources of gas for the West Coast and Arizona-New Mexico. The increasing interconnection of various consuming areas to different producing areas adds to the difficulty of evaluation.

The national price structure reflects to a considerable degree differences in value factors. To this extent, a measure of the relative value of average Permian to average national gas is indicated by the difference for a representative period between average new contract prices in Permian and in the seven southwest states[34] which account for 95 percent of all production sold to pipelines in the nation in 1960. It should be noted that, although Permian production includes a greater proportion of casinghead gas than the national average, most Permian casinghead is processed and sold to pipelines as residue gas. Of Permian sales to pipelines in 1960, only some nine precent was the lower priced casinghead gas.

For many years El Paso was the only substantial interstate buyer in Permian. Since there was competition among pipelines in most other areas during this period when demand was rising rapidly, there was a tendency for Permian price increases to lag behind the national average. The Permian-national price relationship during this period would therefore not directly reflect an appropriate value relationship. Specifically, prior to 1954, El Paso was the only interstate pipeline buyer in Permian. Northern began purchasing there in 1954, and West Texas Gathering Company and Permian Basin Pipeline Company began buying in Permian in 1957. During 1958 and 1959, Transwestern was actively contracting for new gas in Permian in competition with El Paso. These were years of

[34] Arkansas, Kansas, Louisiana, Mississippi, New Mexico, Oklahoma, and Texas.

competitive buying in Permian, culminating in the El Paso renegotiation beginning in 1959 and extending into 1960. The same situation prevailed in other areas. While buying in Permian was competitive during this period, it is probable that in other areas where competitive buying had been common for a longer period, price levels had risen to a comparatively greater degree than in Permian. The spread between weighted average Permian initial base prices under long-term contracts and the national average for these three years was 2.2 cents. The Distributors urge that this figure be used as the location factor or geographical discount. The price spread between Permian and the national average (as measured by the average for the seven southwest states) declined after 1960. In 1961 Permian prices continued their rise while the national averages fell back almost a cent. Permian remained steady in 1962 while the national average again rose. The average spread for the three years 1960, 1961 and 1962 was 1.27 cents. This result may have been influenced by the adoption of the Commission's area guideline prices on September 28, 1960, since producers could thereafter generally avoid contested "in-line" hearings by setting initial prices within the guidelines; however, the record does not show the effect of the guidelines on such prices.

Other factors in the decline in the price spread between Permian and the national average are the growing unity of the market in the seven southwestern states and the increasing inter-market availability of gas. The last item is of growing significance, and it is in considerable part for this reason that it is concluded that the average price differential for the three most recent years, 1.27 cents, should be employed here as the standard. This figure will be rounded to 1.25 cents.

B. PRICE STRUCTURE FOR OLD GAS

It has already been determined that for purposes of this proceeding the national revenue standard for old gas well and old residue gas should be 12.82 cents. This is the point of departure for determining Permian prices for these types of gas. The next step is to apply the geographical discount for Permian of 1.25 cents per Mcf, which produces 11.57 cents per Mcf. This figure will be rounded to 12 cents per Mcf,[25] which will serve as the Permian revenue standard for old gas well and residue gas. It represents the area average unit revenue that should be realized from the sale of these gases. The total revenue to be realized is, of course, the volume of gas times the revenue standard. The rate design problem is first, to insure that the rate structure is such that producers can reasonably obtain these revenues, and second, that the price structure properly reflects price differentials for the different qualities and values of gas. Rate design is concerned with insuring that producers as a group have a practical opportunity to realize the revenue standard under their contracts and with the distribution of that total amount among the various contracts.

In most industries if a ceiling price is set, all parties are in a position to charge that price, thereby obtaining the revenues determined appropriate under the revenue standard. But in the gas production industry this does not follow. If the ceiling is set at 12 cents many producers could not under their contracts charge 12 cents, and so area producers would receive less than the revenue standard. Hence the area revenue standard cannot be used as the ceiling price unless the standard is set at an unreasonably high level.

The value of gas to the buyer depends on certain quality and value features. Thus high pressure gas located near the main pipeline and near the point of consumption is more valuable than gas having the opposite features, other things

[25] The upward adjustment provides a cushion for changed circumstances, as discussed below.

being equal. The major quality features of gas include: pressure, Btu sulphur content, water content. Major non-quality value features include: location of the delivery point in relation to where the gas is to be transported and in relation to the pipeline's facilities, swings between minimum, average, and maximum delivery, the vintage of the contract which involves the cost levels and the demand then prevailing, cost of gathering in relation to size of the delivery, amount of the gas available, minimum take or pay provisions, the buyer's needs for particular gas at a particular time and place. To the seller, the rate of take is also an important value factor. Some of these value and quality factors involve a specific cost to the producer; others are simply a characteristic of some gas. The price expresses the "bundle" of considerations to the buyer and to the seller.

Maintenance of quality and value to the buyer in the rate design is imperative. If ceilings are set and the average quality or the value of the gas sold at the ceiling deteriorates, values are being diluted. Lowering the quality of the gas is the same as raising its price. If the pipeline purchases gas of lesser quality than previously, then bears the cost of additional processing to raise the gas to its former standard, and includes the added costs in its cost of service, the result is the same as if the prices charged for the gas by the producer were raised. A pricing system that fails to insure quality and value is a sieve.

A price structure affording the opportunity to balance the revenues received with the revenue standard and also insuring the maintenance of quality and value can be effectuated under the "spectrum" rate system, which uses two industry institutions: the long-term contract, and the multiple price structure. The first step in this system is to establish the revenue standard. The second is to determine a "gold standard" for pipeline quality gas and for other value considerations to the buyer. The gold standard is the premium above the average price for superior quality and value. It determines the ceiling price for the type of gas. Pipeline quality gas is gas that the pipeline can take into its system without material additional treating or compression.

There are two estimates in the record for the level of the gold standard. Witness Frazier's estimate was that it should be one cent. Distributor witness Jensen relying partly on Frazier and partly on his own analysis of the provisions of the Permian rate schedules concluded that there should be a 1.5 cent gold standard adjustment. If a gold standard of 1.5 cents is used for residue gas, with an average realization of 12 cents, and if the contract rates are compressed as described below, there will be a range of 3.4 cents between the rates at which 30 percent of the one-stage residue gas will be priced and the rates for 95 percent of the three-stage gas.[36] This is in consonance with the historical differentials for residue gas.[37] Accordingly, Jensen's differential of 1.5 cents is adopted as the gold standard for residue gas.

There is little gas well gas with a pressure as low as 50 pounds, which is typical of low quality residue gas. Hence the range in quality of gas well gas is less than that for residue gas, and a gold standard of one cent would be suitable for old gas well gas. However it is convenient, simple and reasonable to have the same ceiling for old residue and gas well gas, and since the size of the gold standard does not affect the total revenues received but only the distribution of the revenues among the various contracts, it is concluded that a gold standard of

[36] Permian residue gas undergoes three or four stages of compression to render it of pipeline quality and to facilitate the extraction of liquids. The gasoline plants are referred to as "one-stage", "two-stage" or "three-stage plants" to describe generally the pressure to which the gas is compressed.

[37] Typical initial prices paid by El Paso for residue gas have been:

	1953	1958	1960
1 Stage Plants	7.0	8.0	13.5
2 Stage	7.5	8.5	14.0
3 Stage	10.0	11.0	17.0
Differential	3.0	3.0	3.5

1.5 cents should also be applied to old gas well gas. Thus the gold standard for residue and gas well gas is 1.5 cents above the 12-cent average, giving a ceiling for these types of gas of 13.5 cents.

The third step is to compress all rates for Permian residue and gas well gas on file with the FPC during 1960 in this fashion: All such rates shall be reduced by a uniform percentage so that the average revenues are 12 cents per Mcf for each type of gas, except that all rates shall be reduced at least to 13.5 cents and no rate shall be reduced below 10 cents.

The results are approximately as follows:[38]

Residue gas

Contract rate	*Allowed rate*
10¢ or less	Contract
10.0–11.86	10.00
12.0	10.12
12.0553	10.17
12.25	10.33
13.25	11.17
13.50	11.39
14.0	11.81
14.50	12.23
16.0 or more	13.50

Gas well gas

Contract rate	*Allowed rate*
Less than 10¢	Contract
10.0–11.8255	10.00
12.00	10.15
12.50	10.57
13.50	11.42
14.50	12.26
15.00	12.68
15.50	13.11
15.7093	13.28
15.7862	13.35
15.9589 or more	13.50

The ceiling prices for the specific contracts for old gas well and residue gas are determined on the basis of such tables. (Hereafter reference to the specific ceiling prices for old gas well and residue gas contracts will refer to the specific prices determined from such tables.) This method preserves the relative differentials in the existing contracts and uses them to reflect the relative value and quality differentials in the various contracts.

[38] The rates as of June 1, 1963, under the rate schedules on file during 1960, furnish the most recent pattern, and it is preferable to use these more recent rates to those in effect on December 31, 1960. Jensen's Exhibit 337 provides the complete data and tables for accomplishing the results using either data, with several variations. The mechanics of the compression method are shown in Appendices K and L of Warren's reply brief.

The tables above show the results for the Large Producers; they exclude the residue gas sales of persons who sold less than 10 million Mcf, but who nevertheless are included in the class of Large Producers because they are sellers of residue gas from gasoline plants. The inclusion of these sales would not change the results to any significant degree. The table does not take into consideration rates that may be raised pursuant to section C below regarding minimum rates. The changes required to take this into account would be slight. The arithmetical calculations can readily be redone with Jensen's tables and the method of calculation described in Warren's reply brief.

The effect of compression in the tables above is to reduce contract prices between 11.8 cents and 16 cents by 15.5 percent, approximately, for each type of gas. Rates above 16 cents would be reduced by a greater percentage and rates below 11.8 cents, approximately, by a lesser percentage.

It is extremely difficult in any case, and probably impossible on this record, to establish a complete set of differentials for the various value and quality characteristics of gas. As has been discribed above, the contracts embody a multiplicity of provisions reflecting many items of negotiation between the buyer and the seller. The cost elements cannot really be isolated because this involves all the frailties of the allocations used in determining the "cost" of producing and processing gas. The CPUC advocates using the differentials proposed in the Commission's Notice of Proposed Rulemaking in Docket No. R–200,[39] but there is no basis in this record for adopting them. Staff virtually abandons efforts at quality differentials, and its price structure permits practically all gas of the same type to sell at the same ceiling regardless of its quality and value. Respondents would set the ceiling for all Permian gas at 20 cents, leaving differentials for lower value and quality to be determined by the negotiations of the parties. Since the highest price currently being paid for Permian gas are a few Transwestern contracts at 18 cents, they are probably correct that a 20-cent ceiling would produce lower prices for gas of less than top quality. But the resulting price level would be unreasonably high.

The existing contract structure undoubtedly contains instances where price was influenced by the superior bargaining power of one of the parties. However, at this stage of our knowledge and on this record, the relative prices in the existing contracts based on the negotiations of the parties provide a sounder means of determining the relative price structure for old gas contracts than the establishment of specific differentials.

Instead of compressing existing rates to the extent required to balance over-all average revenues with the revenue standard, one can start with the last unsuspended rate for all contracts and permit equal increases for all such rates up to the level at which a balance is achieved between the revenues allowed and the revenues received. This method is advocated by witness Frazier who appeared as the Examiner's witness and Distributor witness Jensen.[40] The difficulty with applying this method is that the Commission's policies in the past did not result in uniform treatment of the last firm rates of all companies. For example, when the suspension level was raised from 9 to 11 cents, companies generally filed motions to terminate pending Section 4 proceedings where their suspended rates were below the new suspension level. The motions to terminate were generally granted, except with respect to companies that had pending Section 5(a) cases, such as Phillips. For this reason, many of the last firm rates of Phillips and other companies similarly situated are substantially below the average. Using the last firm rate as a starting point for equal increases would discriminate against these companies. The compression method treats all currently effective rates alike, whereas under the last suspended rate method the final rate structure is made to depend on the suspension policies of the Commission during the years, 1956–1960.

The compression method results in lower refunds than the last unsuspended rate method because the percentage reduction applies to all rates, whereas under the latter method, only the suspended rates are affected.[41] With respect to prospective rates, under Section 5 of the Act an unsuspended rate has no greater status than a suspended rate. The determining factor is that the compression method is preferable on its own merits; the refund element is a resultant that follows after the rate level and structure have been determined.

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[39] A rule making proceeding instituted on May 22, 1961, relating to quality price differentials and in which comments of interested parties have been filed.

[40] If the general level of rates is to be reduced, Respondents prefer the compression method.

[41] The same effect could be achieved for the compression method by compressing only the suspended rates below the ceiling; but this also breaks up the existing rate pattern.

Turning now to casinghead gas, the same principles apply.[42] The revenue standard for Permian casinghead gas has been determined to be 75 percent of the Permian residue gas standard which results in a price of 9 cents per Mcf. Since no Permian casinghead gas is of pipeline quality and practically all is low pressure gas, differences in quality and value are less than for residue gas. A gold standard of 1.0 cent is therefore appropriate. Specific prices applicable to old casinghead gas should be determined by compressing the old contracts in the same way as for residue gas with no prices reduced below 7 cents per Mcf.

There are some El Paso casinghead contracts for the Spraberry area where payment for the casinghead gas is on the basis of the residue gas derived from the casinghead gas plus a percentage of the liquids. If the price for gas sold to a pipeline is partly in terms of a percentage of the liquids derived from the gas, then the price for the sale cannot be determined from the contract alone; it will fluctuate with the price of the liquids. While it is desirable to use and retain the industry's institutions wherever possible, a sales price expressed in terms of a percentage of liquids is not workable. For these reasons it is concluded that the consideration for sales of casinghead gas to pipelines under FPC rate schedules shall be in cents per Mcf for the raw gas and that no other consideration be given.

In sales of casinghead gas, the consideration may also include the right of the producer to have part of the processed gas returned to the lease. Where this occurs a deduction for the value of the gas returned to the lease shall be made at an amount not less than the rate paid by the pipeline for the raw gas. This rule does not apply to percentage contracts covered by section 154.91(e) of the Regulations.

C. MINIMUM RATES

There are some contracts with present rates considerably below the revenue standards adopted herein. The level of these rates may be due to the fact that these contracts were negotiated many years ago when costs and demand were lower than now; or it may be that location or other value factors are such that if the contract price were raised it would not be economic for the pipeline to buy the gas at all. While the number of these low priced contracts and the volume flowing thereunder is small,[43] the rates charged therefor may represent an inequity which should be remedied.

Considering the value factor, contract rates for residue and gas well gas below 9 cents per Mcf are prima facie unreasonably low; the same is true for casinghead rates below 7 cents per Mcf. Accordingly, it is concluded that with respect to contract rates below these amounts, the public interest and the public convenience and necessity require that the seller with the buyer's written consent be authorized to collect rates up to these levels and to file new rate schedules in accordance therewith.

D. PRICES FOR NEW GAS

For pricing purposes new gas refers to gas sold under contracts filed with the Commission on or after December 23, 1960, the date of the institution of this proceeding.

It has previously been found appropriate that the basic pricing standard for old residue and old casinghead gas be related to the cost of old gas well gas. The cost of service method uses average historic costs as the cost basis for all gas. Thus Staff uses its historically determined average costs as the basis for pricing all gas, old or new. This same theory underlies the studies on processing costs by the Distributors, the CPUC, and Respondent witness Carney. Though

[42] Casinghead gas ceiling prices apply to sales of raw oil well gas directly to a pipeline.
[43] See exhibit 337.

they use different methods to determine historic costs, they all use these historic costs as the basis for costing old and new gas. Respondent witness Keene's costs are also on a historical cost basis, and if applied would relate to all gas, old or new.[44] The cost determined here for old gas well gas is analogous to the historical cost of this gas. It is therefore arguable that it should be used as the standard to which all residue and casinghead gas, whether old or new, should be related by value.

However in this industry it is appropriate that a higher ceiling be allowed for new residue than for old residue gas to take account of changing circumstances. A premium basis for new gas well gas has been adopted because its price serves a supply eliciting function. The price for Permian residue gas serves no comparable function. Moreover a differential between the price of old and new residue gas must take into consideration an institutional factor. Residue gas is typically sold to pipelines under twenty-year contracts, but the plants typically buy their raw gas under three and five-year contracts. If the ceiling for new residue gas were substantially higher than the ceiling for old, there would be a tendency for producers selling under percentage contracts at the termination of their contracts to switch to plants (old or new) which had a contract for new residue gas, thus receiving a percentage of a higher price. There are barriers to such shifts: for example, the second plant would have to lay pipes to connect the wells to its plant.[45] But the creation of a large gap between the price for old and new residue gas would tend to lead to duplication of facilities and economic dislocation of existing institutional arrangements. Under the guidelines, increased rates above 11 cents have generally been suspended, whereas new sales at initial rates as high as 16 cents have been accepted. The 5-cent differential thus created between old and new residue gas has created problems of the kind just described. Accordingly, it is concluded that a ceiling price for new residue gas 1.5 cents above the ceiling for old gas is appropriate. For similar reasons, a ceiling for new casinghead gas one cent above the old is adopted.

Since the gold standard ceilings for old residue and casinghead gas are 13.5 and 10 cents, the ceiling for new residue and casinghead gas will be 15 cents and 11 cents, respectively. Prices for residue and casinghead gas sold under contracts filed as rate schedules on and after December 23, 1960, will be governed by these ceilings.

This record does not permit the determination of a complete set of quality and value differentials. However the most recent pricing patterns show that under contracts for the sale of old residue gas, 99 percent of the one-stage residue gas is selling at a differential of at least 2.5 cents below 95 percent of the three-stage gas; and that some 99 percent of the two-stage gas sells for at least 2 cents below 95 percent of the three-stage gas. Under the rates allowed herein after compression, the corresponding differentials are 2.11 cents and 1.69 cents. On this basis, it is concluded that for new residue gas, minimum differentials of 2 cents and 1.5 cents below the gold standard ceiling are appropriate for one-stage and two-stage gas, respectively. Accordingly, subceilings are established for one-stage new residue gas at 13 cents, and for two-stage new residue gas at 13.5 cents. The ceiling of 15 cents will govern three-stage residue gas. It is recognized that the resulting differentials are lower than those which have prevailed

[44] In presenting cost evidence, Respondents have not waived their over-all position that value not cost should be the basis for determining prices of gas. Respondents contend that the cost of gas cannot be reliably determined, though they concede that the cost of gas well gas may be estimated with a greater degree of reliability than the cost of gas produced with oil.

[45] Also, percentage sellers are subject to section 7(b) of the Act even though section 154.91(e) of the Regulations prohibits their filing rates or certificate applications.

in the past. This is because the smallest differentials under various pricing patterns have been adopted and because they have been determined by deduction from the 15-cent ceiling for three-stage gas. Furthermore, the subceilings are maximum prices and temporary until the Commission can establish more complete quality differentials. It is assumed that in further proceedings hereunder the Commission will go forward with this task. Meanwhile, prices for new residue and casinghead gas will be determined by the negotiations of the parties subject to the aforesaid ceilings and subceilings.

As previously determined the national current average cost for new gas well gas is 16.88 cents. Applying the Permian geographical discount of 1.25 cents produces 15.63 cents. A gold standard of one cent is appropriate for new gas well gas, since the quality differences for the bulk of this gas are less than for residue gas. The result, 16.63 cents, rounded upward to 16.75 cents, is found to be the ceiling price for new gas well gas.

Some gas well gas in Permian is sold to gasoline plants which extract liquids from it. The theory of the two-price system requires that in this case the residue gas sold by the gasoline plant which is attributable to new gas well gas be governed by the ceiling for new gas well gas.

E. SECTION 7 CERTIFICATE APPLICATIONS

The section 7 certificate applications consolidated herein of the Large Producers should be granted at initial prices not exceeding the following schedules:

	Gas well	Residue	Casinghead
Old gas	13.5	13.5	10.0
New gas	16.75	15.0	11.0

F. CHANGES IN SPECIFIC CEILING PRICES FOR OLD GAS WELL GAS

As has been discussed previously, many gas contracts cover additional reserves that may be discovered within the bounds of the contract. These contracts generally provide that the seller may abandon deliveries under the contract if and when further operations thereunder are uneconomic. He, of course, cannot sell to anyone else. In such a situation, the producer may be able to find additional gas at a price slightly above the old contract price, and the pipeline may in the light of the circumstances find it economic to amend the old contract by increasing the price. The same situation may occur with respect to the specific ceiling prices set herein for old gas well gas contracts. A producer of old gas well gas who under his contract is in a position to abandon production because he can no longer deliver gas at his specific ceiling price, and who enters into a new contract with the pipeline for further drilling to secure additional reserves of gas at a price above the specific ceiling rate established for his contract, and which rate is at or below the ceiling for new gas well gas, may petition the Commission for an exception. Such a petition should have attached to it the proposed contract and a cost-benefit analysis justifying the higher ceiling price under the new contract on an incremental cost basis. In this situation the pipeline will have already agreed to the change in the existing ceiling rate, and a similar analysis justifying this change will undoubtedly have been prepared in presenting the justification to the pipeline.

G. THE STAFF RATE DESIGN

The major features of the Staff rate design are as follows: Separate unit "costs" of 11.95 and 14.46 cents are determined for all Permian gas well and residue gas. The weighted average "cost" of the two gases is then determined

to be 13.38 cents. Some contracts establish a specific price level from which deductive charges for inferior quality are made. Where the contract price exceeds the ceiling price, Staff requires that the contract first be reduced to the ceiling and then the deductive charge applied. To offset the over-all area effect of these deductive charges the ceiling is raised to 13.7 cents.[46] A ceiling of 9 cents is set for casinghead gas. A proportionate reduction is also made for gas of less than 950 Btu per cubic foot. These are the Staff's revenue standards for old and new gas.

The Staff rate design is subject to two major criticisms. First, the existing contract institution would prevent the producers in the Permian area from realizing the allowed revenues under the Staff's proposed revenue standards. The deficiency based on 1960 volumes and prices is substantial, over $5 million. It is improper to disregard an established industry institution, the long-term contract and its effects on producers. On the basis of the Staff's revenue standard, its proposed rates would be unjust, unreasonable, and therefore unlawful.

Staff's argument is that it is improper for some contracts to receive "more than the reasonable rate in order to make up for the deficiencies in others under low price contracts." (240/28,388.) In the first place, Staff assumes that a rate higher than the average is unreasonably high. Second, Staff confuses the issue of the over-all level of area rates with the issue whether an individual rate is unduly discriminatory or preferential. The reasonableness of area rates concerns the rate level—the average, the maximum and the minimum. Within this framework, the relationship of one rate to another (undue discrimination or preference) is irrelevant to the question of the justness and reasonableness of the over-all rate structure. But Staff does not criticize a single rate on the grounds of undue discrimination or preference. Staff's argument contravenes the very basis of area rates.

Second, Staff's rate design does not sufficiently relate price to quality or value. Staff's quality differentials are limited to: a lower ceiling price for casinghead gas than for gas well and residue gas; a proportionate deduction for Btu below 950 per cubic foot; and the requirement that contractual deductive charges be deducted from the ceiling price where the contract price exceeds the ceiling. Except for these instances, the Staff rate design permits gas of any quality to be sold at the ceiling for that type of gas, absent a contractual bar. As Staff says, "The area rates should be uniformly applicable to gas of any quality acceptable to the purchaser." (Brief, p. 37.) Thus Staff's 13.7 cent ceiling applies to one-stage, sour, undehydrated residue gas; this is the lowest quality residue gas, and for which the current El Paso contract price is 13.5 cents. Staff's rate design applies the same ceiling to three-stage, sweet, dehydrated residue gas for which the current El Paso contract price is 17 cents. The failure to establish adequate quality differentials is unfair to the sellers of high quality gas, and will ultimately prove harmful to the consumer because this pricing structure will tend to deteriorate the quality of residue gas sold to the pipeline. The pipeline will then include the cost of bringing the gas up to pipeline quality in its cost of service.

Two lesser points: Averaging the "cost" of gas well and residue gas (but not casinghead gas) is inconsistent with the theory of separately determining the cost for each of the three types of gas. With regard to deductive charges, Staff requires that contract prices be reduced to the ceiling and that the deductive charge then be applied, in effect setting an individual subceiling for such contracts. It is largely a question of form whether a contract price was set first and a deductive charge then stated, or whether a contract price was negotiated

[46] This is an oddity in Staff's presentation since no offset is allowed for producers who cannot achieve the ceiling for other contractual reasons.

taking these charges into consideration. To assure uniform results, the contract price should be netted prior to the application of any ceiling.[47] Since the deductive charges will no longer prevent a producer from achieving Staff's ceiling if they are netted, the allowance for this should be eliminated and the Staff ceiling restored to its original level of 13.4 cents per Mcf for residue and gas well gas.

Staff also presents an "alternative" rate design, although they "adhere to the Staff rate proposals heretofore presented * * *" (Brief, p. 57.) The alternative proposal consists of an elaborate system of premiums and deductions for various qualities of gas. There is insufficient evidence in this proceeding, as Staff seems to concede, to support its proposal. It merits exploration in a proceeding devoted to quality differentials. Moreover the proposal was not presented during the hearing by testimony or memorandum, or in the Staff's outline of its argument on brief, all as required by the Examiner's overriding order of July 23, 1963. It is not properly presented at this stage.

H. ESCALATION

In section B above, specific prices for all old gas contracts have been established. The finding costs for this old gas have already been expended. The significant changes that can affect the cost of this gas are possible changes in the lesser amounts for current production costs. To take account of such potential factors, an allowance of some 0.4 cents has been made in the price of residue and gas well gas, and some 0.3 cents in the price for casinghead gas. The record does not show general cost or price changes since 1960, but the Bureau of Labor Statistics All Commodities Wholesale Price Index has been fairly steady since 1958. *E.g.* (1957–59=100): 1958, 100.4; 1959, 100.6; 1960, 100.7; 1961, 100.3; 1962, 100.6; 1963, 100.3. For these reasons periodic increases in old contracts including those permitted under section 154.93 of the Regulations will not be permitted to affect the ceiling prices established for the specific contracts for old gas.

Ceiling prices for new residue gas and new casinghead gas have been established at 1.5 cents and 1 cent, respectively, above the prices for old gas to take account of changes in circumstances. The price of new gas well gas has been determined on a 1960 current cost basis.

In these circumstances there is no need for general escalation clauses. Most favored nation clauses and spiral escalation clauses cause price increases in a contract price to occur without reference to the circumstances or economics of the particular operation, but solely because of what happens under another contract. These clauses contravene the public interest and the basis on which prices have been determined in this decision. They are therefore declared to be inoperative and of no legal effect. No change in a rate resulting from such indeterminate pricing provisions will be permitted to take effect under this decision and order.

Clauses in contracts for new gas providing for rate increases that are consistent with section 154.93 of the Regulations may take effect, provided that such increases may take place only up to the appropriate ceiling prices. (Under this section of the Regulations clauses of the type permitting periodic increases every five years are authorized.)

I. PROVISION FOR RELIEF

In instituting this proceeding the Commission found that the practicalities of regulation require, and the Act permits, that a group rate system on an area basis

[47] In Jensen's exhibit 337 prices are on a net basis after subtracting the deductive charges.

be adopted instead of establishing rates on an individual company basis. Group rates based upon typical group evidence may lead to serious injustice to an individual producer. Procedures should therefore be established whereby a producer able to show that continued operation under the rates established herein will result in confiscation of his property on a company-wide basis (including affiliates) shall be entitled to relief, either through an order pursuant to Section 7 of the Act permitting abandonment of his obligation under his certificate to continue interstate sales, or by way of specific price adjustment. The procedures should require that a petition for such relief present a prima facie case.

J. SCOPE OF THIS PROCEEDING

Paragraph (A) of the order instituting this proceeding provides that "A proceeding is hereby instituted to determine the just and reasonable rate or rates for the sales of natural gas produced * * *" in the Permian era, which are subject to the jurisdiction of the Commission. Persons listed in an appendix are designated respondents. This order encompasses the Permian rates of all such parties then on file or thereafter filed during the pendency of this proceeding. Respondents contend that, with respect to the listed parties, only the rates on file as of December 23, 1960, are in issue, and that rates subsequently filed by these parties which were not expressly consolidated are not within the scope of this proceeding. The plain language of the phrase quoted above covers all the rates of the listed parties including those filed after the institution of the proceeding. Respondents' contention is therefore rejected.

The rate schedules or certificate applications of persons not named respondents in the original or subsequent orders are not encompassed by this proceeding.

Paragraph (C) of the ordering clause of the Commission's order of December 23, 1960, consolidated into this proceeding various Section 4(e) proceedings concerned with suspended rates and refund claims thereunder, and Section 7 proceedings concerning certificate applications. The order instituting this proceeding was published in the Federal Register on December 30, 1960 (25 F.R. 13,998). It did not provide for the consolidation of Section 4(e) proceedings (rate suspensions) or Section 7 applications that might thereafter be filed by respondents to this proceeding. There may be Permian unconsolidated Section 4(e) and Section 7 certificate applications which involve retrospective rates. It is arguable that the parties have had constructive notice of the Commission's desire to meld all Permian rate and certificate matters into this proceeding, but publication in the Federal Register does not enlarge the scope of the Commission's order; it merely gives constructive notice of the scope that is actually contained in the order. Thus there is a question whether notice was afforded that action with respect to matters contained in Respondents' unconsolidated dockets was contemplated, if, in fact, it was. It is not impossible that with regard to such matters, additional evidence might have been adduced if the parties had been made more clearly aware of such an intention. If the Commission's order be construed to govern the unconsolidated Section 4(e) and Section 7 proceedings of the Respondents, then the express consolidation of the others was unnecessary. More importantly, with respect to unconsolidated dockets, there is a lack of jurisdiction in this proceeding over the subject matter. For these reasons, issues regarding retrospective rates which may be involved in the unconsolidated Section 4(e) and Section 7 proceedings are not governed by this proceeding. However, the prospective rates of the contracts included in these unconsolidated proceedings are subject to this proceeding by virtue of ordering clause (A) which includes all prospective rates of the Respondents in Permian.

K. REFUNDS

Refunds concern only the Large Producers because the area rates of Small Producers have been found just and reasonable. Refunds shall be determined in the following manner: For rates subject to refund, the allowed revenues at rates fixed herein and the actually collected revenues shall be determined for each year by category, i.e. by type of gas and whether old or new gas. Deficiencies in one category shall be used to offset excess revenues in other categories. If there is an excess of revenues after offset, the amount to be refunded shall be equitably apportioned among the appropriate sales under the rates subject to refund of the category in which the excess remains.

The rationale for this method is that in the first instance refunds should be determined on an area basis, the test being whether producers in the area have collected, over-all, excess revenues on sales under rates subject to refund. However, once it is determined on an area basis that refunds are payable, it is fair that producers in each category shoulder no more than their own burden equitably distributed.

The record does not now contain the information needed to determine refunds, *e.g.* the revenues for years other than 1960. Affected parties should submit draft orders with requests for information and specific proposals regarding refunds in consonance with the principles set forth herein within ninety days of the date of the issuance of this decision and the order attached hereto.

ADDITIONAL CONCLUSIONS

In addition to the foregoing conclusions, it is further found that:

(1) The Permian rates of the Small Producers herein are found just and reasonable and not unduly discriminatory or unduly preferential.

(2) The public convenience and necessity require that the certificate applications of the Small Producer applicants consolidated herein be granted on the same basis and for the same reasons as for the Large Producers; alternatively, upon petition filed within ninety days of the date of this decision, that said certificate applications be made pursuant to general certificates to be issued to Small Producers.

(3) The Permian area rates of the Large Producers are unjust and unreasonable; and their rates shall be determined in accordance with the rates and principles set forth in the preceding portion of this decision. No rates of any Large Producer are found unduly discriminatory or unduly preferential.

(4) Each producer applicant for a certificate of public convenience and necessity consolidated herein is a "natural-gas company" within the meaning of the Natural Gas Act as an independent producer of natural gas, as that term is defined in section 154.91(a) of the Commission's Regulations, engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption and such sales together with the construction and operation of any facilities therefor are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act; each such applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder; the sale of natural gas as proposed by each such applicant herein together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor are required by the public convenience and necessity and a certificate authorizing the same should issue to each of them upon the terms and conditions of the order herein, which terms and conditions are required by the public convenience and necessity. The public convenience and necessity requires that the initial price charged by each such applicant for the sales proposed in his respective certificate applica-

tion consolidated herein be not greater than the rate set forth in the preceding portion of this decision for such contracts.

(5) All producers that intend to accept certificates issued in these proceedings shall file acceptances within ninety days of the date of the issuance of this order, stating whether they request them *qua* Small Producer or Large Producer.

ORDER

Wherefore, *it is ordered*, subject to review by the Commission, That the rates set forth in the foregoing decision be and they hereby are found to be the lawful rates with respect to the matters governed by this proceeding, and that the certificate applications herein be and they hereby are granted in accordance with the terms, conditions and principles hereinbefore set forth.

SEYMOUR WENNER,
Presiding Examiner.

APPENDIX A

ANALYSIS OF COST ESTIMATE OF NEW GAS WELL GAS OF CPUC WITNESS DORAN

CPUC witness Doran presented in Exhibit 222 an estimate of the 1960 cost of Permian gas produced from Permian gas and gas condensate wells. Doran uses Staff's exhibits and results thus:

a. The Staff used the so-called modified Btu method to allocate exploration and development (E&D) expenses between gas and oil. For E&D Doran uses the Staff's weighted average results of the Appendix B and C Respondents from gas and gas condensate leases. As will be discussed later, the modified Btu method would be more appropriately called the modified sales realization method. It is essentially a division of the joint E&D costs on the basis of the respective sales revenues, adjusted slightly for Btu content. It primarily reflects relative values, not the separate exploration costs of gas and oil.

b. For production operating expenses, Doran uses the weighted average of Staff results for the gas and condensate leases. For the condensate leases, Staff allocates the results between gas and liquids on the basis of its version of the relative cost method. In this method, the production operating costs are determined for a group of oil wells that produce no gas (the oil leg); similar results are obtained for a group of gas wells producing little or no liquids (the gas leg). The unit production operating expense of the two legs is then determined and applied respectively to the liquid and gas production of the condensate leases to obtain an allocation of joint operating expenses for the gas. This relative cost method may be an equitable method of allocating joint production operating costs. However, as Respondent witness Dr. Vietti shows, the costs of production for the joint product wells and leases are unrelated to their separate costs.

c. Doran determines his gross production investment by first determining the IDC (intangible drilling cost) per well for gas and condensate wells drilled in Permian during the period 1956–60. The IDC for condensate wells is allocated between gas and liquids on the basis of a relative cost factor reflected in Staff's Appendix B study. The book ratio between IDC and gross investment for 1960 for gas and condensate leases is then determined from the weighted results of Staff's Appendix B and C data. This ratio is applied to the average IDC per well to obtain the gross investment per gas and condensate well. As a consequence the DD&A (depreciation, depletion, and amortization) and the return allowance used by Doran reflect the Staff's use of the relative cost method applied to condensate wells.

After Doran had presented his exhibit, Respondent witness Turner showed that the Permian well count previously presented and on which Doran had relied was substantially underestimated. The use of Turner's more reliable figure for wells would reduce the average production per well and substantially increase Doran's unit cost per well.

Again, Doran's study is not geared to attaining a specific R/P ratio in the future, an essential factor in a study of current costs. Doran would probably have found it difficult to determine an appropriate R/P ratio for Permian because the ratio should reflect market and demand factors which go beyond Permian.

Doran's results reflect Staff's allocation of E&D to gas well and gas condensate well gas by the modified Btu method; his allocation of production operating expense, return, and DD&A allowance between liquids and gas from the condensate wells is governed by the results of Staff's relative cost method. These Staff allocations produce results which may be equitable divisions of the joint costs. As far as determining the separate economic cost, they are fictions. Doran's reliance on Staff's allocated data is so great that his results are too far removed from an economic cost determination for new gas well gas to be acceptable.

APPENDIX B

The Cost of New Gas Well Gas

In this appendix a detailed study is made of the estimates for the cost of new gas well gas presented by Distributor witness Roseman and Respondent witness Park. As mentioned in the text of the initial decision, a few of the estimates made by Respondent witness Sherwin will also be considered.

A. THE COST PER MCF OF DRILLING AND EQUIPPING SUCCESSFUL WELLS

The major component of the capitalized expenditures is the cost of drilling and equipping productive gas wells. Both Roseman and Park go about this by first determining the average cost per foot of sucessful wells drilled in 1960. They then estimate the current average gas well gas reserves added per year. Dividing the average cost per foot by the estimated gas well gas reserves added produces the average cost per Mcf for successful gas wells drilled.

For his determination of the average cost per foot for successful wells drilled in 1960, Roseman starts with the results of the U.S. Bureau of Census, *Census of Mineral Industries for 1958*. The Census data are based on more than 95 percent of the total footage drilled in 1958 and are the most complete figures available. They show the average drilling cost per foot for successful gas wells for 1958 as $17.93. However, there are no Census figures for 1959 or 1960. Roseman determines the 1960 figure by adjusting the 1958 Census figure downward by 5.8 percent on the basis of the 1958–1960 trend for gas and gas condensate well drilling costs shown for the results of the drilling costs of the Appendix A respondents. As discussed in the text, the Appendix A data shows the average national drilling costs for some 240 companies. The 1960 result for these companies shows a level of $22.24 per foot. That this sample is unrepresentative of the average drilling depth is indicated by the fact that the Appendix A respondents drilled 24 percent of the wells in the country for 1960, but accounted for 34 percent of the footage. Since the cost per foot is generally greater at greater depth, and since the Appendix A data are not sufficiently representative of shallow drilling the cost level shown is too high. However the Appendix A sample shows the results for an identical group of companies over a period of years, 1955–1960. Such a constant sample can provide a reliable measure

of trends even though it may not be representative of absolute levels. How the Appendix A sample may indicate trends is shown by the figures on average drilling depth. In 1958 the average depth of the gas and gas condensate wells drilled by the Appendix A respondents was 50 percent greater than the average depth of all such wells drilled in the United States by the entire industry. But between 1958 and 1960 the 7.3 percent increase in the average depth of such wells reported by the Appendix A respondents closely paralleled the 8.2 percent industry wide increase reported in World Oil. Thus the Appendix responses were representative of the depth trend although unrepresentative of the industry depth level. Again, the cost trends reported in the Appendix were similar for most types of wells and for almost all depth ranges. It is to be expected that the trends in the forces influencing drilling costs would operate generally over the various depths and for the various types of wells. While deeper drilling costs more than shallower drilling at any point in time, there is no reason to expect that over a period of time the cost of drilling deeper and shallower wells should not move in the same direction. It is reasonable to believe that during the oil boom years 1955–57 the industry called forth the services of less efficient operators and less efficient equipment. With the passing of the boom, it is reasonable to expect that the industry would be in a position to satisfy its drilling demand with the services of the more efficient lower cost operators and equipment, and that average drilling costs would therefore decline. Since the Appendix A data show that the cost per foot for drilling gas and gas condensate wells declined by 5.8 percent between 1958 and 1960, Roseman adjusts the Census figure for 1958 downward by this percentage to $16.89.

Sherwin, like Roseman, starts with the Census figure for 1958, but raises it by 5.6 percent on the basis of the IPAA drilling cost index. This index is not as reliable an indicator of the trend of costs since 1958 as the actually experienced results shown in Appendix A because of its reliance on posted prices. During a period of price weakness the list prices of industrial products do not reflect available discounts obtainable by negotiation. In contrast, the Appendix A data show the drilling costs over the years experienced by a large group of companies, resulting from their actual payments to drilling contractors or incurred by their own operating departments. These actual costs compared from year to year are superior to the IPAA index as an indicator of the trend in drilling cost over this recent period.

Park uses the *Joint Association Survey* (JAS) figure for 1960 of $18.57 per foot (The Joint Association Survey is a survey conducted by three industry trade groups, the API, IPAA, and the Mid-Continent Oil and Gas Association). The survey is based on a questionnaire mailed to various companies. The companies are not selected on a random basis, and since filling out and returning the questionnaire is voluntary, there is a considerable amount of self selection. The sample is therefore not random. Analysis of certain of the results in the sample indicates that it is biased (in the technical sense) toward an overstatement of the characteristics of the large companies in the industry and an understatement of the characteristics of the small companies. Thus the average depth of wells in the survey is substantially greater than the average depth of the wells of the companies in the universe from which the sample is drawn; and the average revenue of companies in the sample is $21,000,000 compared to the average revenue in the universe, which is under $1,000,000. Typically, large companies drill deeper than small companies, and this is confirmed by the average depth of the sample. The JAS drilling cost figure used by Park reflects the bias in the sample toward the large companies, their deeper than average drilling and consequent higher cost per foot.

Both Roseman and Park use the *World Oil Annual Review* as their source for footage. Both also use virtually the same method for calculating the annual gas well gas reserve additions: gross reserves in any period are equal to changes in reserves during the period, plus the reserves withdrawn as net production during the same period. Roseman found no trend in the 1947–1961 reserves added per foot drilled, so he used the average for the whole period, 587 Mcf per foot drilled. Park, using 6-year moving averages, concluded that the recent productivity of drilling for the industry warranted the figure of 600 Mcf per foot drilled.

Dividing Roseman's cost per foot drilled of $16.89 by the 587 Mcf found per foot, he estimated a cost of 2.88 cents per Mcf of gas. Park's result is 3.10 cents per Mcf. Because Roseman's estimate of drilling cost is sounder than Park's, his estimate of 2.88 cents is accepted.

B. LEASE ACQUISITION COSTS

Park, Roseman and Sherwin estimate lease acquisition costs for gas well gas on the basis of the relationship between lease acquisition costs and successful well drilling costs.

Data on leasehold acquisition costs in relation to successful drilling costs are available from the Staff Appendices B and C, the *Joint Association Survey* and the Chase Manhattan Bank's *Annual Analysis of the Petroleum Industry 1961* (Chase). Ratios between leasehold acquisition costs and successful drilling costs cannot be computed from the Chase data alone because the Chase drilling costs include lease equipment costs which cannot be broken out. However, the Chase figures for lease acquisition costs are separate. Roseman used this data and related it to the trended Census drilling costs (the Chase-Census results). The ratios from the above sources are shown for recent years below.

There is difficulty in using the data on this subject.

1. Lease acquisitions vary considerably from year to year and are significantly influenced by Federal offshore lease sales at which large blocks are sold at irregular intervals, chiefly to large producers. As shown below, the expenditures for leaseholds by the small producers have been stable in relation to drilling costs, while the expenditures of the large producers have varied significantly. Given the variability in the ratios, it is desirable to consider the results

Ratio of lease acquisition costs to successful well costs (percent)

	JAS	Roseman	Staff summaries	
			Respondents over 10 million	Respondents under 10 million
	(1)	(2)	(3)	(4)
1955	36	36	N.A	N.A
1956	29	28	41	28
1957	N.A	20	27	23
1958	N.A	23	39	24
1959	30	28	43	28
1960	38	36	67	28
1961	26	24	N.A	N.A
Weighted average	33	[1] 26.4	42	26

[1] Years 1957, 1958, 1959, 1960.

Source:
(1) Joint Association Survey, 1961; and 137/14381.
(2) Exhibit 224, Sch. 5; and 173/20614.
(3) Exhibit 149, p. 32.
(4) Exhibit 149, p. 45 and Exhibit 153, p. 12. Data in Exhibit 153 adjusted to separate out related lease equipment from reported total of "well equipment and related lease equipment."
N.A.=Not available.

for a number of consecutive years. The JAS does not report any results for 1957 and 1958. The Chase-Census figures are available over a span of years and the Appendix data covers 1956–60.

2. The JAS, the Chase data and the Staff Appendix results are based on limited non-random samples. As previously discussed the JAS results over-represent the large producers. The Chase data are based on a sample which is then expanded by the use of expert knowledge of the industry and judgment to produce industry wide results. While the Appendix figures reflect national data for the companies included, they are limited to Permian respondents. They do not include all Permian producers, nor even all Permian respondents. There are some 75 large natural gas producers in the country, a large producer being defined as one who made jurisdictional sales of over 10 million Mcf during 1960. The Appendix results cover 42 of this group, since it is limited to producers making jurisdictional sales in Permian. It also covers only 94 of some 300 remaining small respondents out of some 1,400 Permian producers.[1] On the item of expenditures for leases, the amounts spent by the 42 large producers are overwhelmingly greater than those spent by the 94 small producers. Since the Staff results are not statistically expanded, they are probably the most unrepresentative of the three samples, and overrepresent the large producers to a greater degree than the other two. The Staff on brief voices the view that the Chase raw data are not as reliable as the data in the Staff questionnaire because the latter is sworn to. There is no reason to infer that reports submitted to and scrutinized by the Chase economists are incorrect. The study is published regularly, distributed widely, and its authors have had the opportunity to improve its techniques on the basis of experience. Qualified economic witnesses in this proceeding examined this data before relying on it.

3. Representativeness is particularly important on this item of lease acquisitions because the large producers tend to have proportionately higher lease acquisition costs than small ones. Dr. Foster's testimony to this effect is confirmed by a comparison between the large and small producers in the Staff Appendices. For the years 1956–60, lease acquisitions for the 42 large producers averaged 42 percent of well drilling costs while they averaged only 26 percent for the 94 small producers. Thus lack of adequate representation of the small producers which exists in the JAS and Staff results tends to produce an overstatement of the ratio of lease acquisitions to well drilling costs. The same principle is applicable to the Chase-Census results to the extent that they are unrepresentative of small companies.

To relate lease acquisitions to drilling cost, Roseman estimated drilling costs for oil and gas separately from the Census for 1958 and trended these results on the basis of the Appendix A experienced costs from 1957–60. The per foot results for oil and gas were applied to the total footage drilled of oil and gas wells as reported in *World Oil*, to obtain the total drilling costs for each year. As previously discussed, trending the drilling data on the basis of the trends shown in the Appendix A is a sound method for determining trends in drilling costs. Trending the 1958 drilling costs downward increases the ratio of lease acquisition costs to drilling costs. Roseman then relates the industry wide lease acquisition data of the Chase analysis to the trended industry drilling costs. He considers the annual ratios from 1955–61 shown on page 399, and correctly found no trend. He then determines the weighted average ratio for the years 1957–60 to be 26.4 percent, which provides a representative sample

[1] Witness Abel lists 1,400 oil and gas independent producers as being in a Permian directory. This includes nonjurisdictional sellers. There are some 2,600 business entities selling under percentage type contracts in Permian.

of years in which lease acquisition costs were at high and low levels. Applying this percentage to his drilling cost of 2.88 cents per Mcf for successful gas wells, determined from the first step, yields 0.76 cents per Mcf.

Sherwin's estimate for the relationship between lease acquisition costs and successful well costs is in the range of 33 to 37 percent. He begins with the Appendix data which for the years 1956–60 average 42 percent for the large producers and 26 percent for the small producers. He also considers the lower estimates of JAS and Chase. JAS doesn't cover the years 1957 and 1958, which the other estimates show were the two lowest years in any of the series. It is evident from the preceding table that for all the years JAS is available 1955, 1956, 1959, 1960, 1961, its ratios are never more than two percentage points higher than the Chase-Census ratios.

Sherwin's major reliance is the Appendix data for the large producers. The ratios for these large producers are much higher than either the JAS or the Chase-Census ratios. The ratio of 67 percent for 1960 is 29 percentage points above the JAS figure for that year and 30 points above the Chase-Census ratio. This last variance is probably due in part to extensive purchases by large producers of offshore leases at the federal sales occurring that year. Such lease sales are in the main confined to large producers and their affiliates, and are generally in large amounts. These transactions are reflected to a greater degree in the Appendix results for the large producers than in the JAS or the Chase-Census results, because the national Appendix data underrepresent the small companies to a greater extent than the other two. Sherwin's upper limit of 37 percent is based in the main on an apparent trend in the results for the large Appendix producers for 1958, 1959 and 1960, 39 percent, 43 and 67 percent, respectively, although on other occasions he criticizes the use of Appendix data even for trending purposes. During this same period there is no trend in the ratios of the Appendix small producers. That three years is too short a period to establish a trend for this purpose is shown by the downward movement in 1961 for both the JAS and the Chase-Census ratios. In March 1962 there were large sales of offshore leases, and the 1962 data will probably reflect this, but the whole picture still indicates variability but no trend. Sherwin's estimate, being based largely on the least representative data, is rejected.

Witness Park combines his estimate for lease acquisitions with that for lease facilities. He estimates that these two items should amount to 50 percent of his already determined drilling costs per Mcf. Park's estimate is based in large part on his judgment and experience as an official of Texaco. He considered the JAS average results for these items for the years when this survey was published and the 1956–60 Staff average results for all Appendix B producers. Both show a ratio of 59 percent for lease acquisition costs and lease production facilities in relation to drilling costs. Park first adjusts this percentage downward to reflect the fact that lease production facilities are more extensive on oil leases. He then adjusts the percentage upward to a lesser extent to take account of the fact that gas wells are more widely spaced and drain a greater acreage than oil wells. These two judgment adjustments resulted in a net downward adjustment to 50 percent, of which Park assigns 40 percent for lease acquisitions and 10 percent to lease production facilities.

Park's 40 percent figure is higher than the JAS average ratio. Moreover, as previously noted, the JAS was not published for the years which the Chase-Census and Appendix ratios indicate were the two lowest in their respective series, 1957 and 1958. And, as previously noted, the JAS average is probably too high because it is overweighted by large companies whose acquisition costs are a higher proportion of well drilling costs than is true for the small companies. The average ratio for the years 1956–60 for all the Appendix B companies

is 42 percent. The upward bias in the ratios resulting from the unrepresentativeness of Staff's companies has been discussed.

Park's upward adjustment is based on his experience that the spacing of gas wells is typically wider than for oil and therefore uses more acreage. He also gives his opinion that gas acreage is not correspondingly cheaper than oil acreage. He cites no study or data in support of his conclusion. He does not appear to have considered the relative values of oil or gas prospects. Park does not mention the factor that the drilling cost for gas wells is typically greater than for oil wells because of the greater depth of gas wells. This would tend to offset the effects in the relationship of possibly higher acquisition costs for gas acreage.

The record contains a single study which indicates that the cost of lease acquisitions for gas has not exceeded those for oil. In Schedule 7 of his Exhibit 224, Roseman relates the capital accounts for lease investment to the investment in lease and well equipment plus drilling cost for successful wells, classified by lease types. In other words he takes the gross historical investment in lease acquisitions for successful gas and oil leases, and relates this amount to the corresponding gross historical investment in successful wells and lease equipment. The study shows that lease acquisition investment was 22 percent for gas leases and 20 percent for oil leases. There is no dispute that lease facility costs on successful oil leases are generally considerably greater than on gas properties. Hence it is probable that if the ratios were limited to the capital accounts for lease acquisition and successful wells, excluding the lease facilities, they would show that the ratio for gas leases was the same as or lower than for oil leases. In any event, the study indicates that the ratio of investment in lease acquisitions to total investment for successful leases is not significantly greater for gas than for oil. This study covers productive leaseholds only. The witness concludes that this limitation doesn't affect the comparison. There is no reason to expect that the respective ratios for oil and gas leases would be changed if leaseholds which are acquired and never go into production were to be included.

There is no evidence that recent investment in gas or oil leases would change the above ratios.

While not conclusive, this study indicates that it is a reasonable hypothesis that the ratio of lease acquisition costs to drilling costs is not significantly different for gas than for oil leases.

It is concluded that Roseman's estimate based on the Chase-Census ratio furnishes the most reasonable estimate for lease acquisition costs. Applying Roseman's ratio to his drilling costs yields 0.76 cents.

C. INVESTMENT IN OTHER PRODUCTION FACILITIES

In computing investment in other production facilities, Park and Roseman using different methods reach the same result, 0.31 cents.[2] The largest single item in this classification of costs is lease production facilities.

Neither Roseman nor Park estimate any salvage value on their capitalized costs, though it is reasonable to expect that there would be some. Roseman cites testimony which appears reasonable from producer witnesses in other cases indicating that this item would amount to 10–15 percent of the tangible investment. However, no allowance is made for this item.

D. PRODUCTION OPERATING EXPENSES

Roseman and Park derive their estimates of current production operating expense from the Staff Appendix data in Exhibit 149. It is necessary to use the Appendix figure as a source for this item as there is no published industry-wide

[2] Roseman originally estimated a cost of 0.18 cents. His subsequent adjustment to 0.31 cents requires a slight adjustment in the allowance for exploratory overhead and working capital.

data for this cost item. Using different methods, Roseman and Park compute direct and indirect expenses for this item by lease types and relate these amounts to the volume of gas well gas produced. Roseman estimates this item at 2.88 cents and Park at 2.62 cents. Roseman's higher estimate is accepted.

E. DRY HOLE COSTS

Roseman and Park divide dry hole costs on the basis of the relationship between successful oil and gas well footage averaged over a period of years. While this method might not be suitable for dealing with the dry hole costs of an individual company due to the variations in annual success ratios and productivity of successful drilling, as Respondent witness Porter showed, these variations tend to be minimized in the magnitude of the industry's total effort over a period of years. Therefore these witnesses' basic approach is sound on the industry level.

For the period 1955–60, Park determines the average annual dry hole footage and successful footage, separately for exploratory and developmental footage. This shows that 6.4 feet of dry holes were drilled for each successful exploratory foot, and 0.3 feet per successful developmental foot. These numbers are multiplied by the average annual gas footage, broken down between exploration and development, thus arriving at the total dry hole footage to be borne by gas well gas. The total is then multiplied by the JAS 1960 average cost per foot for dry holes. The result is divided by the average annual reserve additions of gas well gas to produce 1.56 cents per Mcf for dry holes. Park thus allocates dry hole costs in proportion to the relationship between successful gas footage and total successful footage.

Roseman also divides his dry hole footage between gas and oil in proportion to successful gas and oil footage, separately for "wildcat"[3] and other footage. He derives a combined ratio of 0.898 feet of dry hole per successful gas well footage as the weighted average for the period 1951–61. (The corresponding ratio for Park for the period 1955–60 is 0.891.) Then he takes the cost per dry hole foot drilled from the Census for 1958 and after adjustment computes the cost per Mcf of dry holes drilled.

Roseman makes three adjustments to the dry hole foot cost figure of $8.91, the Census figure for 1958.

The Appendix figures show a decline of 3.5 percent in dry hole drilling costs from the peak year 1958 to 1960. For the reasons previously given, it is appropriate to adjust the 1958 Census level by the trend actually experienced by the constant sample of companies in the Appendix. This adjustment reduces the cost per dry hole foot to $8.60 per foot.

Roseman makes a second adjustment to take account of the fact that gas wells are typically deeper and therefore more expensive than oil wells. Using the *Oil and Gas Journal* figures which show drilling footage by depth and by well type, and Appendix data which shows the Appendix cost per foot for 1960 in the various depth ranges, he finds that the average cost per foot of dry holes allocated to gas was 12 percent greater than it would have been, if depth had been disregarded.

Again, analysis of the figures allocated to gas by Roseman on the basis of successful wells at various depth ranges, indicates that the footage allotted to gas is 4 percent less than if, disregarding depth ranges, the allocation were made simply on the ratio of total successful gas well to oil well footage. This

[3] *World Oil*, on which Park and Roseman rely for allocating dry hole costs, provides a breakdown between "wildcat" and total drilling. It appears that the term exploratory as used here by Park corresponds to the term "wildcat" used in *World Oil*.

is a statistical indication that deeper wells tend to have a higher success ratio.[4] The combination of the second and third adjustments, an increase in cost of 12 percent for greater depth and a reduction of 4 percent for greater success ratio, results in an upward adjustment of 8.28 percent.

The adjusted cost per foot figure is $9.31 per foot which produces a cost of 1.42 cents per Mcf.

Roseman's trended Census cost per foot is preferred to Park's JAS cost. The JAS sample average cost reflects the overrepresentation of large producers, their deeper than average drilling, and consequent higher than average cost per foot. Roseman's adjustments which reflect the effects of depth and success ratios for gas wells are sound refinements. For these reasons Roseman's estimate of 1.42 cents is accepted.

F. GEOLOGICAL AND GEOPHYSICAL EXPENSES, LEASE RENTALS AND EXPLORATORY OVERHEAD

Roseman estimates the cost of geological and geophysical expenses and lease rentals on the basis of their relationship to lease acquisition costs. The Chase *Annual Analysis of the Petroleum Industry, 1961*, shows that these costs averaged 138 percent of lease acquisitions in the period 1957–60, the same source and period Roseman uses in computing lease acquisition costs. The percentage relationship, 138 percent, is applied to the 0.76 cents lease acquisition cost to derive the cost of 1.05 cents per Mcf cost for the geological, geophysical and lease rental costs.

Roseman calculates exploratory and developmental overheads on the basis of the relationship between overhead and total finding and development costs. The ratio is derived from the 1959 JAS, which is the only published source of such data. The percentage is 8.4 percent. Applying this percentage to his total finding and developmental costs (3.95+1.05+1.42) yields 0.54 cents per Mcf for overhead. The combined figure for geological and geophysical expense, lease rentals, and overhead, is 1.59 cents.

Park combines geological and geophysical expense, lease rentals, and overhead into a single item, called other exploratory expenditures. Using a ratio of one to one with the dry hole exploration expenses based on the JAS 1960 survey, his result is 1.56 cents, slightly lower than Roseman's.

The witnesses' allowances for this item are virtually identical and Roseman's higher estimate is accepted.

G. ADJUSTMENT OF NET PRODUCTION TO MARKETED PRODUCTION

Park adjusts his costs upward by 5 percent to take account of gas well gas production he believes will be lost, vented, flared, or consumed on the lease, and therefore not productive of revenue.

The five percent factor is derived from a comparison of the total net production of all gas (including oil well gas) as reported by the AGA, and the total marketed production as reported by the Bureau of Mines for the six-year period ending in 1960. Examination of the annual results of these two surveys indicates that there has been a declining trend in recent years in the difference between the results of the two surveys; in 1960 the difference was only 2.5 percent compared to the 7.5 percent difference in 1955. More importantly, the annual reports of the Texas Railroad Commission and the Louisiana State Conservation Commission for 1960 show that in these states, which produce three-fourths of the

[4] This is not a conclusion that the success ratio at greater depths is higher. It is a conclusion that the success ratio for wells drilled to greater depths is higher than for wells drilled to shallower depths. This is to be expected: on the average, deeper wells go through more or deeper layers of earth and will tend to have a greater chance of hitting pay at one of these levels.

gas well gas produced in the United States, the amount of gas well gas vented and wasted was negligible, considerably less than one-tenth of one percent.

Park attributes some of the 5 percent loss to lease uses, for heaters, compressors, etc., but he does not quantify the portion or furnish any details to support this conclusion.

The instructions in compiling the Appendix data were that respondents who charged gas consumed on the lease to production operating expenses, should also report these volumes in their production. Roseman (and Park), as previously discussed, bases his estimate of production operating expense on the Staff Appendix data. In doing so he considers the volume of gas consumed on the lease to be charged to production operating expenses.

Schedule K of Staff exhibit 149 shows the breakdown of the producer's (net working interest) production volumes under headings such as: gas delivered to plants, gas sales to outside interests, lease and other field consumption, and a general category entitled nonsegregated volumes. This last category covers production volumes whose disposition is not otherwise specifically identified. For production from gas and gas condensate leases, the nonsegregated volumes amount to some 20 percent of the total net working interest production.

Respondents raise the possibility that not all lease consumption volumes were reported as production and concurrently had their value charged as production operating expense. In this event, they argue, there would be a disparity between net production and marketed production for which an extra cost allowance should be made. As evidence of the fact that a substantial part of the gas consumed on the leases was neither reported as production volume nor charged against expenses, they show that the Appendix ratio of gas reported as consumed on the lease to total net working interest production volume was only 0.57 percent for gas and gas condensate leases. This calculation ignores the substantial amount of reported but nonsegregated production, and implicitly assumes that no part of the nonsegregated gas production represents gas consumed on the lease. A more reasonable assumption is to apportion the nonsegregated volumes to the various specificially identified volumes. Restating the Respondents' calculation on this basis, the ratio of gas used on the lease to net working interest production as shown in Exhibit 149 is between 0.7 and 0.8 percent.

The annual reports of the Oil and Gas Division of the Railroad Commission of Texas for the period 1959–62 inclusive [5] show that, for gas well gas, fuel system and lease use accounted for the following percentages of total gas well produced: 1959, 0.75; 1960, 0.70; 1961, 0.76; 1962, 0.69.[6] These results indicate that Respondents in answering the questionnaire listed gas consumed on the lease in their reported production volumes. Respondents do not seem to argue that where volumes were reported, the corresponding charge to expense was not made.

The amount of gas well gas vented and wasted is negligible. With respect to gas consumed on the lease, the Staff Appendix data used by Roseman and Park in determining their unit production operating expense include the appropriate charges for this item.

H. REGULATORY EXPENSE, ROYALTY PAYMENTS AND WORKING CAPITAL

Neither Roseman nor Park show an allowance for regulatory expense. The Staff cost of service estimates show 0.14 cents as the allowance for this item for 1960, and this figure is adopted.

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[5] Texas Railroad Commission, *Oil and Gas Division Annual Reports 1959*, p. 29; 1960, p. 31; 1961, p. 27; 1962, p. 31.

[6] Roseman's rough estimate on cross-examination that the ratio for gas and gas condensate leases was between one and two percent is thus seen to be too high.

For royalty payments Roseman and Park both use 12.5 percent, which is accepted.

Roseman includes in his rate base a working capital allowance reflecting materials and supplies and one-eighth of operating expenses, pursuant to the Commission's pipeline formula. This comes to 1.63 cents per Mcf.[7] Park makes no estimate for this item. Respondents criticize the formula as inadequate but offer no specific alternative. Roseman's estimate is accepted.

I. ALLOWANCE FOR GROWTH

Due to the continuing growth of demand, more gas must be found each year than is produced in order to maintain the R/P ratio at a desired level. Consequently, an allowance for growth must be added to the exploration expense for gas.

It has previously been determined that a national R/P index of 17.5 years would be an appropriate level to reach in 1970. To achieve this requires a findings to production ratio of 1.37 (omitting any requirement for maintaining a reserve against reserves in storage). This means that annual reserve additions will have to be 1.37 times annual production. Since Roseman's exploration expenses are 3.01 cents per Mcf found (1.42 cents for dry hole costs plus 1.59 cents for geological and geophysical expense, lease rentals, and other exploratory expenses), the allowance for growth must be 37 percent of this amount, or 1.11 cents per Mcf.

Achieving an R/P ratio of 20 years would require a finding ratio of 1.66 to 1 or a cost of 1.99 cents for Roseman. Park's estimate is based on maintenance of a 20-year R/P ratio and a 1.67 finding ratio. This results in a cost of 2.15 cents under Park's exploratory costs.

J. LIQUID CREDIT

Gas condensate wells produce a certain amount of lease condensate liquids which yield revenue to the producer. Thus the producer in making expenditures for gas wells can antiticipate revenues from these liquids as well as from the gas. Both Park and Roseman credit the lease liquid revenues against the cost of gas.

Park, using the Staff Appendix B data, determines for 1960 the average price and volume of lease condensate produced from gas and gas condensate leases, excluding the condensate from combination leases. The resultant gross lease condensate revenue per Mcf of gas well gas is 3.71 cents.

Roseman uses the average price per barrel for 1960 for all condensate produced by the Appendix B respondents, $3.03. He then considers four estimates of national condensate production for 1960:

	Million barrels
The American Petroleum Institute	82.1
The Oil and Gas Journal	82.9
Oil Scouts Yearbook	93.8
World Oil	94.0

These different estimates of national lease condensate production yield average lease condensate revenue ranging from 2.64 cents to 3.04 cents per Mcf. Roseman selects the lowest, 2.64 cents, which is based on the API estimate.

The lease condensate production reported by the Appendix B Respondents is well over half of national production, although their reported gross production

[7] Roseman's Exhibit 224 shows an allowance of 1.616 cents. Thus should be corrected to reflect his adjustment in cost of other production facilities.

of gas from gas leases is only about one-third of total national gas well gas production. It is evident that the respondents in this case produce disproportionately large amounts of lease condensate relative to their gas production. This is reflected in Park's estimated credit of 3.71 cents for lease condensate revenue per Mcf for 1960 derived from the Appendix results, compared with the results based on national published lease condensate production for the same year, 2.64–3.04 cents per Mcf.[8] Since the purpose of these estimates is initially to determine the national cost of gas well gas, the use of the published national production data to determine the lease condensate production is sounder than using the Appendix data.

The increasing trend in lease condensate production is shown by the following results from the *Oil and Gas Journal*, whose 1960 figure is slightly above that for the API:

Year	*Condensate production in million barrels*
1956	45.3
1957	51.0
1958	58.4
1959	69.6
1960	82.9
1961	92.8
1962	101.7

The gas well gas production figures for 1961 and 1962 can be calculated in the manner used by Roseman to determine his gas production for 1960 and other years (Park uses an almost identical method).[9] These gas well gas production figures for 1960, 1961 and 1962 can then be related to the 1960, 1961 and 1962 lease condensate production figures from the *Oil and Gas Journal*. Assuming the 1960 figure used by Roseman for the price of lease condensate, the following lease condensate revenues per Mcf are derived: 1960, 2.67 cents; 1961, 2.89 cents; 1962, 3.08 cents.

In view of the fact that the *Oil and Gas Journal* production figures are in the lower range of the published national production data, it is concluded that 3 cents per Mcf is a reasonable estimate for lease condensate.

From the gross lease liquid revenue there must be deducted royalty of 12.5 percent and production tax. Roseman makes no allowance for tax. Park determines a net credit of 3.07 cents after deducting royalty and production tax from 3.71 cents, indicating that royalty and tax amount to 17.25 percent.[10] Applying this percentage to the 3.0 cents estimated total lease liquid revenue and adding the 0.2 cent plant liquid revenue produces 2.68 cents as a net liquid credit. (For discussion of plant liquid revenue, see following page.)

The logic of crediting the revenues from the liquids is that the producer can reasonably expect that, from a proposed expenditure in the generally directional search for and production of gas well gas, he will receive revenue from the liquids as well as from the gas. Thus he may count against his prospective total cost the expected revenues from the liquids. The remainder represents the revenues to be derived from the gas if the total costs are to be met, and is the cost burden that has to be borne by the gas. Since the price of lease condensate has been

[8] Sherwin's estimate of 3.7 cents for lease condensate credit is also based on Appendix data.

[9] 1961, 9,740 million Mcf; 1962, 10,000 million Mcf.

[10] Thus the production tax is roughly 5 percent.

relatively stable in recent years[11] and since the credit amounts to only sixteen percent of the price for new gas well gas adopted herein, it is not likely that changes in the price of condensate will produce significant swings in the price of gas. In these circumstances, crediting the liquids is reasonable for the purpose used here.

Part of the gas well gas is also processed at plants to produce additional liquids and the producer shares in the revenues from these liquids, usually on a percentage basis. Park makes no allowance for these plant liquid revenues on the grounds that these revenues would have "a negligible effect on the price level necessary to satisfy the producers' financial requirements." He gives no analysis of the factors involved and his conclusion rests on his judgment. Roseman presents a detailed and reasonable analysis showing that if the producer receives only 20 percent of the liquid revenues, he would receive revenue of approximately 0.4 cents for each Mcf of gas well gas produced.

The ratio of total nonassociated liquids to gas well gas has been rising in the post war period, and rapidly during the period 1955–61. Only part of this increase is explained by the increase in lease condensate, leaving the balance to be accounted for from a rising trend in plant liquids.

The Distributors and Texaco, Park's sponsor, stipulated that, for purposes of this case, in the computation of a national cost for gas well gas, a credit for plant liquids might be used in the range of 0.1 cent to 0.2 cents per Mcf of gas well gas produced. Roseman's analysis and the increasing trend in plant liquids suggest that the stipulated figures are conservative. Accordingly the upper limit of the stipulation, 0.2 cents per Mcf, is accepted as the appropriate plant liquid credit.

K. PRODUCTION TAXES

It is arguable that it would be appropriate to use the national average of state production taxes because the effect of such a tax is similar to a cost. Park uses a 7 percent rate in his estimate, but there is no detail to support the figure. Respondent witness Hudson uses a 7 percent tax which he feels approximates the national average, relying in part on the taxes in Louisiana and Texas. Doubtless the production taxes of other states can be ascertained. But it would be proper to weight the average taxes before using them as a national figure. The lack of this evidence throws the balance to the use of a Permian figure.

Staff uses a weighted average of the New Mexico and the Texas taxes of 6.25 percent. In 1963, the New Mexico tax was increased. Staff disregards the change as negligible. While the change will not affect production during 1960, it represents a known change of sufficient amount to warrant consideration. Accordingly, a production tax allowance of 6.42 percent which takes the change into account will be used.

L. FEDERAL INCOME TAXES

Respondents do not recommend an allowance for federal income taxes.[12] Staff witness Lyon shows that if the industry's growth is considered there will be no federal income tax liability on finding and producing gas at any return up to 15 percent. Lyon's analysis is accepted as reasonable.

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[11] Average prices for lease condensate were: 1954, $3.01 per barrel Census; 1958 $3.05, Census; 1960 $3.03, Appendix B.

[12] Respondent witness Carney includes computations for income taxes on gasoline plants in his exhibits. Most gasoline plants in Permian are owned by integrated companies, their subsidiaries, or their affiliates.

APPENDIX C

The Cost of Finding Old Gas Well Gas

The purpose of this analysis is to compare the average finding cost of old gas well gas (the gas produced in 1960) with the cost of finding new gas well gas (the reserve additions found in 1960). The general procedure follows these main steps: (1) the total volume of gas well gas produced in 1960 is distributed by estimated year of discovery; (2) the volume associated with each year of discovery is weighted by an index of drilling cost per Mcf for that year 1960=100); and (3) the results are totaled and then divided by 1960 production, thereby deriving a weighted average finding cost for the gas produced in 1960 relative to the finding cost of gas well gas found in 1960. The basic data for this analysis consists of: (1) Production of gas well gas for 1960; (2) estimates of annual additions to gas well gas reserves; and (3) indices of annual drilling costs per Mcf of reserves added.

There are two basic estimates in the record for the amount of gas well gas production in 1960, Distributor witness Dr. Joskow's of 9,420 million Mcf, and Respondent witness Park's, 9,594 million Mcf.[1] Both employ substantially the same method. Dr. Joskow's lower figure will be used, as for this purpose the lower figure is more conservative. The record also contains two basic estimates of annual additions of gas reserves, one by Respondent witness Dr. Foster and a second by Dr. Joskow.[2] The record also contains two annual indices of drilling costs per Mcf of reserves added, Dr. Foster's "Trend of Drilling Cost per Mcf of New Natural Gas Supplies," and Dr. Joskow's "Index of Drilling and Equipping Cost per Mcf of Natural Gas Reserves Added."[3] Since both of these indices show the trend in cost per Mcf of reserves added, they tend to reflect changes in productivity as well as changes in the price level. For this reason they are more significant than indices which merely show changes in the price level.

It is estimated that the depletion period is twenty years with a constant rate of take. This means that five percent of each year's estimated additions to reserves is produced in each of the succeeding twenty years. A longer depletion period would involve costs of an earlier period which were lower; hence, the twenty-year period is a conservative element in this respect. It is also estimated that a one-year lag occurs between discovery of reserves and production. With a one-year lag the twenty-year period 1940–1959 inclusive is used. The reasons for the selection of a twenty-year depletion period and a one-year lag have been discussed in connection with the costing of new gas well gas.

Since there are separate estimates for annual reserves added and for the drilling indices, two separate statistical series are used. The table on page 390 show the results based on Dr. Foster's data, and the table on page 391 shows the results based on Dr. Joskow's data.

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[1] Respondent witness Dr. Sherwin's estimate of 9,591 million Mcf is calculated on a basis similar to Park's.

[2] Exhibit 116, Schedule 7. Method 1 shows Dr. Foster's results, Method 2, Dr. Joskow's. Park's estimates are based on a method similar to Dr. Joskow's and his results are similar to the latter's.

[3] Exhibit 26, Schedule 7 and Response of California Interveners to Presiding Examiner's Request for Information, dated April 22, 1964, last page, column 4. This last index was derived from Dr. Joskow's deflated cost index originally submitted in Exhibit 116, Schedule 8.

Columns (1) in the tables show the respective estimates of Drs. Foster and Joskow for reserve addition for 1947–1959.[4] Columns (2) show five percent of each year additions; these amounts represent the contribution to 1960 production from the reserve additions in prior years, starting with 1947. The percentage distribution of 1960 production by estimated year of discovery is shown in columns (3) in each table. Columns (4) present the two series of drilling cost indices expressed on the basis of 1947–1949=100. These indices are converted to a 1960 base, as shown in column (5), by dividing the index value for each year by the corresponding value in 1960.

Weighted average cost index (Foster) of gas well gas produced in 1960, United States (1960=100)

Year	Foster estimated reserves of gas well gas added			Foster index of drilling and equipping cost/Mcf reserves added		
	Billion Mcf	Assumed 5 percent take, billion Mcf	Percent contribution to 1960 production	1947–49=100	1960=100	(1960=100) weighted by column (3)
	(1)	(2)	(3)	(4)	(5)	(6)
1947	7.284	0.364	3.86	95.0	50.6	195.316
1948	8.206	.410	4.35	100.8	53.7	233.595
1949	7.892	.395	4.19	104.3	55.6	232.964
1950	8.206	.410	4.35	108.7	57.9	251.865
1951	9.432	.472	5.01	116.7	62.2	311.622
1952	10.222	.511	5.42	124.9	66.6	360.972
1953	15.509	.775	8.23	132.4	70.6	581.038
1954	5.289	.264	2.80	139.7	74.5	208.600
1955	17.711	.886	9.41	147.2	78.5	738.685
1956	20.390	1.020	10.83	156.6	83.5	904.305
1957	16.480	.824	8.75	169.4	90.3	790.125
1958	15.088	.754	8.00	174.3	92.9	743.200
1959	15.234	.762	8.09	182.9	97.5	788.775
1. 1947–59		7.847	83.29			6341.062
2. 1940–46 extrapolated with WPI [1]		1.573	16.7		34.0	567.80
3. Total 20 years, line 1+line 2		9.420	100.0			6909.0
4. Weighted average index, line 3÷100 =69.1.						
5. 1940–46 extrapolated with WPI-farm [2]		1.573	16.7		36.4	607.88
6. Total 20 years line 1+line 5		9.420	100.0			6949.0
7. Weighted average index, line 6÷100 =69.5.						
8. 1940–46 extrapolated with Metals [3]		1.573	16.7		36.5	609.55
9. Total 20 years, line 1+line 8		9.420	100.0			6951.0
10. Weighted average index, line 9÷100 =69.5.						
11. 1940–46 extrapolated with iron and steel [4]		1.573	16.7		37.4	624.58
12. Total 20 years, line 1+line 11		9.420	100.0			6966.0
13. Weighted average index, line 12÷100 =69.7.						

[1] BLS Wholesale Price Index of all commodities.
[2] BLS Wholesale Price Index of all commodities excluding farm products and processed foods.
[3] BLS Wholesale Price Index of metals and metal products.
[4] BLS Wholesale Price Index of iron and steel.

With regard to the reserves added during the years 1940–1946 inclusive, the amount contributed to 1960 production for these years is taken as the difference between the sum of the annual contributions from 1947–1959 and total 1960 production of gas well gas. To obtain cost index values for the period before 1947, the year Dr. Foster's drilling index begins, and before 1948

[4] The contributions of annual reserves to 1960 production include extensions and revisions to data of reservoirs found earlier. Although no provision can be made for the earlier and lower cost of the reserves found applicable to extensions and revisions, their inclusion in this time series in the year in which they are reported is a conservative element.

Weighted average cost index (Joskow) of gas well gas produced in 1960, United States (1960=100)

Year	Joskow estimated reserves of gas well gas added			Joskow index of drilling and equipping cost/Mcf reserves added		
	Billion Mcf	Assumed 5 percent take, billion Mcf	Percent contribution to 1960 production	1947–49=100	1960=100	(1960=100) weighted by column (3)
	(1)	(2)	(3)	(4)	(5)	(6)
1948	7.485	0.374	3.97	100.2	62.4	247.728
1949	6.846	.342	3.63	98.0	61.0	221.430
1950	9.065	.453	4.81	102.6	63.9	307.359
1951	8.470	.424	4.50	113.6	70.7	318.150
1952	9.621	.481	5.11	114.1	71.0	362.810
1953	15.368	.768	8.15	145.7	90.7	739.205
1954	5.632	.282	2.99	154.5	96.2	287.638
1955	12.747	.637	6.76	173.2	107.8	728.728
1956	15.305	.765	8.12	159.2	99.1	804.692
1957	16.207	.810	8.60	147.5	91.8	789.480
1958	17.389	.869	9.23	140.7	87.6	808.548
1959	15,138	.757	8.04	147.4	91.8	738.072
1. 1948–59		6.962	73.91			6353.840
2. 1940–47 extrapolated with WPI [1]		2.458	26.1		41.1	1072.71
3. Total 20 years line 1+line 2		9.420	100.00			7427.0
4. Weighted average index, line 3÷100 =74.3						
5. 1940–47 extrapolated with WPI–Farm [2]		2.458	26.1		43.4	1132.74
6. Total 20 years line 1+line 5		9.420	100.00			7487.0
7. Weighted average index, line 6÷100 = 74.9						
8. 1940–47 extrapolated with Metals [3]		2.458	26.1		41.5	1083.15
9. Total 20 years line 1+line 8		9.420	100.00			7437.0
10. Weighted average index, line 9÷100 =74.4						
11. 1940–47 extrapolated with Iron and steel [4]		2.458	26.1		41.5	1063.15
12. Total 20 years line 1+line 11		9.420	100.00			7437.0
13. Weighted average index, line 12÷100 =74.4						

[1] BLS Wholesale Price Index of all commodities.
[2] BLS Wholesale Price Index of all commodities excluding farm products and processed foods.
[3] BLS Wholesale Price Index of metals and metal products.
[4] BLS Wholesale Price Index of iron and steel.

for Dr. Joskow's index,[5] estimates are made by assuming that the drilling cost index for the earlier period moved proportionately with each of these alternative Bureau of Labor Statistics Wholesale Price Indices: (1) All Commodities; (2) All Commodities other than Farm Products and Processed Foods; (3) Metals and Metal Products; and (4) Iron and Steel. The extrapolated indices for the indices for the years prior to 1947 are weighted by the proportion of 1960 gas attributable to gas well gas found in these years.

The product of the cost index multiplied by the relative proportion of 1960 production is given in columns (6) in each table. Dividing the sum of these products by 100 gives the weighted average index of the finding cost for gas well gas flowing in 1960 relative to 1960 costs which are represented by an index value of 100.

The results using the four indices are shown in the lower section of each table. For Dr. Foster's data, shown on page 390, the finding costs of flowing gas are estimated at 69.1 percent, 69.5 percent, 69.5 percent, and 69.7 percent respectively, of the finding cost of new gas well gas cost. For Dr. Joskow's data, shown above, the results show that the estimated costs of gas flowing in

[5] In the Joskow series, the 1947 figure is not comparable with the index for subsequent years. To approximate comparability the extrapolation to the earlier period covered the period 1940–1947, as opposed to the 1940–1946 period for the Foster series.

1960 are 74.3 percent, 74.9 percent, 74.4 percent, and 74.4 percent of the cost of new gas well gas, respectively. It is apparent that the results are similar regardless of which cost index is used for the extrapolation of costs prior to 1947 or 1948.

APPENDIX D

The Historical Cost Presentations

In the text of this decision the Examiner finds that only the costs of gas well gas are reasonably determinable, and that other gas should be priced primarily on the basis of its relative value to flowing gas well gas. Several of the parties have presented historical cost studies of oil well and residue gas. While these methods have been rejected as lacking in probative value, it is proper that they be analyzed. This will be done in this Appendix.

In discussing these historical cost studies, the main problem concerns the division of the joint costs between oil and casinghead gas, between gas well gas and lease condensate, and between residue gas and plant liquids.

Staff presents a historical "cost" study of each type of gas, which is the crux of its pricing system. Respondents contend that the "costs" of finding and producing gas are indeterminable and should not be used as the basis for determining the price of gas, though they concede that the cost of gas well gas may be determined with a greater degree of reliability than that of gas produced jointly with oil. But if historical "cost" is to be sought, as rebuttal they argue that their methods of allocation should be adopted. CPUC and Distributors accept Staff's historical "cost" basis for pricing all gas, except residue gas. They submit their own gasoline plant cost studies. Warren also submits gasoline plant cost studies, though these seem to be submitted essentially as rebuttal to the Staff presentation.

In this the first area rate case methods must be considered afresh. Precedents used in the few individual producer rate cases[1] thus far decided cannot be applied here without consideration of their relevance and validity on an industry or area basis, where circumstances may be different. The analysis which follows takes into account these different circumstances.

A. Representativeness of the Appendix Questionnaires

The data in the replies to the cost questionnaires submitted by the Respondents are the basis on which Staff develops its cost presentation. Replies to Appendix B questionnaires, intended for Respondents having 1960 continental jurisdictional sales in excess of 10,000,000 Mcf, were filed by 68 respondents, 43 whose 1960 jurisdictional sales volumes were in excess of 10,000,000 Mcf, plus an additional 25 respondents whose volumes were less. Of the total of 68 replies to the Appendix B questionnaires, 67 were used by the Staff, as one of the producers having sales in excess of 10,000,000 Mcf did not fill out the form in a way that it could be used.

The Appendix C questionnaire was a simplified form designed for producers having less than 10,000,000 Mcf of continental United States sales. Replies to Appendix C questionnaires were filed by 105 respondents, but Staff used only 69 of them. Thus Staff exhibits reflect data from 67 Appendix B respondents and 69 Appendix C producers, a total of 136 out of the 361 named Respondents.

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[1] *Phillips Petroleum Company*, 24 FPC 537 (1960) which was followed by *Continental Oil Co.*, 27 FPC 96 (1962); *Hunt Oil Company*, 28 FPC 623 (1962); and *H. L. Hunt*, 28 FPC 897 (1962). In the last three of these cases, the Commission relied substantially on the principles of the *Phillips* case.

With respect to drilling costs, which are shown in Appendix A, responses were received from 249 producers.

Staff's cost evidence covers some 75 percent of Permian produced gas and 52 percent of the nationally produced gas.

Under section 154.91(e) of the Commission's Regulations under the Natural Gas Act, producers selling to gasoline plants under percentage contracts are not permitted to file rate schedules, since the sale to the pipeline is covered by the rate schedules filed by the gasoline plants. Some 2,280 of these producer selling entities operating as percentage sellers in Permian are not parties to this proceeding; they sell considerable volumes of gas to Permian gasoline plants which, in turn, make jurisdictional sales. The Commission simply regulates the price of the final product, residue gas; the arrangements between the percentage sellers, their share of the gas and liquids extracted, the amounts of gas to be returned free to the lease, etc., are left to the bargaining of the parties. Many persons are listed as having interests in several percentage selling entities so that, while still large, the list is in part duplicatory. Also an industry directory lists some 1,460 local explorers and producers in Permian, but this list includes non-jurisdictional producers, and may also include percentage sellers.

It is evident that producers having sales in excess of 10,000,000 Mcf are well represented with respect to Permian production. The percentage coverage of the small producers is not large nor is the sample random. Its representativeness is therefore questionable for this group. For these reasons the weight of this evidence bearing on this group is attenuated.

The sample of Respondent witness Allen with respect to developmental drilling costs covers 23 out of 46 Appendix B and C producers to whom the questions were submitted and 73 percent of the dry hole costs of the Appendix B and C producers. This sample suffers from three sampling defects: It was sent to only 46 Appendix B and C respondents; there were responses from only 23; and there was self selection among those who chose to answer. These factors diminish the weight that can be accorded to this evidence.

In contrast, the data used by Messrs. Park and Roseman for new gas well gas was in most significant instances based on national survey data, and is therefore more representative.

B. COMMON COSTS

Respondents in their Appendix B and C questionnaires reported their costs and investment by six lease types: oil only, gas only, combination, oil casinghead, gas condensate with lease separation, and gas condensate without lease separation. Thus the Appendix data itself is the product of considerable judgment.[2] In addition, included in the data submitted in the Appendices was a considerable amount of common costs and common investment, items such as corporate and district overhead and investment, prepayments, materials and supplies, etc. These items have to be allocated to the various lease types.

Staff allocates corporate general expenses, district expenses and prepayments on the basis of the direct lease expenses. Respondents allocate these items on the basis of direct and indirect lease expenses plus DD&A. Respondents' method allocates a greater percentage to gas leases.[3] Here the common costs involve in the main supervisory expenses for the leases. It is reasonable to relate

[2] *E.g.* the U.S. Continental data for gas condensate leases without lease separation includes a considerable amount of lease separated condensate.

[3] In costing new gas well gas both Distributor witness Roseman and Respondent witness Park derive their allowance for production operating expense from Appendix data. Roseman allocated overhead expenses on the basis of direct lease costs plus DD&A, whereas Park based his allocation on direct lease costs. Applied to new gas well gas, Roseman's method produced a slightly higher result.

supervisory expenses to the direct expenses being supervised. DD&A are simply bookkeeping charges that do not require central office supervision.

Staff allocates common investment, *e.g.*, corporate and district investment and the materials and supplies portion of working capital on the basis of the relative gross investment in the leases. Respondents contend that these should be allocated on the basis of net investment. Since the average depletion of the oil leases is greater than that of the gas leases, the use of net investment increases the costs allocated to gas. Here again we are dealing with supervisory investment, which is not substantially affected by depreciation or depletion of other properties. Moreover net investment is a less reliable figure because of the frequent revisions in estimates of reserves which affect the depletion rate. Finally, the need for materials and supplies is not reduced as the property is written off on the books; maintenance continues with operations. Staff's use of gross production investment as the basis for allocating common investment is therefore accepted as reasonable.

C. ALLOWANCE FOR JOINT EXPLORATORY AND DEVELOPMENT COSTS

Exploratory and development costs (E&D) cover principally dry holes, geological and geophysical expenses, lease rentals, cancelled and surrendered leases. In industry accounting practice these items are generally expensed as they are incurred. The purpose of the E&D allocation is to divide the total E&D expenditures among the leases and the products thereon: oil, lease condensate, gas well gas, gas well gas from condensate wells, and casinghead gas.

Under almost any system of allocation which is used to determine an allowance for E&D as a part of the cost of gas produced in 1960, the allowance will be higher than the amount historically related to the gas flowing in 1960 for two reasons: first, gas flowing in 1960 was not found in 1960; it is the product of expenditures made in prior years when cost levels were lower; second, the dollars spent for E&D in 1960 were spent in the hope of finding reserves that would flow in future years. Since the industry is growing and finding more gas and oil than is being currently produced, the E&D expenditures in 1960 are higher than would have been required as part of the search for 1960 gas, even at unchanged price levels.

The Staff's method of allocating E&D in the main follows principles used by the Commission in Phillips. Essentially two ratios are determined[4]: first, Btu's in an average barrel of lease liquids to an average Mcf of gas; second, the price of an average barrel of lease liquids to the price of an Mcf of gas. The first ratio is then divided by the second. The result is called an economic factor. On a national basis for 1960 the over-all factor is 4.0; on a Permian basis the result is a higher factor, 6.3. A similar relationship between oil well gas and gas well gas on a nationwide basis gives a factor of 0.63. For Permian the relationship of oil well gas to residue gas, 0.508, is considered significant because residue gas is more common in Permian than gas well gas, and "because the price of residue gas delivered from oil-well gas is usually close to the price of gas well gas in the same area." (113/11,585.) The lower factor for Permian casinghead gas relative to residue and gas well gas results primarily from its lower sales value. On a judgment basis, after consideration of these ratios and other economic factors and trends, Staff witness Lyon concludes that for the lease products the following economic factors are appropriate for this proceeding: oil and lease condensate, 4; gas well gas (including gas from condensate wells), 1.0; casinghead gas 0.6. The national production of Btu's for the lease products by lease type is then multiplied by the appropriate factor: 4.0 for oil and lease

[4] Staff witness Lyon considered various other factors and trends, but in his final determination he seems to have focused on these ratios.

condensate, 1.0 for gas well gas, and 0.6 for oil well gas. Thus the higher the economic factor for oil, the higher the cost that is assigned to oil. The total national costs are then apportioned to the leases and to the lease products on the basis of the foregoing economic factors. These apportioned costs are then divided by the respective national volumes of the lease products, barrels for liquids and Mcf's for gas. This produces the national unit allowance for each lease product. These allowances are then imputed to Permian.

The rationale for this method is that it reflects the relative fuel values of gas and oil and also the relative market values due to the more valuable form of the liquids.

While the Staff method is termed a "modified Btu method" it is so heavily weighted by the relative sales realization of the products, that the term "modified sales realization" is a more apt characterization. A comparison of the results of the Staff method with the results under sales realization, while not conclusive, is illuminating. Both produce similar results for the United States: a split of E&D costs of 80 percent to liquids and 20 percent to gas; and for Permian: a split of 90 percent to liquids and 10 percent to gas. The reason the results are so similar is that the basic leverage in the "modified Btu method" is the sales value with only a slight variance attributable to the Btu. Moreover, sales realization also takes into consideration the relative values of gas well and casinghead gas just as the "modified Btu method" does. The latter method is quite close to sales realization, though its mechanics and application are more complex.

There are certain difficulties with using sales realization, or a method in which selling price is such a predominent factor, as a cost allocation method for E&D.

Relative sales revenues provide a sound way of allocating certain costs which are a function of sales: for example, general advertising relating to the good will of a company as a whole; or salesmen's salaries, if it is shown that the time spent on sales of different products approximates the amounts sold. But there is no showing here, nor is there any reason from the evidence presented to infer, that the relative sales values of oil and gas reflect their respective share of the total joint E&D costs.

Furthermore sales realization, or a modification heavily affected by it, as a cost allocation is circular: that is, the price for a substantial item is used to determine the cost of the item, which is used to determine the price. Also in the modified sales realization method proposed, the economic factors applicable in a subsequent rate proceeding will have been substantially influenced with respect to the gas side by the economic factors chosen here. For this reason the method would present difficulties if it were used in a subsequent Permian proceeding.[5]

This is not say that value should not be used as a factor in apportioning the costs of joint products—for burdening each of the joint products with a fair or equitable share of the total joint costs. But it does not reflect real costs

[5] It is recognized that an element of this circularity problem may exist in some degree with respect to the determination of the relative value of casinghead gas to gas well gas in a subsequent proceeding under the method proposed for pricing casinghead gas in the text. This problem concerns the relative value of Permian casinghead to gas well gas, not the determination of the absolute value of both gases, as the price for gas well gas in the text is anchored to an independently determined cost. The problem is not substantial here since only a small amount of Permian casinghead gas is sold as such. And absent a substantial change in factors such as the technology of processing or in the general quality of Permian casinghead gas, of which there are no indications in the record, no change in the casinghead-gas well gas relationship would be indicated.

An extreme instance of this type of circularity is present in the argument that the price for all gas should be determined on the basis of its value as a commodity, and that this value should be determined on the basis of the field prices for the gas.

except where it can be shown that the costs to be allocated are functions of the sales revenues. Staff's E&D allocation method must be recognized as one based primarily on value.

Respondents allocate E&D expenses as follows: As for developmental dry holes, they contend that this drilling has always been directional. Respondent Phillips sent a questionnaire regarding the amounts spent for dry holes which had been aimed at oil reservoirs and for dry holes aimed at gas reservoirs to 46 of the Appendix B and C Respondents. The sample was not random and there is a considerable degree of self selection in the responses. Replies were received from 23 Respondents covering the years 1956–60. These data account for 73 percent of the aggegrate developmental dry hole costs for the Appendix B and C companies. The results show that 33 percent of the developmental dry hole expenditures made by the 23 Respondents were aimed at gas reservoirs. Therefore Respondents allocated 33 percent of 1960 Appendix B and C developmental dry hole costs to gas reservoirs. If Respondents had allocated developmental wells on the basis of the IDC (intangible drilling cost) of successful developmental wells of all the Appendix B and C Respondents the percentage for gas would have been 23 percent. Respondents explain the difference on the ground that developmental drilling aimed at gas reservoirs has a lower success ratio than that aimed at oil reservoirs because of the wider well spacing on gas properties.

As for exploratory dry holes, Respondent witness Sherwin shows that for the years 1956–60 about 50 percent of the IDC of successful exploratory drilling was associated with successful wells which found gas reservoirs. Therefore Respondents allocated about 50 percent of the exploratory dry hole costs to gas reservoirs.

The remaining exploratory expenses, unclassified dry holes, geological and geophysical, lease rentals, abandoned leases, etc., were allocated between gas and oil on the basis of the cost of combined successful exploratory and developmental effort which resulted in finding gas reservoirs compared to oil reservoirs. The percentage of these remaining expenses allotted to gas on this basis is 27 percent.

For the E&D costs allocated to gas reservoirs, a further division is needed between the gas and the lease condensate production. Respondents use a volumetric basis, *i.e.*, for purposes of measurement the lease condensate is converted back to a gas and the costs are distributed on the basis of the respective vapor volumes of gas and condensate. Specifically, it is assumed that one barrel of condensate occupies about 1.1 Mcf. The explanation offered for this way of handling lease condensate is that the condensate is a gas in the reservoir, though it condenses immediately at the surface, whereas oil is a liquid in the reservoir. This distinction, however, has little cost significance.

The vapor volumetric method ignores the economic purpose of the driller. Deep gas reservoirs tend to be gas condensate rather than gas well gas reservoirs, and the likelihood of finding condensate in wells at depth is part of the driller's calculus.[6] One barrel of condensate is worth over $3.00, twenty times the value

[6] The national average depth of successful exploratory condensate and dry gas wells has been for the following years:

	Dry gas wells, feet	*Gas condensate wells, feet*
1956	4,993	9,309
1957	5,170	9,915
1958	5,323	9,640
1959	5,294	9,783
1960	4,974	9,479

Source: Lahee, Statistics of Exploratory Drilling in the United States, 1945–1960.

of an Mcf of gas valued at 15 cents. Under the vapor volumetric method each would be assigned approximately equal costs. The conditions under which the condensate and the gas are produced do not warrant such a result.

Finally, the E&D costs allocated to oil reservoirs by Respondents are further allocated between oil and casinghead gas on the basis of "a modified relative cost" method. As will be discussed below, this method does not reflect true costs. This variant of the relative cost method is not based on the development of costs for single product legs. Instead, the gas leg includes the dual product gas condensate leases with lease separation (using a vapor volumetric method for costing the lease condensate), and the oil leg includes the oil casinghead leases. A ratio is obtained between the total respective single and joint product costs for the oil and the gas legs and applied to split the oil well gas from the oil in the casinghead leases. Respondent witness Porter offers no explanation why a ratio obtained in this manner is meaningful for the purpose used. There is no probative evidence to show that it either reflects true costs or that it is "equitable."

Respondents' use of the successful efforts method to allocate exploratory dry hole costs between gas and oil reservoirs reflects cost elements to a greater extent than the modified sales realization method of Staff. But Respondents' vapor volumetric method and modified relative cost method to allocate between gas and lease condensate, and between casinghead gas and oil, respectively, are unsound.

Staff argues that there are extreme difficulties in classifying dry holes as either exploratory or developmental. This is no doubt partially true, and it will be noted that Respondent witness Keene includes a classification of unsegregated dry holes in his group of other E&D costs. While the problem is not without difficulty, the Staff questionnaire included a breakdown by type of exploratory and development wells. Moreover the industry has been classifying dry holes as exploratory or developmental for years.

Staff seems to criticize Respondents' allocation of dry hole costs on the ground that if it is valid, these costs should be related to reserves found, which is the objective of this cost occurrence. This same criticism is equally applicable to Staff's position that E&D should be charged against current production.

D. THE VARIOUS "RELATIVE COST METHODS" FOR ALLOCATION OF PRODUCTION COSTS AND INVESTMENT

The "relative cost method" is used to separate the joint production costs between the liquids and the gas on the joint product leases (the oil casinghead leases, the gas condensate leases with lease separation and the combination leases). The theory of the method is to determine the separate costs of producing oil on oil only leases, and of producing gas on dry gas leases; then the ratio of the two separate costs is used to divide the joint costs between oil and gas production.

It will facilitate analysis if the Staff method of applying the method is described first.

In developing costs for single products referred to as "gas and oil legs," Staff first excludes "shut-in" single product leases (for allocation purposes). It then divides the gas and oil legs into three costing centers: cash expense, DD&A, and return allowance. The joint product lease cash expense and the DD&A are allocated to gas and lease liquids on the basis of the single product unit cash expense and unit DD&A, respectively. However, the joint product return allowance is not allocated on the basis of single product unit return allowance (or on single product unit net investment which would give the same result), but on the basis of single product gross investment.

While the theory of the relative cost method appears easy to formulate, there are numerous controversies about its application, most of which stem from the different meanings the parties assign to the element of "comparability":

a. Do the single products have to be comparable, and if so, what is the test?

b. Must the single product leases be placed on a common basis for major economic and physical characteristics?

c. Must the single product leases be placed on a common basis with the joint product leases?

d. Must there be a comparability of production process between the single product leases and the joint product leases?

Some of the parties seem to vary their definitions with the particular issue, which adds to the complexity of the problem.

With regard to comparability of product, Staff includes in its Permian[7] gas leg the leases which produce only single products at the lease, *i.e.*, gas only leases and gas condensate leases without lease separation. It excludes gas condensate leases with lease separation from the gas leg because they produce two products at the lease. Respondents argue that gas condensate leases with lease-separation should be included in the gas leg because they are produced under conditions similar to other gas leases, and under conditions dissimilar to that of the oil casinghead gas leases. The basic distinction made by Respondents is that condensate is in the gaseous phase in the reservoir while oil is in the liquid phase. This argument has to do with problem (d) above: that there must be comparability of process. Two products, gas and lease condensate, are produced on gas condensate leases with lease separation, and for purposes of the relative cost method they should be treated as joint products.

With regard to comparability of major economic and physical characteristics, Staff argues that this is required under the method and necessitates two adjustments to the legs: the first is the exclusion of shut-in leases from the gas and oil legs for purposes of allocation. (The actual costs of the shut-in leases in the joint lease categories are not excluded from the costs when the allocations are applied.) There are shut-in leases on the joint product leases and each of the single product leases, but the percentage of shut-in leases is greatest on the gas leases. Staff's second adjustment is to allocate the joint product return allowance on the basis of single product gross investment rather than net investment, because "there are major differences regarding the state of depletion between the state of depletion of the single product and the joint product production categories." With respect to the single product leases, the oil-only leases are more depleted than the dry gas leases. Using net investment as the basis for allocation of the return allowances imposes a comparatively greater burden on gas than oil. Of course, the actual joint product return allowance is computed on net investment. The question here is what the allocation basis on the joint product leases should be.

Respondents argue that if the relative cost method is to be used, the conditions of production should be taken as they are: shut-in wells are an incident of oil and gas production and should be considered as they exist; the same is true, they contend, for net investment. This argument is inconsistent with Respondents' previous position that gas condensate leases with lease separation should be treated as single product leases because the conditions of production on both are similar and unlike those on joint product oil casinghead leases. Respondents further argue that if any adjustments are to be made, an adjustment should be made for the fact that the oil only leases tend to reflect high cost stripper wells,

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[7] In its Continental U.S. gas leg, Staff excluded the lease condensate leases without lease separation because significant volumes of liquids are reported under this classification.

requiring pumping. On this last point, Respondents' grounds for adjustment are as sound as Staff's, though Respondents do not indicate what the adjustment should be, or how it could be made.

The real questions regarding these adjustments go to (a) the definition or the elements required for the relative cost method, and (b) the validity of the method itself, particularly in the light of the proposed adjustments.

If comparability with regard to the economic and physical characteristics of the single product leases and the joint product leases is an essential element of the method, then Staff's adjustments are required, along with a lot of others. But the relative cost method can technically be performed without these adjustments. And while the use of normalizing adjustments with respect to the single products is in consonance with the theory of the relative cost method, as a practical matter it is expedient to discard such added complications, as there is no end to them once begun.

Phillips' witness Cramer presents a variant of the relative cost method, referred to as the "Y" ratio method. He does not claim that his method indicates the real costs of any of the products. The method raises the special problems which underlie the use of the relative cost method such as shut-in leases and allocation of joint product return. It also requires that combination leases be treated as either gas leases or oil leases. Cramer in this case treats them as oil-casinghead gas leases. Staff's relative cost method relies on an allocation ratio based on single product costs. The "Y" ratio method includes in the base the cost and production of the joint products, which are the very costs to be allocated by the ratio to be derived. The results are worked out to a cubic equation which is solved with a computer. While the method may produce a mathematical solution, the assumptions behind it are no more valid than those back of Staff's relative cost methods. It further complicates an already complex situation, without adding validity to the conclusions.

The relative cost method of "costing" joint products is not a costing method. There is no evidence that the cost of producing oil from oil only leases and of producing gas from dry gas leases has any cost causal relation to the cost of producing lease condensate from gas condensate leases or of gas from oil wells. As Dr. Vietti, Respondent Texaco's witness shows, all these products are produced under different conditions, aside from the fact that they are discovered underground and brought to the surface through holes drilled in the ground.

Moreover the method can be and is applied with immumerable variations, each producing different results. A relatively small variation in the cost or volume of the single product leases can, because of the leverage effect of the legs, produce substantial shifts in the allocation of the joint product costs. The reasons for preferring one variation to another are tenuous, although the differences in results can be substantial. There is no indication that the results of the relative cost method are closer to the separate product costs of joint production than relative values related to the cost of old and new gas well gas. Nor is there any indication that they are more "equitable."

There may be hyperbole in Texaco's description of the relative cost method as the "villain of the piece." But there is merit to its charge that the method invites statistical manipulation to produce desired results.

The relative cost method is really not appropriate for the purpose used here. Its underlying philosophy is that single product production is the norm, and the joint cost situation the special case. But here oil production without gas is not the typical situation; and dry gas is yielding its place to condensate well gas as the great sources of new gas reserves are being found at depth.

E. GAS WELL GAS PRODUCED FROM COMBINATION LEASES

In allocating the production costs of combination leases, Staff uses a double-step method. It first allocates joint costs on combination leases between all lease liquids and all raw gas. It then allocates the raw gas costs so obtained between (1) oil well gas, (2) gas well gas, and (3) condensate well gas on the basis of (a) the unit "cost" of gas from oil casinghead gas leases (which figure was derived by previous relative cost allocation), (b) the unit cost of gas from gas only leases, and (c) the unit cost of gas from all condensate gas leases (which figure was derived in part by previous relative cost allocation), respectively.

After developing its costs of gas by type of gas and by lease class, Staff recombines the costs to arrive at a cost for gas well gas and for oil well gas. Its cost of gas well gas reflects a weighted average cost of gas from the gas only leases, gas condensate leases, and gas from gas only and gas condensate from wells on combination leases.

Respondents argue that the cost of gas well gas from combination leases should not be included in the cost of gas well gas. Instead they impute the cost of gas well gas on gas and gas condensate leases to the cost of gas well gas on combination leases. In Permian, gas well gas from combination leases amounts to some 35 percent of total gas well gas production. The gas well gas from combination leases is gas well gas and should be included in determining the cost of gas well gas. The costs on the combination leases are joint and result in some economies. There is no reason not to reflect this saving in cost.

F. RELATING COSTS TO VOLUMES PRODUCED

Some of the raw gas produced is reinjected into oil or gas condensate reservoirs to produce a greater recovery of liquids. Staff spreads its total costs among all units produced, including volumes reinjected. Under this method the liquids which are benefited bear the cost allowance for the reinjected gas. Thus the cost of the gas borne by the purchaser is only for the gas delivered.

Respondents argue that only the direct cash operating expense should be assigned to these reinjected volumes. This places the burden of the other costs relating to this reinjected gas, DD&A, E&D, and return allowance, on the volumes sold. Under this method the purchaser bears the full burden now of gas that he doesn't receive, but is reinjected for the benefit of the liquids. When and if the reinjected gas is eventually sold, the purchaser bears the full burden a second time. When gas is reinjected it is for the purpose of enhancing future liquid production. The entire cost of producing the gas that serves this function should be borne by the future liquids which are benefited, not by current gas sales. The cost difference for this item between Staff and Respondents is slight in Permian but is considerable in the Continental-United States.

G. SEPARATE COSTING OF APPENDIX B AND C RESPONDENTS

In performing its allocations, Staff handled the Appendix B and Appendix C costs separately. At the final stage, the results of the allocations were combined on a weighted average basis. The final results are substantially the same as if they had originally been combined, as Respondents propose.

H. GASOLINE PLANTS

In Permian raw oil well gas not sold directly to pipelines is, in the main, piped to gasoline plants. There it is compressed and treated, and liquids are extracted.[8]

[8] A small amount of Permian gas well gas is also processed at gasoline plants.

In pipeline cases the Commission has generally held that the gasoline plant operations are jurisdictional, and consequently both the revenues and the costs of these plants should be included in determining the pipeline cost of service. The reasons have been that the liquids extraction operations were deemed useful to the pipeline's operations, and incidental to their over-all transmission operations. In *Phillips* the Commission concluded that the gasoline plant operations of this nonpipeline producer constituted "a business conducted primarily for Phillips' benefit; that their prime purpose is to engage in the maximum extraction which is possible and feasible, for a profit, rather than to render the gas delivered to Phillips' pipeline customers more transportable." The Examiner's discussion on this point, which was adopted by the Commission, relies on the testimony of Phillips' witness.

> The purpose of the processing is the extraction of liquefiable hydrocarbon . . . . The extraction of these liquids from gas is a business of itself. [24 FPC 562, 679, 670 (1960).]

Raw gas is not homogenous. The heavier molecules which constitute the LP gases and natural gasoline can be economically liquefied under certain conditions of pressure and temperature. When liquefied, these hydrocarbons are more valuable than in their gaseous state. In 1960 the average revenue per million Btu's of Permian residue gas was some 11.8 cents, whereas the average revenue per million Btu's of Permian plant liquids was some 45 cents. Thus a Btu of gas that is metamorphosed into a liquid is increased in value some 3.7 times.

Compression of the gas to three stages is performed to facilitate liquid extraction as well as to improve the quality of the gas for pipeline use. There are ten one-stage plants in Permian, not owned or controlled by a pipeline, from which jurisdictional sales of residue gas are made. In nine of these under both the contractual arrangements and the operations of the plants, the one-stage plants deliver low pressure residue gas to the pipeline; the pipeline compresses the gas further, redelivers it to the plant operator for extraction of liquids, and the gas is then redelivered to the pipeline. Compression to three and even four stages is also useful for attaining the higher pressures needed to reinject gas into producing reservoirs. Costs incurred for compression benefit the recovery of liquids and the quality of the gas both for sale to pipelines and for reinjection.

Historically, gasoline plants were operated in Permian to extract liquids from natural gas when the gas was still being flared because there was no market for it. The original purpose of establishing the gasoline plants was solely to convert Btu's of gas into Btu's of liquids because of their enhanced value after their metamorphosis. Since the growth in the demand for the gas and the rise in its price, the operations of the Permian gasoline plants have acquired a second purpose, improving the quality of the residue gas.[8]

Most of the raw gas is sold to the gasoline plants under percentage type contracts pursuant to which the producer is paid a percentage of the revenues realized by the plant from the liquids extracted and from the residue gas sold by the gasoline plant. Thus changes in the price of the residue gas or of the liquids are reflected in the supply price the gasoline plants pay the percentage producer. The percentage contract reduces the risks of the parties from fluctuations in the supply price of the oil well gas and the selling price of the finished products.

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[8] But note the testimony of Phillips' witness referred to in the *Phillips* case regarding the extraction of liquids: "Actually, it reduces the heating value of the gas, and so might be said to be detrimental to the interests of the pipeline." (*Supra*, at 680, adopted by the Commission at 562.)

Respondent Warren Petroleum Company presented a study of Permian processing costs. Warren's original computations are based on a 16 percent return, but it offered no independent evidence to justify this. It apparently relies on Respondents' other evidence on this point. Respondent witness Morton stated that the return on the plants would be expected to be less than on gas production, that he regarded these operations "as entitled to a return similar to manufacturing companies in general, as a guide." (168/19,849–50.) Dr. Morton's exhibit shows that for the years 1957–61 the average earnings of Fortune's fifty largest and fifty medium size manufacturers were about 9.5 percent. Staff's proposed rate of return is 9.5 percent on gas production including the gasoline plants, based on the weighted average earnings of the publicly listed integrated and nonintegrated petroleum companies. Accordingly, it is concluded that a return of 9.5 percent is reasonable for the gasoline plant operations.

The OPUC and Distributors also use a rate of return of 9.5 percent in their studies. To facilitate comparison, Warren's figures as used herein will be adjusted to reflect a 9.5 percent rate of return.[10]

The consolidated gross revenues of the Permian gasoline plants for 1960 were some $117 million for liquids and $74 million for residue gas sold, which is a split of 61 percent for liquids and 39 percent for the gas. Also the gasoline plants received further revenues of $1.5 million for residue gas returned to the lease, aside from the substantial amounts returned free to the leases, $700 thousand for residue gas delivered under processing agreements, and $2.6 million in miscellaneous revenues for other processing services. Thus for 1960, the total revenues were about $196 million: the revenue from residue gas sales represented some 38 percent, and that from liquids and other sources some 62 percent.

Between 1960 and 1962 the liquid revenue level in Permian fell some 20 percent. On the basis of these prices the revenue split for 1960 is some 57 percent to liquids and 43 percent to residue gas sold.

In filling out the Appendix questionnaires the Respondents functionalized their costs relating to gasoline plants and then assigned or allocated these costs between residue gas and plant liquids. All parties agree that the direct costs of liquid extraction should be assigned to the liquids extracted. The issues here concern the division of the joint costs for gathering, treating and compressing the gas, and also dividing the joint cost of the raw intake gas.

Respondent Warren allocates the joint costs of gathering, treating and compressing on this basis: 87 percent to residue gas sold and 13 percent to the liquids.[11] Warren employs a volumetric method using the vapor volume equivalent of the liquids extracted. Warren's argument is that the size of the pipes and the amount of compression needed are related to the volumes flowing through.

Respondent witnesses Porter and Carney both rely in part on the Armed Services Procurement Regulations (ASPR) as justification for this allocation which Porter quotes:

> Definition of Allocability. A cost is allocable if it is assignable or chargeable to a particular cost objective * * * in accordance with the relative benefits received or other equitable relationship * * * a cost is allocable to a government contract if it * * * benefits both the contract and other work * * * and can be distributed to them in reasonable proportion to the benefits received. * * * Indirect costs shall be accumulated by logical cost groupings with due consideration of the reasons for incurring the costs.

[10] In several of Warren's exhibits a similar adjustment is made for the same reason, but, of course, without prejudice to Warren's claimed return.

[11] Warren agrees that in dealing with plant liquids, the cost of residue gas not sold, but used for other purposes, should not be included in the cost of the gas sold.

> Each grouping should be determined so as to permit distribution of the groupings on the basis of the benefits accruing to the several cost objectives. (158/17,369–71.)

Warren's witness explains:

> For purposes of determining costs and revenue requirements for the regulated portion of the plant operations (i.e., the residue gas sale) it is necessary to divide these joint costs on the basis of cost incurrence or benefits conferred as determined by engineering considerations. (158/17,499–500.)

The phrase "by engineering considerations" in reference to benefits received does not appear in the quoted ASPR regulations.

Warren's witness explains why he disregards the economic purpose of the plants or the relative values of the products which result from the use of the joint facilities:

> The gathering lines and compressors do not know what kind of extraction facilities follow them in the plant, nor are they aware of the competence of the plant owner's marketing department. (225/26,410.)

An extreme example of the application of Carney's vapor volumetric method is this: 99.3 percent of all uranium is nonfissionable U^{238}; some 0.7 percent of uranium is fissionable U^{235}. In the great U-shaped gaseous diffusion plants the two isotopes are separated by converting uranium into a gas and then forcing it through pipes with a series of filters. Eventually the heavier U^{238} collects at the bottom and the lighter U^{235} rises to the top. U^{238} has certain commercial uses; but U^{235} is much more valuable. Under the vapor volumetric method 99.3 percent of the costs would be borne by the U^{238}, and only 0.7 percent by the more valuable U^{235}. For, to paraphrase Warren's witness, the pipes and filters do not know what kind of facilities will follow them, nor are they aware of the purpose of the plant's operations.

Warren's witness' statement that "The gathering lines and compressors do not know what kind of extraction facilities follow them in the plant" would be more in consonance with business reality if, as Distributors point out, he were to add:

> but the processors who invested capital in the plants and designed the systems certainly did know the relation of the various types of facilities to each other, each one as a part of an economic whole. (Reply Brief, p. 45.)

Warren cites Respondent witness Porter's further reference to the ASPR regulations:

> Each cost grouping shall be distributed to the appropriate cost objectives. This necessitates the selection of a distribution base common to all cost objectives to which the grouping is to be allocated. The base should be selected so as to permit allocation of the grouping on the basis of the benefits accruing to the several cost objectives. (158/17,371.)

The question is what are the several cost objectives? The purpose of laying pipes and running compressors in the operation of a gasoline plant is hardly to measure volumes passing through them. The purpose is to add economic value to the products being produced. The purpose is to extract liquids and to facilitate the transportation of some of the gas.

Warren contends that the phrase "benefits received" in the ASPR "is not intended to reflect the monetary value added to each of the products being costed." The quoted regulations do not say how the "benefits received" are to be measured. But it is reasonable to infer that "benefits received" has some relation to the value added to the product by the joint process, and that this factor is expected to be reflected along with cost incurrence. If its meaning is identical with "cost incurrence", as Warren argues, the phrase would not have been needed at all.

The vice in Warren's allocation is that it relies entirely on a physical measurement after an investment has been made. It ignores the economic purpose of the cost incurrence. And in allocating 87 percent of the joint costs to gas and only 13 percent to the more valuable liquids, it is inequitable. For these reasons the volumetric method is rejected.

For the cost of the raw gas supply, Warren uses the average percentage seller's share per Mcf in the residue gas sold in 1960 based on year-end 1960 prices. But the reasonableness of these 1960 year-end prices is in issue in this proceeding. Warren cannot determine the supply cost of its residue gas under the percentage contracts unless the price of its residue gas is first determined. On a cost basis, Warren's final cost for residue gas is therefore indeterminable.

Distributors and CPUC confine themselves to methods of dividing the joint processing costs. They rely on Staff's 1:1 Btu allocation for allocating the gas intake costs. They also adopt Staff's cost of the intake gas. Both the Distributors and the CPUC rely on methods for allocating the joint costs of the gasoline plants which are based on a relationship between the amount of liquids extracted and the joint costs. Distributors' method allocates 36 percent of the joint costs of gathering compressing and treating to the residue gas and 64 percent to the liquids. Distributors' method relies on a correlation for which no causal relation is shown; it also relies on unwarranted and unsound statistical techniques and inferences.

The CPUC method allocates some 20 percent of the joint costs to gas and 80 percent to liquids. The method is based on a grouping of the plants, with the assumption that gas and liquid costs in each of any two groups of plants are equal. But there is no proof of the validity of this assumption and the method is therefore rejected.

Staff accepts the breakdown furnished by the producers in the Appendices regarding the assignment and allocation by the producers of the treatment costs. Staff allocates the joint costs of gathering, compression and intake gas between gas and liquids on a 1:1 Btu basis. On this basis some 72 percent of the joint gathering and compression costs are allocated to gas and some 75 percent of the joint raw gas costs are allocated to gas.

Staff's basic reason for using a 1:1 Btu allocation seems to be that this is what the Commission used in the *Phillips* case. But crucial factors in Permian are different from those in *Phillips*. Phillips was there processing, on the average, lean gas; in Permian the gas is rich in liquids. Thus in *Phillips* the gasoline plants were producing 1.49 gallons of liquids per Mcf of residue gas; in Permian the plants produce 3.44 gallons per Mcf, 2.3 times more. In *Phillips* the residue gas revenues were 1.6 times the liquid revenues; in Permian, the ratio of the gas revenues to the liquid revenues is 0.63. The gas-liquid revenue ratio in *Phillips* was 2.5 times greater than in Permian. In *Phillips* the gasoline plants extracted approximately 1 Btu of liquids for each 7 Btu's of residue gas produced. In Permian the plants produce 1 Btu of liquids for each 3 Btu's of residue gas produced. Thus, as shown on the table on page 405, in Permian the total processed gas-liquid Btu ratio in terms of Btu's is 2.3 times greater than in Phillips.

Staff's method equates a Btu of liquids with a Btu of gas, even though the former has a value 3.7 times the latter at 1960 prices. In using Btu's in its E&D allocation Staff found it necessary to weight the Btu's by economic factors. Every reason for doing so for purposes of that allocation applies with equal force to the allocation of the joint costs of the gasoline plants. Staff's straight Btu method ignores a major economic purpose of the plants—the enhanced value

of the extracted Btu's. The 1:1 ratio method is unsound and unreasonable in the circumstances of this proceeding, and it produces inequitable results.

Btu relationship between residue gas and extracted liquids—Permian Basin *and the* Phillips *case*

Permian Basin:[1]

	MMBtu
(1) Residue Gas Sales	662, 571, 752
(2) Residue Gas Returned to Lease	137, 284, 854
(3) Subtotal	759, 856, 606
(4) Liquids Extracted	249, 426, 738
(5) Total (3)+(4)	1, 009, 283, 344
(6) Btu Ratio—Residue Gas/Liquids $\frac{(3)}{(4)}$	3. 05

Phillips case:

(7) Residue Gas Sales	609, 562, 623
(8) Total Residue Gas[2]	641, 644, 800
(9) Liquids Extracted[3]	90, 411, 162
(10) Total (8)+(9)	732, 055, 962
(11) Btu Ratio—Residue Gas Liquids $\frac{(6)}{(8)}$	7. 10

Permian Basin to Phillips:

Residue Gas/Liquids Btu Ratio $\frac{(11)}{(6)}$	2. 3 to 1

[1] Excludes custom processed gas.
[2] Residue gas sold was approximately 95% of total residue gas.
[3] Includes some vented gas.

Source: Distributors' Memorandum in Reply to Examiner's Questions of February 4, 1964—p. 5; Warren-Phillips Memorandum in Reply to Examiner's Questions of February 4, 1964—p. 34.

In the circumstances here the application of an economic factor of at least two for the liquids to modify the Btu's is reasonable. Under such a 2:1 Btu allocation as applied to the processing costs as functionalized by Staff, the joint costs of gathering, compressing and treating are split: 42 percent to residue gas sold, and 58 percent to liquids. The average overall unit cost of processing gas under the 2:1 Btu method is 4.5 cents per Mcf of residue gas processed. The table on page 406 gives the detail.

It is recognized that this method is in considerable part value determined, and that it is in many respects subject to criticisms similar to those that have been leveled at the Staff's value determined allocation for E&D. But burdened with these disadvantages, it is still sounder than any of the methods proposed by the parties.

In determining the payment to the percentage sellers there must be included: their share in the selling price of the residue gas and the liquids as well as the fact that they receive back at the lease some 16 percent of the total residue gas volumes. This gas is returned to be used as fuel on the lease and also to benefit future production of the lease liquids, instead of being sold to the pipeline.

I. CONCLUSIONS REGARDING THE HISTORICAL COST PRESENTATIONS

In the text of this decision it has been concluded that it is only with respect to gas well gas sought for as such, that conclusions regarding the cost of gas are meaningful. The conclusion was also reached that a reasonable cost for old gas well gas could be determined by using the current operating costs and the average historical cost of finding this gas. With regard to oil well gas, the economic cost is extremely low; the gas is an unavoidable by-product of

Adjustment to staff processing costs (Exhibit 173) to reflect allocation of joint costs (gathering, compressing and treating) on a 2:1 Btu basis

	Total	Residue Gas Processed		Liquids	
		Dollars	Percent	Dollars	Percent
Joint expenses	$38,074,716	$21,653,091		$16,421,625	
Joint return	13,894,435	7,458,533		6,435,902	
Total joint costs	51,969,151	29,111,624	56.0	22,857,527	44.0
Other expenses	34,498,360	5,030,925		29,467,435	
Other return	8,883,439	1,280,179		7,603,260	
Total other costs	43,381,799	6,311,104		37,070,695	
Total costs	95,350,950	35,422,728	37.2	59,928,222	62.8
Mcf of residue gas processed		786,506,089			
Cost per Mcf, cents		4.50			

Joint costs borne by products sold

		Percent
Residue gas sales	$29,111,624 × 857,405.1 / 786,506.1 = $21,742,127	41.8
Liquids:		
Liquids extracted	22,857,527	
Residue gas not sold	7,369,497	
	30,227,024	58.2
Total joint costs	51,969,151	100.0

the search for and production of oil. It is possible by using various types of allocations of composite total joint costs to arrive at a set of numbers and label them "costs"—or even "equitable costs." But these results have little meaning in the circumstances of this case because they are the end results of a series of allocations piled high on layers of other allocations, each of which involves numerous assumptions, involved calculations, and alternatives where the reasons for preference are often tenuous and the differences in results can be substantial. Nor is it always perceived why the results of these layers of calculations are "equitable." Finally, many of these allocations demand in the name of common sense a value adjustment to a physical factor.

In the case of gasoline plant costs, the problems also revolve about joint costs which serve dual functions, residue gas and liquids extraction. No satisfactory method of dividing these joint costs has been proposed by any party. The Examiner has therefore applied a method which, despite the problems connected with its use, is, in the circumstances of this proceeding, sounder than any presented. However, the most serious problem with costing residue gas is not merely the extreme difficulty of determining a reasonable allocation method for the joint processing costs, but the validity of applying the results of such a method on top of the pile of allocations used to determine the "cost" of the raw gas.

Respondents state in their brief:

> If a historical cost of service computation is deemed necessary as a point of reference for testing producer rates, we submit that such a computation should be limited to the cost of non-associated gas, because it alone may furnish a reasonable approximation of the identifiable cost of gas. The cost of associated gas is wholly dependent upon inherently discretionary allocation methods which render the results of little, if any, meaning for the purpose of measuring revenue requirements. (137:14,370.) Moreover, no data are available for an industry-wide computation of the cost of associated gas, but only for Appendix B and C respondents, which data

understate industry costs. For these reasons we believe that, if it is necessary to make a computation of the cost of all gas, the cost of non-associated gas should be imputed to the cost of associated gas. (182:21, 593.) [Respondents' initial brief, p. 67a.]

The Examiner agrees in the main with this stated cost philosophy of the Respondents. He disagrees on two points. First, it is not clear whether the data for the Appendix Respondents understate industry costs. The Appendix data may not be representative, but whether on balance they overstate or understate industry costs is not definite. For example, on drilling costs per foot the data based on Appendix A Respondents yield results higher than industry costs. See page 377. Again Permian casinghead gas is largely a by-product of Permian oil. While the separate costs of the gas and oil are indeterminable, it is reasonable to conclude that the cost of the gas jointly produced with oil is less than that of gas separately produced, or produced under conditions where it is the major product. Of greater significance, the average value of Permian casinghead gas is so much lower than the average value of Permian gas well gas that, from a value standpoint, the two gases cannot reasonably be priced at the same level. For these reasons the Examiner concluded in the text of this decision that the primary factor in pricing casinghead and residue gas should be their value in relation to the cost of flowing gas well gas. This method is simpler and more reflective of market economics than the multi-allocated cost fictions developed in the historical cost presentations of the parties. Another advantage of this pricing method is the reduction in the expenses and time required for the collection of the needed data and the preparation and presentation of historical "cost" studies.

APPENDIX E

Parties and Proceedings Consolidated

The order of December 23, 1960, made the following parties Respondents:

Abell, George T.
Ackers, D. E.
Ada Oil Co.
Adams & Ray
Aikman, Claude E.
Aldrich & Fullingim
Amerada Petroleum Corp.
American Trading & Production Corp.
Anderson-Prichard Oil Corp.
Antweil, Morris R.
Ard Drilling Co., The
Argo Oil Corporation
Ashland Oil & Refining Co.
Atlantic Refining Co., The
August, John J.
Aurora Gasoline Co.
Austral Oil Co., Inc.
AZTEC Oil & Gas Co.
BBM Drilling Co.
BTA Oil Producers
Baker & Taylor Drilling Co.
Bakke, W. E.
Bankers Trust Co., Trustee
Barnes, J. C.
Barnes, R. C.
Barnhart Hydrocarbon Corp.
Barnhart, Paul F.
Baxter, Murphy H.
Bayview Oil Corp.
Beach, Mrs. R. G.
Bell Petroleum Co.
Benedum-Trees Oil Co.
Bird, Ethel W.
Black, Henry Drilling Co., Inc.
Blackwood & Nichols Co.
Blackwood, F. G.
Blanco Oil Co.
Bond Oil Corp.
Bradley, Albert
British-American Oil Producing Co., The
Brown & Key, Inc.
Brown & Wheeler
Brown, Herman
Brown, James G. and Associates
Burk Royalty Co.
Burns, John J.
Cabot Carbon Co.

Cahill, John T.
Callery, F. A., Inc.
Campbell, E. P.
Carper Drilling Co., Inc.
Carter, R. W.
Castleman, Barbara B.
Champlin Oil & Refining Co.
Charm Oil Company
Cherry, A. W.
Christmann, John J.
Cities Service Oil Co.
Cities Service Production Co.
Clark Dale Drilling Co.
Cobb, Dalton H.
Coline Oil Corp.
Colorado Oil & Gas Corp.
Coltexo Corp.
Columbian Carbon Co.
Cone, J. R.
Cone, S. E.
Connally, J. E., d/b/a Connally Oil Co.
Constantin, E., Jr.
Constantine, S. T.
Continental Oil Co.
Coronet Oil Co.
Cosden Petroleum Corp.
Cox, John L.
Crouch, Louis
Cruce, J. L., Jr.
Crumly, L. D., Jr.
Culbertson, E. A. & Irwin, W. W.
Dalport Oil Corp.
Danglade, F. J.
Dansby, Ben, Jr.
Darneille, George J.
Daugherty, J. A.
Davis, Ethel Jo
Davis, K. W.
Davis, K. W., Jr.
Davison, Leland
Delhi-Taylor Oil Corp.
Derrick, J. Roy
Dixon Management Corp.
Donnell Drilling Co.
Dorchester Corp.
Drilling & Exploration Co., Inc.
Duncan Drilling Co.
Duncan, J. Walter, Jr.
Duncan, Raymond T.
Duncan, Vincent J.
Duncan, Walter
Elliot & Hall
Elliot, Inc.
Elliot Production Co.
El Paso Natural Gas Products Co.
Enfield, Robert N.
Eppenauer, A. R.
Evans, David M.
Falcon Oil Corp.
Felmont Oil Corp.
Fields, Bert
Fikes, Leland
Fleet, Howard W.
Fogelson, E. E.
Foree, R. L.
Forest Oil Corp.
Fox, James O., Jr.
Franklin, John M.
French, L. R., Jr.
Gackle, Albert
General American Oil Co. of Texas
General Crude Oil Co.
George Royalty Co.
Getty Oil Co.
Gibbins, J. P.
Goldston Oil Corp.
Goldston, W. L., Estate of
Grace, Joseph Peter
Great Western Drilling Co.
Greene, Hazel
Greenbrier Oil Co.
Gruss, Joseph S.
Gulf Oil Corp.
Halbouty, Michel T.
Hall, G. E.
Hall & Stewart Drilling Co.
Hamilton Dome Oil Co., Ltd.
Hammonds, George S.
Hammonds, Scott
Hamon, Jake L.
Hanley Co.
Hanlon-Boyle, Inc.
Harper Oil Co.
Hart, Patricia Ruth Carter
Haynes & V. T. Drilling Co.
Herd Oil & Gas Co.
Hernstadt, Wm. L.
Hiawatha Oil & Gas Co.
Hill, John H.
Hitchcock, E. C.
Hodge, T. F.
Honeyman, R. B., Jr.
Honolulu Oil Corp.
Horne, L. L.
Howard, Alvin H. and Vasser, D. E.
Howard, Frank A.
Hudson & Hudson, Inc.

Hudson, William A.
Hudson Co., W. H.
Humble Oil & Refining Co.
Hunt Trustee Estate, Caroline
Hunt, H. L.
Hunt, Lamar
Hunt, Lyda Bunker, Estate of
Hunt, N. B.
Hunt Oil Co.
Hunt, W. H.
Hunter, J. D., Trustee
Husky Oil Co.
Indian Royalty Co.
Inland Natural Gasoline
Inman, Curtis R.
Jal Oil Co. Inc.
Jocelyn-Varn Oil Co.
Johnson & French Oil Co.
Johnson, J. Wes, d/b/a Tower Oil & Gas Co. of Texas
Jones, J. E., Drilling Co.
Julkirk Corp.
Kay Kimbell, Oil Properties
Kelly, John M.
Kerr-McGee Oil Industries Inc.
Kewanee Oil Co.
Kidd, Barron
King, Warren, Dye & Yeckel
Kirby Production Co.
Ladenburg, Thalmann & Co.
Lamont, Thomas S.
Latch, Leonard
Late Oil Co.
Laughlin, Phil E.
Leonard, J. M.
Leonard Oil Co.
Limpia Royalties Inc.
Livermore, George P.
Lomax, W. L. (Pete) & J. P.
Lone Star Producing Co.
Lowe, Ralph
Lundbeck, G. Hilmer, Jr.
Luse, W. P.
Lyle, W. M.
M. W. J. Producing Co.
Macdonald Oil Corp.
Makin Drilling Co.
Maracaibo Oil Exploration Corp.
Markham, Jack
Martin, Williams and Judson
McAlester Fuel Co.
McFarlin, E. B. & Ketchum, E. P.
McGrath and Smith
McKnight, William L., d/b/a La Gorce Oil Co.
Meadows, A. H.
Mendota Oil Co.
Mertzon Corp.
Mesquite Gas Products, Inc.
Miami Petroleum Co., Inc.
Midland National Bank, The, Trustee
Midwest Oil Corp.
Miller, Charles P.
Moberly, George A.
Moncrief, W. A., Jr.
Monsanto Chemical Co.
Monterey Oil Co.
Moore, J. Hiram
Moore, John I.
Moore, Wayne
Moses, H. L.
Moses, Lucy
Mosser, H. J.
Murphy Corp.
Neill, J. P.
Neleh Gas & Oil Corp.
Nemaha Oil Co., Agent
Nolan, Wm. C. & Theodosia M., d/b/a Munoco Company
Norsworthy, Clarence L., Jr.
North Central Oil Corp.
Northern Natural Gas Producing Co.
Norwood Oil Co. and/or Norwood Drilling Co.
O'Neill, Joseph I., Jr.
Odessa Natural Gasoline Co.
Ohio Oil Co.
Oil Well Drilling Co.
Olsen Oils, Inc.
Olsen, R., Oil Co.
Pan American Petroleum Corp.
Parker Drilling Co.
Parrish, Grace Marjorie Moran
Pauley Petroleum Inc.
Payne, Clifford E.
Pecos Co.
Peerless Oil & Gas Co.
Penrose, Neville G., Inc.
Phillips Petroleum Co.
Pioneer Production Corp.
Placid Oil Co.
Poff, H. Bryan
Powell, Celestine V. Trust
Powell, Doless E.
Powell, Purnell F.
Powell, Len
Powell, Mortimer

Prentice Development Corp.
Pulaski, Dan J.
Pure Oil Co., The
Putnam, G. D.
Redfern Oil Co.
Reef Corp.
Regester, H. W.
Reigle, E. E., d/b/a Richmond Drilling Co.
Republic Natural Gas Co.
Resler & Sheldon
Richardson, Sid W.
Robertson, French M.
Rodman, E. G.
Rodman, E. G. and Noel, W. D.
Rodman, Late & Noel
Rodman-Noel Oil Corp.
Rosenthal, Jerome B.
Rutherford, P. R.
Rutter & Wilbanks Bros.
Ryan, Katherine
Samedan Oil Corp.
Sands, Caroline H.
Santa Rosa Gas Co.
Sapphire American Petroleums, Inc.
Saturn Drilling Co.
Scarborough, Warren
Schermerhorn Oil Corp.
Scott, Paul P., Trust
Secure Trusts
Sharp, J. R., Inc.
Sharples Oil Corp., The
Shea, Edward L.
Shell Oil Co.
Signal Oil and Gas Co.
Simmons, Jay
Sinclair Oil & Gas Co.
Skelly Oil Co.
Slade, Inc.
Slick Oil Corp.
Snowden, James H.
Socony Mobil Oil Co., Inc.
Sohio Petroleum Co.
Southern California Petroleum Corp.
Southern Petroleum Exploration Inc.
Southern Union Gas Co.
Southland Royalty Co.
Spence, Aurelia, Mrs.
Standard Oil Company of Texas
Starr, J. W.
Stekoll Petroleum Corp.
Stout, Billy J.
Street, Gordon, Inc.
Street, Gordon P.
Sun Oil Co.
Sunray Mid-Continent Oil Co.
Sunset International Petroleum Corp.
Sunshine Royalty Co.
Superior Oil Co., The
TXL Oil Corp., The
Tela Corp.
Terrill, J. W.
Texaco Inc.
Texaco Seaboard, Inc.
Texas Crude Oil Co.
Texas Gas Products Corp.
Texas Gulf Producing Co.
Texas-Hanover Oil Co.
Texas Hydrocarbon Co.
Texas National Petroleum Co.
Texas Pacific Coal and Oil Co.
Thornbury, D. H.
Three States Natural Gas Co.
Tidewater Oil Co.
Todd, W. L., Jr.
Tres Oil Co.
Tri-Service Drilling Co.
Trice Production Co.
Tucker, R. C.
Turner, Fred, Jr.
Two States Oil Co.
Union Oil Company of California
United States Smelting Refining and Mining Co.
V. E. M. Oil, Inc.
Vaughn, G. H., Jr. & Jack C.
Vest, Earl & Sam; Dorbandt, Arnett; Ross, Bert
Warren Petroleum Corp.
Watts, Ed. E.
Weier Drilling Co.
Welborn, J. M.
West Texas Gathering Co.
Westbrook-Thompson Holding Corp.
Western Development Company of Delaware
Western Natural Gas Co.
Western Oil Fields, Inc.
Western Petroleum Co.
Westlund, Carl J., Inc.
Willetts, Elmore A., Jr. and Craig, Earle M., Jr.
Williams, D. A.
Williamson, J. C.
Wolfson, Reuben I. & Sam
Wrightsman, Charles B.
Young, Marshall R.
Zachary, J. M.

The following Respondents were eliminated as parties to the proceeding by subsequent orders of the Commission:

H. J. Mosser
Kerr-McGee Oil Industries Inc.
Marshall R. Young
Columbian Carbon Company
Hazel Greene
Felmont Oil Corporation
Tela Corporation
Coline Oil Corporation
R. C. Barnes
Bayview Oil Corporation
Bond Oil Corporation
Coronet Oil Company
Ben Dansby, Jr.
Falcon Oil Corporation
Hanlon-Boyle Inc.
Alvin H. Howard and D. E. Vasser
Indian Royalty Company
H. Bryan Poff
Katherine Ryan
James H. Snowden
American Trading & Production Corp.
Maracaibo Oil Exploration Corp.

The following proceedings involving proposed increases in rates were consolidated:

Producer[1]	*Docket Nos.*
Aikman, Claude E	G–18466, RI60–73.
Amerada Petroleum Corp	G–19488, G–19489, G–19490, G–19577, G–20390, RI60–353, RI60–354.
Anderson-Prichard Oil Corp	G–19638, G–19644, G–19651, RI60–121, RI60–149, RI60–150.
Ard Drilling Co., The	RI60–90.
Argo Oil Corp	RI60–177.
Ashland Oil & Refining Co	RI60–329.
Austral Oil Co., Inc., Agent	G–19540.
Aztec Oil & Gas Co	RI61–201.
BTA Oil Producers (Operator), *et al*	G–20525.
Bakke, W. E. (Operator), *et al*	G–16477.
Barnhart Hydrocarbon Corp	G–16417, G–20418.
Barnhart, Paul F	G–13985, G–14017, G–14018.
Baxter, Murphy H. (Operator), *et al*	G–14181.
Benedum-Trees Oil Co	G–12881, G–20522.
Bird, Ethel W., *et al*	RI60–190.
Black, Henry, Drilling Co. Inc. (Oper.) *et al.*	RI60–105.
Blackwood, F. G., *et al*	G–18515.
Blanco Oil Co., *et al*	G–20402.
British-American Oil Producing Co., The.	G–14028, G–19254.
Brown, Herman	RI60–82.
Brown, James G. & Associates (Oper.), *et al.*	RI60–346.
Brown and Wheeler, *et al*	RI60–4.
Cabot Carbon Co	G–18842, G–18844, RI60–27.
F. A. Callery Inc., *et al*	G–13993, G–19645, RI60–395.
Charm Oil Co	G–19491, RI60–206.
Cities Service Oil Co	G–20393, G–20394, G–20395.
Cities Service Producing Co. (Oper.), *et al.*	G–20396.
Connally, J. E. d/b/a Connally Oil Co. (Oper.), *et al.*	RI60–104.
Constantine, S. T	RI60–43.

[1] This producer designation is for general identification and may not include all of the respondents designated in the respective orders initiating rate suspension proceedings.

Producer[1]	Docket Nos.
Continental Oil Co	RI61-86, RI61-87.
Cosden Petroleum Corp	RI60-376.
Cox, John L	RI60-115, RI60-272, RI60-321.
Crumly, L. D., Jr	G-20530, RI61-42.
Culbertson, E. A. Irwin, W. W	RI60-153.
Dalport Oil Corp., *et al*	G-20397, G-20398.
Davison, Leland, *et al*	RI60-467, RI61-54.
Delhi-Taylor Oil Corp	G-19728, RI60-322.
Donnell Drilling Co	G-14736.
Dorchester Corporation (Operator)	RI60-11.
Elliott, Inc	RI60-228.
Elliott Production Co	RI60-212.
Enfield, Robert N	RI60-87.
Eppenauer, A. R	G-20524.
Fleet, Howard W., *et al*	RI60-157.
Foree, R. L	G-20539.
Forest Oil Corp	RI60-107.
French, L. R., Jr	G-17347, G-19725, G-19726, RI60-9.
Gackle, Albert (Operator), *et al*	G-13940, G-14045, RI60-117, RI60-151.
General American Oil Co. of Texas	RI60-248.
Getty Oil Co	G-16533, RI60-72, RI61-19.
Goldston, W. J., Independent Executor of Estate of W. L. Goldston.	RI60-343.
Greenbrier Oil Co	RI60-22, RI60-23.
Gruss, Joseph S	RI60-74, RI60-461.
Gulf Oil Corp	G-20399, G-20400.
Hall, G. E. (Operator), *et al*	G-15175.
Hamilton Dome Oil Co., Ltd	G-20414.
Hammonds, George S	G-16520.
Hammonds, Scott, *et al*	G-16521.
Hamon, Jake L	G-18327, RI60-106, RI60-112.
Hanley Co	RI60-75, RI60-76, RI60-77.
Harper Oil Co. (Operator), *et al*	RI60-200.
Herd Oil and Gas Co	G-18769.
Honolulu Oil Corp	G-16425, G-17059, RI60-32.
Horne, L. L	G-18268.
Hudson, W. H. Co	RI60-156.
Humble Oil & Refining Co	G-16415, G-16416, G-18172, G-19487, RI60-430, RI60-443, RI60-444, RI60-447, RI60-473.
Hunt, H. L	G-16421, G-18554, G-20527, RI60-84, RI60-110, RI60-324.
Hunt, Lyda Bunker, Estate of	G-16423, G-18556, G-20535.
Hunt, Lamar	G-16418, G-17424, G-18847, G-20528.
Hunt, N. B	G-16420, G-16478, G-18557, G-20533.
Hunt, W. H	G-16419, G-17425, G-18848, G-20534.
Husky Oil Co	G-19722.
Inland Natural Gasoline	G-19992, RI61-91.
Jal Oil Co. Inc	RI60-256, RI60-350, RI60-362, RI60-386, RI60-442.
Jocelyn-Varn Oil Co. (Oper.), *et al*	RI60-36.
Johnson, J. Wes d/b/a Tower Oil & Gas Co. of Texas.	RI60-276.

Producer[1]	Docket Nos.
J. E. Jones Drilling Co. (Oper.), *et al*	G–14762.
Kay Kimbell Oil Properties, *et al*	G–20538.
Kawanee Oil Co	G–15235, RI61–155.
Kidd, Barron	RI60–109.
Kirby Production Co. (Oper.), *et al*	G–13838, RI60–311.
Latch, Leonard, *et al*	RI60–328.
Late Oil Co. (Oper.), *et al*	G–14495.
Leonard Oil Co	RI60–44, RI60–113.
Leonard, J. M	RI61–226.
Limpia Royalties Inc	G–14761.
Luse, W. P., *et al*	RI60–37.
Lyle, W. M., *et al*	G–20419.
MWJ Producing Co. (Oper.), *et al*	RI60–88, RI60–188.
MacDonald Oil Corp. (Oper.), *et al*	RI60–258, RI60–419.
Markham, Jack, *et al*	RI60–222.
Martin, Williams & Judson (Oper.), *et al.*	RI60–89.
McAlester Fuel Co	G–19324.
McFarlin, E. B. & Ketchum, E. P	G–13161, RI60–24.
McGrath & Smith (Oper.), *et al*	RI60–316.
McKnight, William L. d/b/a La Gorce Oil Co., *et al.*	RI60–315.
Meadows, A. H	RI60–33.
Mendota Oil Co	RI60–314, RI60–351.
Midhurst Oil Corp	RI60–103.
Monsanto Chemical Co	RI60–122.
Monterey Oil Co	G–17799, G–18568, RI60–28, RI60–42, RI60–80.
Moore, J. Hiram, *et al*	RI60–3.
Moore, John I., *et al*	RI60–120.
Moore, Wayne, *et al*	G–20416.
Nemaha Oil Co., Agent	RI60–78, RI60–79.
Odessa Natural Gasoline Co	RI60–5.
Ohio Oil Co., The	RI60–259, RI60–260.
Oil Well Drilling Co., *et al*	RI60–152.
Olsen Oils, Inc	G–20002, G–20003, RI60–118.
O'Neill, Joseph I., Jr., *et al*	RI60–320.
Pan American Petroleum Corp	G–16480, G–16481, G–16532, G–19998, G–20006, G–20007, G–20008, G–20452, RI61–43, RI61–44, RI61–45, RI61–53, RI61–58.
Parrish, Grace Marjorie Moran, *et al*	G–16903.
Pauley Petroleum Inc., *et al*	G–20529.
Pecos Co	RI60–34, RI60–35.
Peerless Oil & Gas Co	G–20401.
Phillips Petroleum Co	G–11849, G–13734, G–14006, G–14115[2], G–15314, G–15315, G–17071, G–18206, G–18207, G–18215, G–18417[2], G–18418, G–20403[2], G–20404, G–20405, G–20417, G–20523, RI60–2, RI60–15, RI61–30.

[1] This proceeding is consolidated only insofar as it pertains to the Permian Basin, New Mexico and Texas Railroad Commission Districts Nos. 7–C and 8 areas.

Producer[1]	Docket Nos.
Pure Oil Co	G-16800, G-17930, G-17937, G-20005, G-20280, RI60-91, RI60-418.
Redfern Oil Co	G-18770.
Reef Corp. (Oper.), *et al*	RI61-66.
Reigle, E. E., d/b/a Richmond Drilling Co.	RI60-38.
Republic Natural Gas Co	G-13311, RI60-10.
Resler & Sheldon (Oper.), *et al*	G-19492.
Robertson, French M. (Oper.), *et al*	RI61-244.
Rodman, E. G. (Oper.), *et al*	G-19994, RI60-7.
Rodman, E. G. & Noel, W. D.	RI60-6.
Rodman, Late & Noel	G-19952.
Rodman-Noel Oil Corp	G-19996.
Rosenthal, Jerome B., *et al*	RI60-414.
Rutter & Wilbanks Brothers (Oper.), *et al*	RI60-155.
Santa Rosa Gas Co. (Operator)	G-17165, G-20412.
Schermerhorn Oil Corp	RI60-40, RI60-41, RI60-81.
Scott, Paul P. Trust, *et al*	RI60-108, RI61-98.
Secure Trusts	G-16424, G-18558, G-20536.
Sharples Oil Corp., The	G-14253, G-14624.
Signal Oil & Gas Co	RI60-219, RI60-305.
Simmons, Jay, *et al*	RI60-154, RI60-197.
Sinclair Oil & Gas Co	G-16534, G-16956, G-18326, G-19723, G-19724, G-20082[3], G-20580, RI60-31, RI61-56[3]
Skelly Oil Co	RI61-88.
Socony Mobil Oil Co., Inc	G-12981, G-12982, G-13030, G-15448, G-15449, G-15995, G-20406, G-20407, G-20408, RI60-46, RI61-94.
Sohio Petroleum Co. (Oper.), *et al*	RI60-8.
Southern California Petroleum Corp	RI60-12, RI60-13.
Southern Union Gas Co	G-19483, RI60-242.
Southland Royalty Co	G-19727, RI60-119, RI60-148, RI60-306, RI61-50.
Standard Oil Co. of Texas	G-13187, G-14059, G-19583, G-19664, RI60-164, RI60-337, RI60-338, RI61-161.
Stanton Oil Co., Ltd	RI61-106.
Stekoll Petroleum Corp. (Oper.), *et al*	RI60-114.
Stratton, G., Jr. (Oper.), *et al*	G-16535, G-18692.
Street, Gordon, Inc	RI60-86.
Street, Gordon P	RI60-85.
Sun Oil Co	RI60-123, RI60-124.
Sunray Mid-Continent Oil Co	G-13160, G-16884, G-19090, G-20537, RI60-14, RI60-29, RI60-101.
Superior Oil Co., The	G-12949, G-12950, G-15358, G-18771, G-20075.
TXL Oil Corporation, The	RI60-224.
Texaco Inc	G-16414, G-17159, RI60-132, RI60-137, RI60-142, RI60-466, RI61-33, RI61-74
Texaco Seaboard, Inc	G-14194.
Texas Gas Products Corp	G-16888, G-18952, G-20420.

Producer[1]	Docket Nos.
Texas Gulf Producing Co	G–14066, G–16537, RI60–25, RI60–26.
Texas Hydrocarbon Co	G–16889, G–18951, G–20421.
Texas National Petroleum Co	RI60–325, RI61–26, RI61–27.
Texas Pacific Coal & Oil Co	RI60–453, RI60–469, RI60–470.
Three States Natural Gas Co	RI60–278.
Tidewater Oil Co	G–14061, G–14185, G–16259, G–16260, RI60–70, RI60–71, RI61–17, RI61–18.
Todd, W. L., Jr., *et al*	G–20415.
Tri-Service Drilling Co	RI60–454.
Trice Production Co	RI60–234.
Turner, Fred, Jr	RI60–83.
Two States Oil Co	RI60–39.
Union Oil Co. of California	G–13997, RI60–174, RI60–438.
Vaughn G. H., Jr. & Jack C	G–13770, G–20413.
V. E. M. Oil, Inc	RI60–116.
Warren Petroleum Corp	G–12842, G–15304, G–15310, G–15311, G–16114, G–18467, G–18471, G–18517, G–18560, G–20409, G–20410.
Weier Drilling Co. (Oper.), *et al*	RI60–261.
Western Natural Gas Co	G–19252, RI60–45.
Western Petroleum Co	G–20411.
Westlund, Carl J., Inc. (Oper.), *et al*	RI60–196.
Wrightsman, Charles B	G–20540.

The following certificate proceedings were also consolidated:

Name	Docket No.
Brown, Robert T., Operator, *et al*	CI61–733.
North Central Oil Corp., Operator, *et al.*	CI60–435.
Nortex Oil and Gas Company	CI61–34.
TXL Oil Corporation, The	CI61–879.

APPENDIX F

Parties whose petitions to intervene were granted by orders dated May 31, 1961 and July 26, 1961:

Public Service Commission of Wisconsin
Minneapolis Gas Company
Public Utilities Commission of State of California and People of the State of California
David Fasken
Delta Drilling Company
W. H. Black (Operator)
DST Exploration Company
G. E. Marsh, II
J. H. Vandenbark (Operator)
The City of Los Angeles
Abel & Bancroft
James L. Green, Fr. and Thomas M. Sloan
J. H. Bartley, Norman Bock, A. W. Lasher, Jr. & William Moss
Dekalb Agricultural Association, Inc.
The State of Wisconsin

West Central Texas Oil and Gas Association
Iowa Public Service Commission
Texas Independent Producers and Royalty Owners Association
City and County of San Francisco, California
San Diego Gas & Electric Company
Pacific Gas & Electric Company
State of New Mexico
Jeanne E. Krebs
Big Chief Drilling Company
American Liberty Oil Company
El Paso Natural Gas Company
Transwestern Pipeline Company
Minnesota Valley Natural Gas Company
Iowa Electric Light & Power Company
King-Stevenson Oil Company, Inc.
Pacific Lighting Gas Supply Company, Southern California Gas Company and Southern Counties Gas Company of California
Service Drilling Company
The State of Texas
Northern States Power Company
E. R. Bahan
Central Natural Gas Company
Metropolitan Utilities District of Omaha
Independent Petroleum Association of America
Fuels Research Council, Inc.
The City of San Diego
Woolaroc Oil Company
Iowa Power and Light Company
Central Electric and Gas Company
Northern Natural Gas Company
J. M. Armstrong & W. A. Yeager
C. A. McClintic
Delfern Oil Company

Parties whose petitions to intervene were denied by orders dated May 31, 1961 and July 26, 1961

Adobe Oil Company, (Operator)
Lowe Petroleum Company
Valley Royalty Corporation
North Texas Oil and Gas Association
D. B. Blue
T. Jack Foster & Likins-Foster Honolulu Corporation
Oklahoma Independent Petroleum Association
Appleton Oil Company
The Anabaco Operating Company
Chet H. Jameson, Jr.
W. J. Hefner
Keener Oil Company
Mead Production Co.
Calvert Petroleum Company
E. J. Muth
Southwest Kansas Royalty Owners Association
Guy M. Steele, Jr.
Union Oil Company of Oklahoma

The Vickers Petroleum Co., Inc.
Cleary Petroleum, Inc.
Admiral Oil, Inc.
Gerald N. Eason
Fair Oil Co.
E. Lyle Johnson
W. R. Yinger
Consolidated Edison Company of New York, Inc.
Nix and Harris
Viersen & Cochran
Friedon L. Parham and J. R. Perkins
Westheimer-Neustadt Corporation
GMC Oil Corporation
C. W. Dobbins, Jr.
Dr. H. B. Alspaugh
Krumme Oil Company
Compadre Oil Corporation
Earlsboro Oil & Gas Company
J. A. La Fortune, Jr.
Jack H. Bryant, Trustee
The United Gas Improvement Company
Public Service Electric and Gas Company
Long Island Lighting Company
Philadelphia Electric Company

APPENDIX G

Parties Filing Briefs

Signers of Joint Respondent Brief:

Continental Oil Company
Tidewater Oil Company
Pan American Petroleum Company
Sohio Petroleum Company
Schermerhorn Oil Corporation and Kenwood Oil Company
Sunray DX Oil Company
Sinclair Oil & Gas Company
Marathon Oil Company
Cities Service Oil Company
Texaco Inc.
Socony Mobil Oil Company, Inc.
J. Ray McDermott & Co., Inc.
Amerada Petroleum Corporation
Murphy Corporation
Shell Oil Company
Cabot Corporation
The Pure Oil Company
Skelly Oil Company
The Atlantic Refining Company
Humble Oil & Refining Company
Gulf Oil Corporation
The Superior Oil Company

312-270—69——30

Parties Adopting the Joint Respondent Brief:

The British-American Oil Producing Company
Southland Royalty Company
Westates Petroleum Company
Western Petroleum Company
Whaley Company, Incorporated
Odessa Natural Gasoline Co.
Rodman-Noel Oil Corporation
W. D. Noel
E. G. Rodman
L. R. French, Jr.
E. G. Rodman and W. D. Noel
Rodman, Late and Noel
Inland Natural Gasoline
Dixilyn Drilling Corp.
West Texas Gathering Company

Additional Respondent Briefs:

Warren Petroleum Corporation
Texaco Inc.
Hunt Oil Company
Superior Oil Company
Phillips Petroleum Company
Sohio Petroleum Company
Sun Oil Company
Perry R. Bass, Operator, *et al.*
Gulf Oil Corporation
Placid Oil Company

Intervener Briefs:

The State of Texas
Texas Independent Producers & Royalty Owners Association and West Central Texas Oil & Gas Association
Independent Petroleum Association of America
People of The State of California and the Public Utilities Commission of The State of California
The City of San Diego
The City and County of San Francisco
California Distributor Intervenor Group
State of Wisconsin and Public Service Commission of Wisconsin

Staff Briefs

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

AREA RATE PROCEEDING, AR61-1, ET AL.; NORTH CENTRAL OIL CORPORATION (OPERATOR), ET AL., CI60-435; SOCONY MOBIL OIL COMPANY, INC., CI61-34; ROBERT T. BROWN (OPERATOR), ET AL., CI61-733; TEXACO INC., CI61-879

ORDER ISSUING CERTIFICATES

(Issued August 5, 1965)*

By Opinion No. 468, *supra*, p. 159, and order in this proceeding issued concurrently with this order we have prescribed the just and reasonable rates for

*See order issued October 4, 1965 denying rehearing, etc., 34 FPC 1082.

jurisdictional sales of natural gas in the Permian Basin area. There are four applications for certificates of public convenience and necessity which were consolidated in this proceeding and these are the subject of the present order. Temporary certificates have been granted to all four applicants and the gas is now flowing in interstate commerce.

The only issue presented by the applications is the initial price at which the gas is to be certificated. As we stated in Opinion No. 468, the just and reasonable area rate fixed therein constitutes the "in line" price required by the public convenience and necessity in granting permanent certificates. All of the applications involve "flowing gas" as defined in Opinion No. 468, produced in Texas. The applicable area rate is 14.5 cents per Mcf at 14.65 psia adjusted to reflect any quality deficiencies in the gas and we shall therefore grant the certificates conditioned to an initial price no higher than the applicable area rates. The certificates shall be subject to the moratorium on any rate increase filing in excess of the applicable area rate prior to January 1, 1968, as provided in Opinion No. 468, pp. 227–231.

Each of the certificate applications has a somewhat different history from the others and also differs in its contract provisions. We shall therefore discuss each of them separately.

The proposed rate schedule of *North Central Oil Company (Operator), et al.*, Docket No. CI60–435, contains provisions specifying that the gas must equal or exceed in every particular the pipeline quality standards established in Opinion No. 468. A permanent certificate will therefore be issued in this docket providing for an initial price of 14.5 cents per Mcf at 14.65 psia. The temporary certificate contained no refund condition but a rate increase was filed during the period of the temporary. The increased rate was suspended pursuant to Section 4(e) and has subsequently been collected subject to refund, Docket No. RI65–288. The last-mentioned docket has not been consolidated herein and accordingly the question of refunds in that proceeding will be disposed of pursuant to the Order to Show Cause issued this date, *infra*, p. 424. The question of whether refunds should be ordered during the period of the temporary when no express refund obligation was operative, but prior to the effective date of the proposed increased rate, will be deferred until our decision of the same issue in Skelly[1] and Amerada[2].

Robert T. Brown (Operator), et al., Docket No. CI61–733 involves sales made under a temporary certificate without an express refund condition. The related contract contains provisions requiring gas moving under it to equal or exceed pipeline quality standards in all respects save for hydrogen sulphide and total sulphur. The permanent certificate will provide for an initial price computed by modifying the ceiling price of 14.5 cents per Mcf by deducting therefrom the cost of processing the gas to meet the pipeline quality standards for the Permian Basin. Accordingly the producer (unless these sales qualify as small producer sales as defined in the rule proposed this date providing for small producer certificates for such sales) shall, within 90 days of the effective date of this order, file a statement which shall state either that the gas accords with all pipeline quality standards established in Opinion No. 468 or in which respects the gas deviates from such standards, the agreed cost to the buyer of processing the gas to bring it to the quality standards with respect to each quality defect, and the resulting rate for the gas. Such statement shall be signed by both seller and buyer. However, if the seller and buyer are unable to agree upon any or all of the particulars entering into the computation of the proper price, the seller

[1] Skelly Oil Company, Docket No. G–18638, *et al.*
[2] Amerada Petroleum Corporation, *et al.*, Docket No. CI62–1544, *et al.*

must so indicate in the statement and supply the information required to compute the applicable area rate as adjusted as well as the contentions of the parties with respect to the quality and amount of the adjustment as any item in dispute. The buyer may file a separate statement setting forth its views within such period. In such event the Commission will then determine the amount of the quality deduction. As in the case of *North Central Oil Corporation (Operator), et al., supra*, the determination of any refunds which may be due for the period of the temporary, when no express refund conditions were in effect, shall be deferred.

The applications of *Socony Mobil Oil Company, Inc.* (Socony), Docket No. CI61–34, and *Texaco Inc.*, Docket No. CI61–879, involves so-called Spraberry or El Paso contracts. In accordance with the principles established in Opinion No. 468, the applicable area rate will be applied to the volumes of residue gas taken into the purchaser's pipeline under these contracts. The contracts provide that there shall be a reduction in the price paid for such residue gas if treatment of the casinghead stream received by the buyer is necessary to remove sulphur. The cost of such treatment and the cost of any other necessary treatment of the casinghead stream to bring the gas to pipeline quality, aside from those processing costs incurred in removing the liquids, must be deducted from the ceiling price of 14.5 cents per Mcf to determine the applicable area rate. The certificates granted in these two dockets will be conditioned upon a filing by the producer within 90 days of the effective date of this order of a statement as to quality of the casinghead gas and cost of treating (or an estimate if no agreement is reached) as described above and further conditioned upon an initial price equal to the applicable rate established by deduction from 14.5 cents per Mcf of the cost of treating the gas to pipeline quality standards as such cost is determined by agreement of the parties or by the Commission. During the time they were operating under these temporary certificates both Socony and Texaco Inc. filed for rate increases which were suspended and are now in effect subject to refund. Computations of the refunds due for the period during which these rates have been collected subject to refund will be dealt with in the Section 4(e) proceeding. Docket Nos. RI65–209 and RI65–115.

Socony succeeded to a temporary certificate which contained a refund condition. Texaco Inc. succeeded to a temporary certificate without refund condition. Accordingly, Socony will be required to submit a computation of all excess amounts collected for the entire period of operations under the temporary certificate except the time during which the Section 4(e) proceeding was pending, and to make refund of those amounts with interest. For the reasons previously stated, Texaco Inc. will not be required at this time to make any refunds for the period when there was no express refund condition.

All certificates issued herein shall be subject to a moratorium against rate increases prior to January 1, 1968, unless such increases are authorized by later order of the Commission.

The Commission finds:

(1) Each applicant for a certificate of public convenience and necessity listed in Appendix A hereto is a "natural-gas company" within the meaning of the Natural Gas Act as an independent producer of natural gas, as that term is defined in Section 154.91(a) of the Commission's Regulations, engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption and such sales together with the construction and operation of any facilities therefor are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(2) Each applicant listed in Appendix A hereto is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(3) The sale of natural gas as proposed herein by each applicant listed in Appendix A hereto together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor are required by the public convenience and necessity and a certificate authorizing the same should issue to each of them upon the terms and conditions of the order herein, which terms and conditions are required by the public convenience and necessity.

(4) Except as granted in the order in Opinion No. 468 the exceptions of the applicants listed in Appendix A hereto to the presiding examiner's initial decision and proposed order should be denied.

The Commission orders:

(A) Certificates of public convenience and necessity are issued, upon the terms and conditions of this order, authorizing the sales by the applicants listed in Appendix A to this opinion of natural gas in interstate commerce for resale, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary for such sales, all as hereinbefore described and as more fully described in the respective applications, amendments, supplements and exhibits in this proceeding.

(B) The certificates granted in paragraph (A) above are not transferable and shall be effective only so long as the applicants continue the acts or operations hereby authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations and orders of the Commission.

(C) The grant of the certificates issued in paragraph (A) above shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act or Part 154 or Part 157 of the Commission's Regulations thereunder, and is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against the respective applicants. Further, our action in this proceeding shall not foreclose or prejudice any future proceedings or objections relating to the operation of any price or related provisions in the gas purchase contracts herein involved. The grant of the certificates aforesaid for service to the particular customers involved shall not imply approval of all the terms of the respective contracts, particularly as to the cessation of service upon termination of said contracts, as provided by Section 7(b) of the Natural Gas Act. The grant of the certificates aforesaid shall not be construed to preclude the imposition of any sanctions pursuant to the provisions of the Natural Gas Act for the unauthorized commencement of any sales of natural gas subject to said certificates.

(D) The notice provisions of Section 154.94(b) and the detailed submittal subprovisions of Section 154.94(f) of the Commission's Regulations under the Natural Gas Act are waived insofar as they apply to any reductions in rates hereby ordered.

(E) The certificate granted to North Central Oil Corporation (Operator), *et al.*, is conditioned upon a total initial price, including tax reimbursement, of 14.5 cents per Mcf at 14.65 psia, and within 30 days of the effective date of this order North Central shall file a supplement to its presently filed rate schedule reflecting the conditioned price as the initial price in lieu of the initial price provided in the present rate schedule.

(F) The certificates granted to the applicants, other than North Central Oil Corporation (Operator), *et al.*, are hereby conditioned to a total initial price,

including tax reimbursement, no greater than the applicable base area rate of 14.5 cents per Mcf at 14.65 psia subject to further reductions, effective as of the effective date of this order, for any quality deviations as determined pursuant to ordering paragraph (G) hereof, and further conditioned upon the filing by the respective applicants within 30 days of the determination of such rate of a supplement to its filed rate schedule reflecting the applicable area rate in lieu of any rate provided in the rate schedule then on file, and further conditioned upon refunds being made with interest by each applicant of the difference between the applicable area rate and any rate in excess thereof collected subsequent to the effective date of this order. The manner and time of such refunds shall be determined by the Commission in a later order.

(G) The certificate hereby granted to each applicant listed in Appendix A hereto, other than North Central Oil Corporation (Operator) *et al.*, is issued upon the condition that such applicant (unless the sale qualifies as a small producer sale pursuant to the proposed rule issued this date) shall file, within 90 days of the effective date of this order, a statement that the gas accords with all pipeline quality standards established in Opinion No. 468 or in which respects the gas deviates from such standards, the agreed cost to the buyer of processing the gas to bring it to the quality standards with respect to each quality defect and the resulting rate for the gas. Such statement shall be signed by both seller and buyer. However, if the seller and buyer are unable to agree upon any or all of the particulars entering into the computation of the proper price, the seller must so indicate in the statement and supply the information required to compute the applicable area rate as adjusted as well as the contentions of the parties with respect to the quality and amount of the adjustment as any item in dispute. The buyer may file a separate statement setting forth its views within such period.

(H) The certificate granted to Socony Mobil Oil Company, Inc., is issued upon the condition that the said applicant shall file within 120 days of the effective date of this order a report in triplicate with this Commission of the refunds due each buyer by reason of the collection by said applicant and its predecessor of rates in excess of the applicable area rate during the period in which such excess rates were collected prior to the effective date of the rate which is the subject of the present proceeding in Docket No. RI65-209.

(I) Socony Mobil Oil Company, Inc. shall retain the amounts shown in the report required under (H) above, subject to further order of the Commission directing the disposition of those amounts. If said applicant elects to commingle these retained refunds with its general assets and use them for its corporate purposes, it shall pay interest thereon at the rate of 4.5 percent per annum on all funds thus available from the date of the filing of the refund report to the date on which they are paid over to the person ultimately determined to be entitled thereto in a final order of the Commission. If the applicant elects to deposit the retained refunds in a special escrow account, the respondent shall tender for filing on or before the date of the filing of the refund report an executed Escrow Agreement, conditioned as set out below accompanied by certificate showing service of a copy thereof upon each of its jurisdictional customers. Unless notified to the contrary by the Secretary within 30 days from the date of filing thereof, the Escrow Agreement shall be deemed to be satisfactory and to have been accepted for filing. The Escrow Agreement shall be entered into between respondent and any bank or trust company used as a depositor for funds of the United States Government and the agreement shall be conditioned as follows:

(1) Respondent, the bank or trust company, and the successors and assigns of each, shall be held and formally bound unto the Federal Power Commission for

the use and benefit of those entitled thereto, with respect to all amounts and the interest thereon deposited in a special escrow account, subject to such Agreement, and such bank or trust company shall be bound to pay over to such person or persons as may be identified and designated by final order of the Commission and in such manner as may be therein specified, all of any portion of such deposits and the interest thereon.

(2) The bank or trust company may invest and reinvest such deposits in any short-term indebtedness of the United States or an agency thereof or in any form of obligation guaranteed by the United States which is, respectively, payable within 120 days as the said bank or trust company in the exercise of its sound discretion may select.

(3) Such bank or trust company shall be liable only for such interest as the invested funds described in Paragraph (2) above will earn and no other interest may be collected from it.

(4) Such bank or trust company shall be entitled to such compensation as is fair, reasonable and customary for its services as such, which compensation shall be paid out of the escrow account to such bank or trust company. Said bank or trust company shall likewise be entitled to reimbursement for its reasonable expenses necessarily incurred in the administration of this escrow account, which reimbursement shall be made out of the escrow account.

(5) Such bank or trust company shall report to the Secretary of this Commission quarterly, certifying the amount deposited in the trust account for the quarterly period.

(J) The decision whether refunds should be ordered as a condition of the permanent certificate of applicants, other than Socony Mobil Oil Company, Inc., listed in Appendix A hereto is deferred for subsequent determination. Such certificates shall issue at the present time subject to the condition that the subsequent determination of the Commission with respect to such refunds shall then be incorporated in each such certificate as a condition thereof.

(K) The certificate granted to each applicant listed in Appendix A hereto is issued upon the condition that the applicant shall not file any change in rate providing for a price in excess of the applicable area rate prior to (1) subsequent order of the Commission in this proceeding permitting such filing or (2) January 1, 1968, whichever is earlier.

(L) The certificate of each applicant listed in Appendix A is issued upon the condition that the proposed rate schedule of the applicant shall be amended by the inclusion of the following language:

> From the effective date of the order of the Federal Power Commission in the Permian Basin Area Rate Proceeding AR61–1, until January 1, 1968, no increase in rates may be filed, except in compliance with a specific order of the Commission, at a rate in excess of the applicable area rate as determined pursuant to said proceeding or pursuant to later order of the Commission. Applicable area rate, as that term is used herein, shall mean the rate to be determined after all adjustments from the ceiling price because of deviations from the pipeline quality standards established in the aforesaid order of the Commission.

(M) Except as herein granted the exceptions to the initial decision and proposed order are hereby denied.

APPENDIX A

Docket No. AR61–1 *et al.*

North Central Oil Corp. (Operator), *et al*_____	Docket No. CI60–435
Socony Mobil Oil Company, Inc. (Successor to Nortex Oil & Gas Corp.)	Docket No. CI61–34
Robert T. Brown (Operator), *et al*_____	Docket No. CI61–733
Texaco Inc. (Successor to The TXL Oil Corp.)__	Docket No. CI61–879

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

AREA RATE PROCEEDING (PERMIAN BASIN), DOCKET NO. AR61-1, ET AL.

ORDER TO SHOW CAUSE

(Issued August 5, 1965)*

By Opinion No. 468 and order issued in the above proceeding concurrently with this order, *supra*, p. 159, we have prescribed just and reasonable rates for all jurisdictional sales of natural gas made in the Permian Basin area by respondents therein and ordered refunds in the Section 4(e) proceedings consolidated therewith. We know of no reason why the record already made in this proceeding is not adequate to determine the rates of non-respondents presently certificated under permanent or temporary authorization to sell gas in the Permian Basin and also to determine the refund obligations under unconsolidated 4(e) dockets of respondents or non-respondents. We believe the record is also sufficient to conclude that any outstanding certificate applications not consolidated in the case for new sales in the area should be certificated at or below the applicable ceiling price as the sales contract may permit.

We therefore are of the opinion that the determinations set forth in Opinion No. 468 should apply to these other sales of gas and to certificate applications in the Permian Basin which were not consolidated in the Permian case. Nevertheless, we shall afford the producers making these sales or seeking certificates an opportunity to show cause why the rate determinations made in Opinion No. 468 and accompanying order should not be applicable to their sales from the Permian Basin as defined in our order instituting this proceeding.

In view of the foregoing, it is necessary and appropriate for the purpose of administering the Natural Gas Act that the parties listed in Appendixes "A"[1] and "B"[2] and "C"[3] be made respondents to this proceeding (to the extent that they are not already respondents) and be required to show cause, if there be any, why the rates determined in Opinion No. 468 and accompanying order should not be made applicable to all Permian Basin sales of the respondents in Appendixes "A" and "B", and should not determine the refund obligations under the dockets listed in Appendix "C".

While just and reasonable rates were prescribed prospectively in the Permian decision for sales made pursuant to temporary authorization by those producers listed in Appendix "D",[4] permanent authorization has not been granted to those producers for such sales. We shall therefore also make such producers respondents herein, and shall give them an opportunity to show cause why they should not receive permanent certificates at the rate level prescribed in Permian. We

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*Reconsideration denied by order issued October 12, 1965, 34 FPC 1135.

[1] Appendix A includes all persons making sales in the Permian Basin under permanent certificates who were not made respondents under previous orders in Docket No. AR61-1.

[2] Appendix B includes all pending certificate applications of parties who were not made respondents in previous Permian orders whether their sales were being made under temporary certificates or not, together with all pending certificate applications of parties previously made respondents in Permian where no sales are being made under temporary authorization.

[3] Appendix C includes all pending Section 4(e) dockets not previously consolidated in the Permian proceeding.

[4] Appendix D includes all pending certificate applications of parties previously made respondents in Permian who are making sales under temporary authorizations but have not been afforded a hearing under Section 7 of the Natural Gas Act.

shall also give those producers in Appendix "B"[5] who have not received permanent authorization a similar opportunity.

The Commission orders:

(A) The parties listed in Appendixes "A", "B" and "C" hereto are made respondents herein and shall show cause, in writing, if there be any, within 90 days of the issuance of this order, why the rates prescribed by Opinion No. 468 and accompanying order shall not be applicable to all Permian Basin sales of the respondent listed in Appendixes "A" and "B" and to all the refund obligations under the dockets listed in Appendix "C".

(B) The parties listed in Appendix "D" shall show cause, in writing, if there be any, within 90 days of the issuance of this order, why they should not receive permanent certificate authorization for their respective sales at the rates prescribed by Opinion No. 468 and accompanying order.

(C) The parties listed in Appendix "B" which have not received permanent certificate authorization for their sales shall also show cause, in writing, if there be any, within 90 days of the issuance of this order, why they should not receive permanent certificate authorization for their respective sales at the rates prescribed by Opinion No. 468 and accompanying order.

(D) Future procedures shall be established by subsequent orders of the Commission herein.

APPENDIX A

Producer	*Producer*
American Liberty Oil Company	Hill & Meeker
Ares, Sam D.	Kasper, Alexander C. and Frank Kell Cahoon
Bartley, J. H.	Kimsey, Roy E., Jr.
Bateman, Frank	Kluthe, Joseph
Bogle Farms, Inc.	Kerbs, Jeanne E.
Brannon, Clyde J., Jr.	Lakeland Petroleum Corporation
Brooks Gas Corporation	Landmark Oil, Inc.
Brown, P. F.	Langham, J. T.
Burk Gas Corporation	Lanier, Sid
Burrell, Jack L.	Late, Frank M.
Cactus Drilling Company	Long, C. E.
Carter Foundation Production Company	Lovelady, I. W.
Clark Oil Co.	MacCurdy, Malcolm d/b/a GMK Oil Company
Crone Oil Company	McDermott, J. Ray
Davoust, Richard C.	McMillian, John G., Jr.
Delta Drilling Co.	Mallard Petroleum, Inc.
Dixilyn Drilling Corporation	Maxwell Oil Co.
Dugan, Thomas A.	Midhurst Oil Corporation
Fasken, David	Morel, W. A.
Fluor Corporation, Ltd., The	Nearburg, E. E. & Ingram, Tom L.
Greenlee, Melba J.	Ne-O-Tex Corporation
Grover, Arden R., *et al.* d/b/a Grover, MacCurdy & Hoffacker	Nordhausen, R. H.
Hassie Hunt Trust	Parker & Parsley
Haynes, Charles A.	Penrose Production Company
Helmerich & Payne	Producing Properties, Inc.

[5] Appendixes "B" and "D" do not include certificate applications previously consolidated and set for hearing.

APPENDIX A—continued

Producer	*Producer*
Ray, Bernard	Southern Minerals Corporation
Read, Charles B.	Southern New Mexico Oil Corporation
Reserve Oil & Gas Company	Texam Oil Corporation
Roberts, A. P., Jr.	Texas American Oil Corporation
Robinson Bros. Oil Producers	Turner, J. Glenn
Rock Island Oil & Refining Co., Inc.	Vandenbark, J. H.
Santana Petroleum Corporation	Williams Brothers Company
Joseph E. Seagram & Sons, Inc., d/b/a Texas Pacific Oil Company	Wiseman, B. W., Jr.
Slaughter, William E., Jr.	Younger, John F.
	Floyd W. Smith and Co., Inc.

APPENDIX B

Producer	*Docket No.*
American Petrofina Company of Texas	CI62–635
Apco Oil Corporation	CI64–718
The Atlantic Refining Company, *et al*	CI65–513
Bartessa Oil Corporation	CI61–1724
Perry R. Bass (Operator), *et al*	CI64–597
Blackwood & Nichols Company, *et al*	G–3679
W. K. Byrom	CI62–336
Capitan Petroleums, Inc	CI65–561
Chambers & Kennedy	CI62–100
Chase Petroleum Company, *et al*	CI63–1211
Cities Service Oil Company	CI64–765, CI64–1451
DST Exploration Corporation	CI61–1261
Robert N. Enfield (Operator), *et al*	CI65–577
Gulf Oil Corporation	CI64–708, CI64–818, CI65–463, CI65–464, CI65–465, CI65–466, CI65–467, CI65–468, CI65–609
Hanagan Petroleum Corporation (Operator), *et al.*	CI65–586
Hankamer, Curtis	CI61–1606
Humble Oil & Refining Company	G–5145, CI65–606
Hunt Petroleum Corporation	CI64–184
Curtis R. Inman (Operator), *et al*	CI65–658
International Oil & Gas Corporation	CI65–679
Kerr-McGee Oil Industries, Inc	CI65–605
Lario Oil & Gas Company	CI62–684
Lesh Company	CI62–319
Ralph Lowe	CI65–649
Marathon Oil Company	CI64–716, CI65–603
McCulloch Oil Corporation of California, *et al*	CI62–1491
Ray Morris Exploration Company (Operator), *et al.*	CI62–860
Monsanto Company	CI65–525, CI65–531
The Nueces Company (Operator), *et al*	CI62–101
Pan American Petroleum Corporation	CI64–713
Penroc Oil Corporation	CI65–595
Petroleum Exploration, Inc. of Texas, *et al*	CI63–368

APPENDIX B—continued

Producer	*Docket No.*
Potash Company of America (Operator), *et al*	CI65–628
Rodman Petroleum Corporation (Operator), *et al.*	CI61–111
Rutter & Company, Ltd., *et al*	CI65–1165
Rutter, Wilbanks and Rutter	CI61–1733
Tom Schneider (Operator), *et al*	CI65–191
Joseph E. Seagram & Sons, Inc., d/b/a Texas Pacific Oil Company	CI62–438, CI65–558
Shell Oil Company	CI64–706, CI65–1164
Sinclair Oil & Gas Company	CI61–1500, CI61–590, CI64–1439, CI65–543
Skelly Oil Company	CI61–601
Peter B. Smith	CI65–1242
Southern Petroleum Exploration, Inc	CI65–692, CI65–911
Southland Royalty Company	CI65–806
Marion E. Spitler	CI65–678
Standard Oil Company of Texas, A Division of Chevron Oil Company	CI65–564, CI65–1018
Sun Oil Company (Southwest Division)	CI65–583
Sunray DX Oil Company	CI64–784
The Superior Oil Company	CI65–995
Texaco Inc	CI65–589
Tidewater Oil Company	CI64–585
John H. Trigg	CI65–625
Union Oil Company of California	CI65–539
J. C. Williamson, *et al*	CI62–109
Wolfson Oil Company (Operator), *et al*	CI62–444
Harvey E. Yates, *et al*	CI65–659

APPENDIX C

Ada Oil Company (Operator), *et al*	RI61–271
Amerada Petroleum Corporation	G–16117, G–16256, G–16715, RI62–333, RI63–253, RI64–31, RI64–58, RI64–340, RI65–20
Amerada Petroleum Corporation, *et al*	G–16118
Amerada Petroleum Corporation (Operator), *et al.*	G–16119, RI62–334, RI65–19
American Liberty Oil Company	RI63–455
Apco Oil Corporation	RI64–579
Apco Oil Corporation, *et al*	RI64–578
The Atlantic Refining Company	G–18913, RI61–468, RI62–446, RI63–228, RI63–272,[1] RI64–191, RI64–244, RI64–272, RI64–278, RI64–292, RI64–336, RI64–654, RI65–8, RI65–70
The Atlantic Refining Company (Operator), *et al.*	G–16803, G–18565, RI64–337,[1] RI65–9
The Atlantic Refining Company (Operator)	RI61–388, RI64–271

APPENDIX C—continued

Producer	*Docket No.*
The Atlantic Refining Company, Sunset International Petroleum Corporation & Socony Mobil Oil Company, Inc. (Operator), *et al.*	RI61–389
Austral Oil Company Incorporated	RI63–273
Aztec Oil & Gas Company	RI62–381, RI64–34, RI64–699, RI65–68
BBM Drilling Company, *et al*	RI61–303
Bankers Trust Company, Trustee	RI62–124
Barnes, J. C. (Operator), *et al*	RI63–296
Barnhart, Paul F., *et al.* & Sohio Petroleum Company.	RI61–359, RI61–402
Bartessa Oil Corporation, *et al*	RI62–187
Bartley, J. H., *et al*	RI61–283
Baxter, Murphy H	RI63–291
Murphy H. Baxter (Operator), *et al*	RI63–289
Murphy H. Baxter, *et al*	RI63–290
Benedum-Trees Oil Company	RI65–142
Blanco Oil Company	RI64–767
British-American Oil Producing Company, The	RI63–292, RI64–123
Brooks Gas Corporation	RI65–325
Brown & Key, Inc	RI61–503
BTA Oil Producers	RI65–106
BTA Oil Producers (Operator), *et al*	RI65–50, RI65–107
BTA Oil Producers, Agent for Bernard E. Alpern, *et al.*	RI65–46
BTA Oil Producers (Operator), Agent for Carlton Beal, *et al.*	RI65–104
BTA Oil Producers, Agent for Ernst Wolff, *et al.*	RI65–105
BTA Oil Producers, Agent for Winter Wolff Company, *et al.*	RI65–47
Burrell, Jack L. (Operator), *et al*	RI64–82
Cabot Corporation (SW)	RI61–293, RI64–294, RI65–72
Callery, F. A., Inc	RI64–805
Chambers & Kennedy	RI64–664
Champlin Petroleum Company	RI63–236
Cities Service Oil Company	RI63–426, RI64–279, RI64–764
Cities Service Oil Company (Operator), *et al*	RI64–765
Cities Service Oil Company (Operator)	RI64–766
Continental Oil Company	RI60–193, RI61–473, RI62–31, RI63–368, RI64–30, RI64–79, RI64–301, RI64–368,[1] RI65–51, RI65–86, RI65–211
Continental Oil Company (Operator), *et al*	RI61–472, RI61–480, RI63–367, RI64–5, RI64–29, RI64–35, RI65–83
Continental Oil Company (Operator)	RI62–422
Crouch, Louis	RI61–278
Culbertson, E. A. & Irwin, Wallace W	RI61–508
Davoust, Richard C	RI65–71
Dixilyn Drilling Corporation (Operator), *et al*	RI61–277

APPENDIX C—continued

Producer	*Docket No.*
Elliott Oil, Inc	RI64-332
Elliott Production Company	RI64-304, RI64-331
Fasken, David, *et al*	RI63-333
Fields, Bert, Estate, *et al*	RI63-366
Fluor Corporation, Ltd., The	RI65-585
Foree, R. L	RI64-782
Forest Oil Corporation	RI64-357, RI65-16
General Crude Oil Company	RI64-359
Getty Oil Company	RI61-446, RI64-307
Gulf Oil Corporation	G-13110, G-13983, G-13984, G-14092, G-14929, G-16960, RI61-300, RI63-265, RI64-77, RI64-83, RI64-95, RI64-176, RI64-321, RI65-36, RI65-48, RI65-101, RI65-554
Gulf Oil Corporation (Operator), *et al*	G-16959, RI64-78, RI64-322, RI64-772
Hanley Company	RI65-55
Hanley Company, *et al*	RI65-57
Hanley Company (Operator), *et al*	RI65-114
Hanley Company (Operator), *et al.* and Humble Oil & Refining Company.	RI65-56
Harper Oil Company (Operator), *et al*	RI65-506
Hassie Hunt Trust	RI65-418
Herd Oil & Gas Company	RI62-291
Hernstadt, William L	RI62-118
Hill & Meeker (Operator), *et al*	RI61-317
Hudson, William A. & Hudson, Edward R., *et al*	RI63-364
Hudson, William A. & Hudson, Edward K. (Operator), *et al.*	RI64-603
Humble Oil & Refining Company	G-19157, RI61-376[1], RI61-524, RI62-415, RI64-42, RI64-49, RI65-10, RI65-24, RI65-271
Humble Oil & Refining Company (Operator), *et al.*	RI63-238, RI63-414, RI64-50, RI64-56, RI65-25
Humble Oil & Refining Company & Amerada Petroleum Corporation and Parker & Parsley and Hanley Company.	RI65-11
Hunt, Caroline, Trust Estate	RI63-252
Hunt, H. L	RI65-79, RI65-80, RI65-141
Hunt Industries	RI65-82
Hunt, Lamar	RI64-52, RI65-76
Hunt, N. B	RI64-51, RI65-77
Hunt Oil Company	G-13191, G-16422, G-16479, G-18464, G-18555, G-18668, G-20531, RI60-202, RI65-74
Hunt Oil Company (Operator), *et al*	G-20532, RI65-81
Hunt Petroleum Corporation	RI65-84
Hunt, W. H	RI64-63, RI64-74, RI65-78

APPENDIX C—continued

Producer	*Docket No.*
Husky Oil Company	RI65–64
International Oil & Gas Corporation	RI64–581
J. E. Jones Drilling Company & Sohio Petroleum Company ** and Deane E. Stoltz.	RI61–466, RI61–474**
Kasper, Alexander G. & Frank Kell Cahoon (Operator), *et al.*	RI65–320
Kerbs, Jeanne E	RI62–29
Kimsey, Roy E., Jr. (Operator), *et al*	RI65–441
Kluthe, Joseph (Operator), *et al*	RI63–22, RI63–142
Lakeland Petroleum Corporation	RI64–384
Lakeland Petroleum Corporation (Operator), *et al.*	RI64–383
Limpia Royalties, Inc	RI61–495, RI61–505
Lowe, Ralph (Operator), *et al*	RI61–482
Mallard Petroleum Inc. (Operator), *et al*	RI63–301, RI64–101
Marathon Oil Company	RI61–296, RI65–355
Marathon Oil Company (Operator), *et al*	RI64–690
Martin, Williams & Judson, *et al*	RI61–306, RI65–192
Martin, Williams & Judson (Operator), *et al*	RI61–371, RI65–193, RI65–215
Maxwell Oil Company (Operator), *et al*	RI61–281
McAlester Fuel Company	RI65–140
McMillian, John G., Jr., *et al*	RI63–303
Mendota Oil Company	RI61–273
Mesquite Gas Products Inc. (Operator), *et al*	RI61–326
Midhurst Oil Corporation (Operator), *et al*	RI62–405, RI65–49
Midland National Bank, The Trustee	RI64–681
Midwest Oil Corporation	RI63–224, RI63–269
Midwest Oil Corporation (Operator), *et al*	RI63–268
Moncrief, W. A., Jr	RI63–365
Monsanto Company	RI64–16, RI65–23
Moses, H. L	RI62–116
Moses, Lucy	RI62–117
MWJ Producing Company (Operator), Agent	RI61–370, RI65–191, RI65–214
Neleh Gas & Oil Corporation	RI65–525
Nordhausen, R. H., *et al*	RI64–739
North Central Oil Corporation (Operator), *et al*	RI65–288
Northwest Production Corporation (Operator)	RI65–113
Nueces Company, The (Operator)	RI64–796
O'Neill, Joseph I., Jr. (Operator), *et al*	RI63–260, RI63–267
Pan American Petroleum Corporation	RI63–481, RI64–6, RI64–80, RI64–156, RI64–280, RI64–302, RI65–111, RI65–117, RI65–133, RI65–473
Pan American Petroleum Corporation (Operator), *et al.*	RI61–534, RI63–483, RI64–293, RI64–303, RI65–109
Pan American Petroleum Corporation, *et al*	RI65–110
Pan American Petroleum Corporation (Operator).	RI65–112
Pecos Company	RI65–67

APPENDIX C—continued

Producer	*Docket No.*
Pecos Company, *et al*	RI65–65
Pecos Company (Operator)	RI65–66
Penrose Production Company, *et al*	RI65–398
Petroleum Exploration Inc. of Texas (Operator), *et al.*	RI61–451
Phillips Petroleum Company	RI63–454, RI64–4, RI64–589, RI65–186, RI65–205
Phillips Petroleum Company (Operator)	RI62–541, RI63–453, RI64–607, RI65–185
Phillips Petroleum Company (Operator), *et al*	RI63–452, RI65–187, RI65–206
Placid Oil Company	RI64–295
Pure Oil Company, The	RI63–258, RI63–263, RI64–28, RI64–193, RI65–17
Pure Oil Company, The (Operator), *et al*	RI65–18
Redfern Oil Company	RI62–290
Reserve Oil & Gas Company	RI65–189
Reserve Oil & Gas Company (Operator), *et al*	RI65–188
Rhodes, A. L. (Operator), *et al*	RI65–616
Robinson Bros. Oil Producers	RI65–467
Rodman Petroleum Corporation (Operator), *et al.*	RI65–419
Samedan Oil Corporation	RI61–345, RI64–174, RI65–45
Samedan Oil Corporation (Operator), *et al*	RI61–344, RI64–173, RI65–44
Schermerhorn Oil Corporation	RI65–150
Schermerhorn Oil Corporation (Operator), *et al*	RI64–590, RI64–668, RI65–148
Schermerhorn Oil Corporation (Operator)	RI65–149
Joseph E. Seagram & Sons, Inc., d/b/a Texas Pacific Oil Company.	RI61–357, RI61–544, RI63–144, RI63–179,[1] RI63–183, RI63–434, RI63–435, RI65–87, RI65–100
Joseph E. Seagram & Sons, Inc., d/b/a Texas Pacific Oil Company (Operator), *et al.*	RI61–358, RI63–180, RI63–182, RI64–582, RI65–88
Secure Trusts	RI65–85
Shell Oil Company	G–12951, G–16254, G–16952, G–17368, RI62–247, RI63–479, RI64–132, RI64–141, RI64–144
Shell Oil Company (Operator)	G–12952, G–16255, RI61–476
Shell Oil Company (Operator), *et al*	G–12953, G–16253, RI61–477, RI62–243, RI63–235, RI63–480, RI64–133
Shell Oil Company and Ashmun & Hi Hilliard No. 5 LTD and Tenneco Oil Company (Operator), *et al.* and Cities Service Oil Company.	RI61–475
Sinclair Oil & Gas Company	G–14060, RI61–437, RI63–271, RI64–3, RI64–108, RI64–119, RI64–305[1], RI64–341[1], RI64–463, RI64–631, RI64–637, RI65–38

APPENDIX C—continued

Producer	*Docket No.*
Sinclair Oil & Gas Company (Operator)	RI64–219, RI65–39, RI65–626
Sinclair Oil & Gas Company (Operator), *et al*	RI64–465, RI65–40, RI65–108
Sinclair Oil & Gas Company and Ne-O-Tex Corporation.	RI65–75
Skelly Oil Company	RI64–2, RI64–99, RI64–111, RI64–122, RI64–150, RI64–218, RI64–364, RI64–774
Skelly Oil Company (Operator)	RI64–64
Skelly Oil Company (Operator), *et al*	RI64–110
Socony Mobil Oil Company, Inc	RI63–115, RI64–112, RI65–42, RI65–209, RI65–420
Socony Mobil Oil Company, Inc. (Operator), *et al.*	RI64–43, RI64–339, RI64–752, RI65–41, RI65–167, RI65–210
Socony Mobil Oil Company, Inc., *et al*	RI64–354
Socony Mobil Oil Company, Inc. (Operator)	RI65–43, RI65–272, RI64–797, RI65–540
Sohio Petroleum Company	RI65–59, RI65–102
Sohio Petroleum Company (Operator), *et al*	RI63–270, RI63–305, RI64–629, RI65–58, RI65–246
Sohio Petroleum Company, *et al*	RI65–60, RI65–249
Southern New Mexico Oil Corporation	RI65–35
Southland Royalty Company	RI63–381
Standard Oil Company of Texas, A Division of Chevron Oil Company.	RI62–368, RI62–369, RI64–40, RI64–60, RI64–158, RI65–132, RI65–324
Standard Oil Company of Texas, A Division of Chevron Oil Company (Operator), *et al.*	RI62–371, RI64–61, RI64–88, RI65–134
Standard Oil Company of Texas, A Division of Chevron Oil Company (Operator).	RI62–370, RI65–131
Street, Gordon, Inc	RI61–372, RI61–373, RI65–212
Sunray DX Oil Company	RI63–482, RI64–102, RI64–177, RI64–617, RI64–804, RI65–7, RI65–226
Sunset International Petroleum Corporation	RI63–107
Sun Oil Company	G–12841, G–12880, G–16257, RI61–555, RI62–382, RI63–264, RI63–346, RI64–15, RI64–81, RI64–711, RI64–798, RI64–806, RI65–21, RI65–608
Sun Oil Company (Operator), *et al*	G–16258, RI61–556, RI62–383, RI65–22
Superior Oil Company, The	RI62–17, RI64–217, RI65–156, RI65–157
Superior Oil Company, The and Rutter, A. W., Jr. & Amerada Petroleum Corporation	RI62–445
Tenneco Oil Company	RI64–635
Tenneco Oil Company and Continental Oil Company and Harvey H. Henry	RI64–89

APPENDIX C—continued

Producer	*Docket No.*
Texaco Inc	G–13155, G–13162, G–13190, G–14062, G–14096, G–16413, G–16536, RI61–461, RI61–447, RI63–237[1], RI64–41, RI64–98, RI64–130, RI64–643, RI65–115
Texaco Inc. (Operator), *et al*	RI65–116
Texas American Oil Corporation (Operator), *et al.*	RI65–319
Tidewater Oil Company	RI61–444, RI64–721[1]
Tidewater Oil Company (Operator), *et al*	RI61–445
Turner, J. Glenn, *et al*	RI64–355
Union Oil Company of California	RI61–512, RI64–338, RI65–69
Union Texas Petroleum, A Division of Allied Chemical Corporation	RI65–63, RI65–208, RI65–539
Union Texas Petroleum, A Division of Allied Chemical Corporation (Operator), *et al.*	RI65–62, RI65–538
Union Texas Petroleum, A Division of Allied Chemical Corporation, *et al.*	RI64–149, RI64–323, RI65–61
United States Smelting Refining and Mining Company (Operator), *et al.*	RI64–698
Vandenbark, J. H. (Operator), *et al*	RI61–467, RI61–490
Vest, Earl, *et al*	RI63–363
Western Oil Fields Inc	RI63–459
Willets, Elmore A., Jr. & Craig, Earl M., Jr	RI64–666
Wolfson Oil Company	RI65–248
Wolfson Oil Company (Operator), *et al*	RI63–402, RI65–247
Ruben I. Wolfson & Sam Wolfson, d/b/a Wolfson Oil Company (Operator), *et al.*	RI61–270
Wrightsman Investment Company	RI65–174
Yates Petroleum Corporation (Operator) *et al*	RI64–526
Younger, John F., *et al*	RI63–302

[1] This proceeding is consolidated only insofar as it pertains to the Permian Basin, New Mexico Texas Railroad Commission District Nos. 7–c and 8.

APPENDIX D

Amerada Petroleum Corporation	CI65–600
The Atlantic Refining Company	CI61–1351, CI62–1287, CI64–21
J. E. Connally, d/b/a Connally Oil Company (Operator), *et al.*	CI62–629
Continental Oil Company	CI64–379
Gulf Oil Corporation	CI62–568, CI62–808, CI63–193, CI63–911
Hanley Company (Operator), *et al*	CI61–1124
Humble Oil & Refining Company* (Operator), *et al.*	G–5145*, CI62–539*, CI63–689, CI63–1344, CI65–351
J. Wes Johnson, d/b/a Tower Oil & Gas Company of Texas.	CI61–1020, CI61–1336
Martin, Williams & Judson	CI62–1151
Marathon Oil Company	CI62–1475

APPENDIX D—continued

Producer	*Docket No.*
Moncrief, W. A., Jr	G–18047
Pan American Petroleum Corporation	CI62–1168
Phillips Petroleum Company	CI62–202
Pioneer Production Corporation, *et al*	CI62–955
Rutter & Wilbanks, Brothers, *et al*	CI61–1052
Shell Oil Company (Operator)	CI65–399
Samedan Oil Corporation (Operator), *et al*	CI62–691
Socony Mobil Oil Company, Inc	G–19844, CI61–1105, CI62–801
Sohio Petroleum Company (Operator), *et al*	G–17012
Sun Oil Company	CI62–1003, CI65–512
Texaco Inc	CI62–622, CI65–436
Westbrook-Thompson Holding Corp	G–17562
United States Smelting, Refining & Mining Company.	CI63–380

RATE AND CERTIFICATE FILINGS BY SMALL INDEPENDENT PRODUCERS, DOCKET NO. R–279

NOTICE OF PROPOSED RULEMAKING: MISCELLANEOUS AMENDMENTS TO THE REGULATIONS UNDER THE NATURAL GAS ACT

(August 5, 1965)*

1. Pursuant to the Commission's decision in Docket No. AR61–1 (issued this day, hereinafter referred to as the "Permian Decision") and in particular the provisions thereof relating to certain relief from filing requirements for "small producer sales," and for the purpose of implementing certain findings, determinations and conclusions in that decision, notice is hereby given of proposed amendments and additions to the appropriate regulations under the Natural Gas Act.

2. The Commission noted in the Permian Decision that present filing requirements contained in the Regulations often constitute a burden for the small independent producer. In order that the Commission may be informed as to these transactions, it is proposed that certain data be included in the annual reports to the Commission of the pipeline companies which purchase gas from such producers. The changes in the Regulations herein proposed will, if adopted, relieve the small producer in the Permian Basin from applying for individual certificates for new sales of gas at prices within the ceiling price for the area and from filing for rate increases which do not exceed the applicable ceiling. It is contemplated that sales by small producers in the remaining areas will be covered by these new rules when just and reasonable area rates are fixed for the respective areas.

3. In accordance with the notice requirements of Section 4 of the Administrative Procedure Act, general notice of the proposed amendments to the regulations will be published in the Federal Register. All interested persons, whether or not they are parties in Docket No. AR61–1, may submit to the Federal Power Commission on or before September 7, 1965, data, suggestions and comments in writing concerning the proposed amendments. The Commission will consider these written submissions before taking any action upon the proposed amendments. An original and nine copies of any such submissions should be filed.

*Published in the Federal Register on August 12, 1965 (30 F.R. 10058).

4. Subject to such changes as may be made upon consideration of the submissions of interested persons, the Commission finds that the proposed amendments to the Regulations are necessary and appropriate for the proper administration of the Natural Gas Act.

The Commission proposes that the following amendments be adopted pursuant to Sections 4, 7 and 16 of the Natural Gas Act.

(A) Parts 154 and 157 of Subchapter E and Part 260 of Subchapter G, Chapter I, Title 18, Code of Federal Regulations should be amended by amending §§ 154.103, 157.31, 260.1 and 260.2, and by adding new §§ 154.104, 154.110, and 157.40 as follows:

1. Section 154.103 would be redesignated as 154.110 and amended to read as follows:

§ 154.110 Applicability of §§ 154.92 through 154.102.

Sections 154.92 through 154.102 shall apply only to those persons specified in § 154.91 but shall not apply to producers who are subject to § 157.40 of this chapter.

2. Section 154.104 would be added to Part 154 and read as follows:

§ 154.104 Producers Subject to § 157.40.

Those producers who, due to their coverage by § 157.40, have been relieved in § 154.110 from the filing obligations imposed by this Part, shall file the required information in the annual statements filed pursuant to § 157.40.

3. Section 157.31 redesignated as § 157.39 and would be amended to read as follows:

§ 157.39 Applicability of §§ 157.23 through 157.30.

Sections 157.23 through 157.30 shall be applicable to independent producers as defined in § 154.91 of this Chapter, with the exception of those independent producers who are subject to § 157.40.

4. Section 157.40 would be added to Part 157 and read as follows:

§ 157.40 Small Producer Certificates of Public Convenience and Necessity.

(a) *Definitions*

(1) A "Small Producer" is an independent producer of natural gas as defined in § 154.91 of this Chapter, whose total jurisdictional sales on a nation-wide basis, together with such sales of "affiliated producers," are not in excess of 10,000,000 Mcf per year. As used in this section, the term "jurisdictional sales" includes volumes of gas paid for but not taken under prepayment clauses or otherwise, and volumes of gas sold under other independent producer rate schedules in the proportion that the independent producer seeking to come within this section has an interest in such sales, but does not include sales made pursuant to percentage sales contracts.

(2) "Affiliated producers" are persons who, directly or indirectly, control, or are controlled by, or are under common control with, the reporting producer. Such control exists if the producer has the power to direct or cause the direction of the management and policies of a person, whether such power is exercised alone or through one or more intermediary companies, or pursuant to an agreement, and whether such power is established through a majority or minority ownership or voting of securities, common directors, officers, or stockholders, voting trusts, holding trust, associated companies, or any other direct or indirect means. For the purposes of this section, independent producers who are, or are controlled by, members of the same family, whether related by blood or marriage, are presumed to be "affiliated."

Such presumption is rebuttable upon a satisfactory showing to the Commission that the producing companies are in fact operating independently.

(3) "Small Producer Sales" are sales by small producers (as defined herein) in which one or more producers have an interest, but do not includes sales in which one or more producers not qualifying as small producers have interests which in the aggregate are greater than 12½ percent.

(b) *Requirements for the Small Producer Certificate*

Upon the approval of appropriate applications made pursuant to the provisions of this section, Small Producers will be granted "Small Producer Certificates" authorizing "small producer sales" of natural gas in interstate commerce at prices no higher than the applicable just and reasonable area ceiling for such gas, without further certification from the Commission.

(1) Small Producer Certificates are initially available only to Small Producers operating in the Permian Basin and are applicable only to their small producer sales in that area. Such certificates will apply to production in other areas and the producers therein located upon the fixing of just and reasonable rates for such areas by the Commission.

(2) Small Producers in the Permian Basin may apply for a Small Producer Certificate to cover all previous and all future jurisdictional sales, which do not raise the producer's total jurisdictional sales on a nation-wide basis above 10,000,000 Mcf per year. Applications by these producers shall include the following information: (i) total jurisdictional sales on a nation-wide basis for the year preceding the application; (ii) a list of outstanding certificates and rate schedules together with names and percentage of interest of other interest owners under such rate schedules; and (iii) the names of all owners (stockholders, partners, joint venturers, etc.) of the applicant with an interest of 5 percent or more, their percentage of ownership in the applicant and in any other natural gas company, and any positions such owners may hold with another natural gas company.

(3) Applicants for Small Producer Certificates who have no outstanding certificates issued by this Commission for the sale of gas shall include the following information in their applications: (i) a listing of all contracts to sell natural gas in interstate commerce; at least one contract (either executed or in process of negotiation) must be listed in order that the application may be considered; (ii) source of production, total rate and the annual volume delivery obligations of the producer under each such contract, together with names and percentage of interest of other interest owners under each such contract, and (iii) a list of all owners of the applicant, their percentage of ownership in the applicant and in any other natural gas company and any position such owners may hold with another natural gas company.

(4) The application as filed shall contain the information called for on Form A* attached hereto.

(c) *Annual Statements*

Annual statements (Form B* attached hereto) shall be filed by all producers, either individually or by groups, to whom Small Producer Certificates have been issued. The statements shall be submitted not later than February 15 of each year for the preceding calendar year.

(d) *Duration of the Small Producer Certificate*

A Small Producer Certificate issued hereunder shall remain in effect for small producer sales until the Commission on its own motion or on application terminates such certificate because the producer no longer qualifies as

*Omitted in printing.

a small producer or for other good cause. Upon such termination the producer will be required to file separate certificate applications and individual rate schedules for future sales but the Small Producer Certificate will still be effective as to those past sales already certificated thereunder.

5. Sections 260.1 and 260.2 dealing with annual reports for natural gas companies would be amended by the addition of the following paragraph to each of those sections.

(d) All natural gas companies, as defined in the Natural Gas Act, purchasing gas from independent producers who have been granted Small Producer Certificates pursuant to § 157.40, shall include the following information pertaining to such purchases in their annual report: (i) the name of the producer and the field from which the gas is produced; (ii) the average rate paid per Mcf; (iii) the amount of gas received under each contract with the producer, and (iv) the amount paid for the gas received under each contract.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

NATURAL GAS PIPELINE COMPANY OF AMERICA, DOCKET NO. RP61-8

ORDER REJECTING AND DENYING APPLICATION FOR REHEARING

(Issued August 6, 1965)

On July 9, 1965, Natural Gas Pipeline Company of America filed an application for rehearing of our Opinion No. 456-A and order issued June 23, 1965, 33 FPC 1277, on rehearing in the above-entitled proceeding. On July 23, 1965, the City of Chicago also filed an application for rehearing of Opinion No. 456-A and order, and also a petition for the issuance of a declaratory order as to whether or not Natural's application for rehearing will be accepted and "thereby extend the time for filing an appeal". Chicago points out that no provision is made in our Rules for review of orders issued on rehearing, and requests that a declaratory order be entered rejecting all applications for rehearing on orders issued on rehearing.

This opinion was issued after we had granted rehearing with respect to our original Opinion No. 456, 33 FPC 574, for the purpose of further consideration. In Opinion No. 456-A we confirmed with certain modifications Opinion No. 456, where we determined that Natural must "flow through" to its customers the advantages of liberalized depreciation and make refunds from February 3, 1964. Because Natural announced that it was proposing to change to straight-line depreciation on its tax returns as of January 1, 1965, and argued that it had nothing to "flow through" to its customers after that date, a further determination was necessary. It was our opinion as expressed in Opinion No. 456-A that Natural could not reopen the record in this way, but its proper course was to start a new proceeding by making a rate filing. Therefore, we said, the reduced "flow-through" rates should remain in effect until superseding rates filed by Natural became effective.

In their present applications for rehearing Natural and Chicago reargue a number of matters that were in issue when we issued our original Opinion No. 456 and order. These include the applicability of *Alabama-Tennessee Natural Gas Co.*, 31 FPC 208, and the date from which refunds should be computed. Since there is no provision in the Natural Gas Act or our Rules for a second application for rehearing, with respect to these matters the applications should be rejected, and to this extent the request in Chicago's petition for a

declaratory order will be granted. However, on our treatment of its abandonment of liberalized depreciation for tax purposes Natural, in our opinion, could properly file an application for rehearing, since this was a new matter raised by Natural and determined by us in the first instance in Opinion No. 456–A and order. Otherwise there would be no opportunity for applying for rehearing with respect to this matter. To this extent, therefore, we accept Natural's application for rehearing and deny the request in Chicago's petition for a declaratory order.

In its application for rehearing Natural argues that to require it to file a new rate case to give effect to the factor of abandonment is inconsistent with *Midwestern Gas Transmission Company*, 32 FPC 993, Opinion No. 444, Docket Nos. RP61–19 and RP62–7, issued October 13, 1964. In that proceeding, which was a rate investigation under Section 5(a) of the Natural Gas Act, the company likewise changed from liberalized to straight-line depreciation for tax purposes after the close of the record, although unlike the present case it did so before, rather than after, an adverse Commission decision on the point. Because an immediate reduction in the company's rates was justified and required by our disposition of other issues, we ordered the company to file new rates based upon straight-line depreciation. These rates were made subject to further reduction to reflect the use of liberalized depreciation in the tax allowance should the Commission finally determine in the remanded proceeding it set for hearing that the liberalized method should be used.

As we said in Opinion No. 456–A the significant difference here is that the *Midwestern* case was a Section 5(a) investigation designed to change rates prospectively. Looking only to the future in *Midwestern* our alternatives were to remand the entire case for further hearing to reflect the new circumstances, thus foregoing an immediate rate reduction which appeared to be warranted whether Midwestern took liberalized depreciation or not, or to divide the case as we chose to do. On the other hand this proceeding was initiated under Section 4 with a rate increase filing by Natural and relates to the period from March 1, 1961, until new rates became effective. It is our opinion as stated in Opinion No. 456–A that Natural should not be permitted to reopen the record applicable to this period and change one factor to its advantage without bringing other factors up to date. In order to terminate the effect of the present proceeding and bring this new factor before us, Natural could lock in the refund period now running by a further rate filing under Section 4 reflecting its changed method of computing depreciation for tax purposes and any other relevant matters relating to its cost of service or rates.

The Commission further finds:

(1) Chicago's application for rehearing and the portions of Natural's application for rehearing referred to below should be rejected.

(2) The assignments of error and grounds for rehearing set forth in Natural's application for rehearing filed in the proceeding present no facts or legal principles which would warrant any change or modification in the Commission's Opinion No. 456–A and order.

(3) The request contained in Chicago's petition for a declaratory order should be granted in part and denied in part as specified below.

The Commission orders:

(A) Chicago's application for rehearing and the portions of Natural's application for rehearing filed July 9, 1965, other than those relating to Natural's proposed abandonment of liberalized depreciation for tax purposes, are rejected.

(B) To the extent not rejected Natural's application for rehearing filed July 9, 1965, is denied.

(C) The request contained in Chicago's petition for a declaratory order that Natural's application for rehearing be rejected is denied with respect to the issue relating to abandonment of liberalized depreciation for tax purposes, but is granted with respect to the other issues.

Commissioner Bagge *not participating.*

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

SOUTHWESTERN OIL & REFINING COMPANY (OPERATOR), ET AL., DOCKET NOS. G-3881, G-19933, G-19997, RI60-285 AND CI65-1260

FINDINGS AND ORDER AFTER STATUTORY HEARING PERMITTING AND APPROVING ABANDONMENT OF SERVICE, AMENDING ORDER ISSUING CERTIFICATE, ACCEPTING SUPPLEMENT AND OFFER OF SETTLEMENT, SEVERING AND TERMINATING PROCEEDINGS, AND ORDERING REFUNDS

(Issued August 6, 1965)

On June 2, 1965, Southwestern Oil & Refining Company (Operator), *et al.*, (Southwestern) filed an application for abandonment for the sales of natural gas made under its Rate Schedule No. 3, and for settlement of its proposed increased rates under said rate schedule and also under its Rate Schedule No. 5, pursuant to Section 1.18 of the Commission's Rules of Practice and Procedure. The above-docketed proceedings involve sales of natural gas made by Southwestern to Tennessee Gas Transmission Company (TGT) from fields in Texas Railroad Commission District No. 4. The proposed rate increases under Southwestern's Rate Schedule No. 3 were, in Docket No. G-19997, from 11.90337¢ to 14.87597¢ per Mcf of gas, and in Docket No. RI60-285 to 17.02416¢ per Mcf. Under its Rate Schedule No. 5, Southwestern proposed rate increases from 12.12268¢ to 15.0952¢ per Mcf in Docket No. G-19933, and to 17.24347¢ per Mcf in Docket No. RI60-285.[1]

Each of the proposed increased rates were suspended for the statutory period by order of the Commission, and were subsequently placed in effect, subject to refund by Southwestern by motion duly filed in accordance with the applicable provisions of the Natural Gas Act.

Southwestern proposes a settlement rate under each of the subject rate schedules of 14.6¢ per Mcf at 14.65 psia. Its proposal includes the elimination of the price redetermination and favored nation clauses from its FPC Gas Rate Schedule No. 5, and the substitution therefor of 1.0¢ per Mcf periodic escalations to commence on July 1, 1965, February 5, 1968, and each five-year period thereafter. Southwestern also proposes to refund to TGT all monies collected subject to refund above the settlement rates.

However, in its application for abandonment of sales of natural gas under its FPC Gas Rate Schedule No. 3, Southwestern states that the reserves are depleted, and TGT, by letter agreement dated November 6, 1964, concurs. As we have previously stated, the provisions of the Second Amendment to the Statement of General Policy No. 61-1 (18 CFR 2.56) are not applicable where deliveries of natural gas have ceased, *Jack P. Rayzor (Operator), et al.*, Docket No. G-16702 (order issued June 20, 1963); *Reserve Oil and Gas Company*, Docket No. G-18570, *et al.*, 33 FPC 1266 (order issued June 16, 1965). Consequently, we shall condition our approval of Southwestern's offer of settlement to require it to refund

[1] All of the rates stated are at 14.65 psia, inclusive of tax reimbursement.

to TGT all amounts collected subject to refund above the area increased ceiling rate which is 14.0¢ per Mcf at 14.65 psia for the sale of pipeline quality gas less applicable contract deductions.[2]

Under the settlement proposal, as conditioned herein, Southwestern's annual revenues will be decreased approximately $29,078 from its presently effective rate, and it will refund to TGT approximately $131,594, exclusive of interest.

The sale made by Southwestern to TGT under its FPC Gas Rate Schedule No. 3, for which it seeks abandonment, and cancellation of said rate schedule, was certificated in Docket No. G–3881. After due notice of Southwestern's application no petition to intervene, notice of intervention, or protest to the granting of the application have been filed.

At a hearing held on July 1, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application submitted in support of the authorization sought herein.

We desire to make it clear that our conditional acceptance of Southwestern's offer of settlement shall not be construed as approval of any future increased rate filed in accordance with its reservation of the right to file increases to cover future tax increases or periodic increases as provided for in its offer of settlement, and is without prejudice to any findings or order of the Commission in any future proceedings, involving Southwestern's rates and rate schedules.

The Commission finds:

(1) Applicant is engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption subject to the jurisdiction of the Commission and is, therefore, a "natural-gas company" within the meaning of the Natural Gas Act.

(2) The sale of natural gas proposed to be abandoned, as hereinbefore described and as more fully described in the application in this proceeding, is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(3) The subject abandonment is permitted by the public convenience and necessity and should be approved as hereinafter ordered.

(4) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the order issuing a certificate in Docket No. G–3881 should be amended by deleting therefrom authorization to make the sale proposed to be abandoned.

(5) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that notice of cancellation of Applicant's FPC Gas Rate Schedule No. 3 should be accepted for filing.

(6) The proposed settlement of the above designated proceedings, as conditioned herein and on the basis described herein, as more fully set forth in the offer of settlement filed with the Commission by Southwestern on June 2, 1965, is consistent with the Statement of General Policy No. 61–1, as amended, 18 CFR 2.56, and the conditional approval thereof as made effective and hereinafter ordered is in the public interest and is appropriate to carry out the provisions of the Natural Gas Act.

The Commission orders:

(A) Permission for and approval of the abandonment of service by Applicant, as hereinbefore described and as more fully described in the application in Docket No. CI65–1260, are granted.

[2] Southwestern's FPC Gas Rate Schedule No. 3 provides for a 0.21931¢ per Mcf dehydration charge, therefore, it will actually refund to a rate of 13.78069¢ per Mcf for the monies collected subject to refund.

(B) The order issuing a certificate in Docket No. G–3881 is amended by deleting therefrom authorization to make the sale of natural gas permitted to be abandoned in paragraph (A) above.

(C) The Notice of Cancellation dated November 30, 1964, is accepted for filing effective the date of this order and is designated as Supplement No. 4 to Applicant's FPC Gas Rate Schedule No. 3.

(D) The offer of settlement filed with the Commission by Southwestern on June 2, 1965, is approved as conditioned herein and in accordance with the provisions of this order.

(E) Southwestern shall file within 30 days of the issuance of this order a notice of change in rate providing for the settlement rate of 14.6¢ per Mcf at 14.65 psia, inclusive of tax reimbursement under its Rate Schedule No. 5 together with an executed contract amendment eliminating the favored-nation and price redetermination clauses from said Rate Schedule. The notice of change and the contractual amendment shall be submitted in accordance with Part 154 of the Commission's Regulations under the Natural Gas Act.

(F) Southwestern shall compute the difference between the rates collected subject to refund and 13.78069¢ and 14.6¢ per Mcf under Rate Schedule Nos. 3 and 5, respectively, with applicable interest, to the date of this order, and shall within 45 days from the date of issuance of this order submit a report to the Commission, with a copy to TGT, setting out the amount of refunds (showing separately the principal and applicable interest), the bases used for such determination, the periods covered, and ten days thereafter a letter from TGT agreeing to the correctness of such amounts. Ten days thereafter, unless notified to the contrary by the Secretary of the Commission, Southwestern shall refund to TGT the monies, with applicable interest, computed as set forth above.

(G) Upon notification by the Secretary of the Commission that Southwestern has complied with the terms and conditions of this order, the rate and charge of 14.6¢ per Mcf under its Rate Schedule No. 5, specified in its offer of settlement shall be effective as of the date of the issuance of this order; the above-designated proceedings shall be deemed severed from the Texas Gulf Coast proceeding, Docket No. AR64–2, and the proceeding in Docket No. G–3881 shall be deemed terminated insofar as it pertains to Southwestern's FPC Gas Rate Schedule No. 3.

(H) The acceptance by the Commission of Southwestern's offer of settlement, as herein conditioned, is without prejudice to any findings or determinations that may be made in any proceeding now pending, or hereafter instituted by or against Southwestern, and is without prejudice to claims or contentions which may be made by Southwestern, the Commission staff, or any affected party thereto, in any proceeding, including area rate or similar proceedings.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

THE ATLANTIC REFINING COMPANY, DOCKET NO. G–17741; TRANSCONTINENTAL GAS PIPE LINE CORPORATION, DOCKET NO. RP65–31

ORDER RELEASING REFUNDS

(Issued August 9, 1965)

The Commission by order[1] issued December 31, 1964, approved Atlantic's offer of settlement of its refund obligation to Transco under Atlantic's Rate Schedule Nos. 118, 147, and 150. Atlantic was ordered therein to retain the

[1] "Order Accepting Offer of Settlement, Severing and Terminating Proceeding, and Prescribing Refunds," *The Atlantic Refining Company*, Docket No. G–17741, 32 FPC 1554.

refund amount subject to further order of the Commission directing the disposition of those amounts. This retention was directed in keeping with our policy expressed in the order approving the Humble settlement[2] wherein we stated that it is "our duty to insure that the ultimate consumers of gas actually receive all of the benefits of our rate regulation to which they may be entitled," and that we were taking action "to assure that, within the limits of our jurisdictional reach, the refunds to be ordered actually flow to those parties legally and equitably entitled thereto."

Review of Transco's flow-through obligation shows that it is obligated by the Commission's order[3] approving Transco's settlement in Docket No. RP61–13 to flow-through the jurisdictional portion of the refund in this proceeding. All other pipelines in the resale chain which receive significant amounts are similarly obligated with the exceptions of The Manufacturers Light and Heat Company and United Natural Gas Company. Neither Manufacturers nor United Natural is presently obligated by prior Commission order to flow-through refunds received from Transco in Docket No. RP61–13. Accordingly, we have provided that Transco shall retain and defer its flow-through to Manufacturers and United Natural pending our further order.

The Commission orders:

(A) Atlantic and Morgan Guaranty Trust Company, the escrow agent appointed pursuant to Paragraph (E) of our order issued December 31, 1964, are jointly directed to release and pay over to Transco within 30 days of this order, the total amount assigned to Transco as specified in Atlantic's refund report filed May 13, 1965, together with the associated escrow earnings.

(B) Transco shall, pending further order of the Commission retain and defer the flow-through of those portions of the amount received pursuant to Paragraph (A) above which are attributable to purchases by The Manufacturers Light and Heat Company and United Natural Gas Company.

(C) The amounts ordered to be retained pursuant to Paragraph (B) above shall be retained by Transco in accordance with the methods set forth in Paragraph (J) of the Commission's "Order Releasing Refunds in Part," issued April 21, 1965, in *Humble Oil & Refining Company*, Docket No. G–9287, *et al.*, 33 FPC 830. Transco shall within 30 days of this order report the manner in which this amount will be retained.

(D) Except as specifically ordered to retain amounts and defer the flow-through to specified parties, each company shall flow-through the refunds received pursuant to this order and submit a report thereon in accordance with the applicable Commission orders governing its flow-through obligation.

(E) Where any pipeline subject to the jurisdiction of this Commission receives a refund as a result of this order and, contrary to our conclusion that the jurisdictional portion thereof will flow-through to its customers, claims the right to retain such amounts that pipeline shall report to the Commission within 10 days of the date of this order, the basis of such claim and, when the amount is received, that pipeline shall retain the amount in dispute, in accordance with Paragraph (C) above, subject to our further order.

(F) Where amounts have been retained pursuant to Paragraph (B) and the party which otherwise would have received such amounts is presently obligated

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[2] "Order Conditionally Approving Rate Settlement Proposal, Severing and Terminating Proceedings, and Prescribing Refunds," *Humble Oil & Refining Co.*, Docket No. G–9287, *et al.*, issued July 8, 1964, 32 FPC 49.

[3] "Order Approving Settlement, Accepting Tariff Sheets, Prescribing Refunds and Terminating Proceedings," *Transcontinental Gas Pipe Line Corporation*, issued February 2, 1962, in Docket No. RP61–13, 27 FPC 187.

to flow-through such amounts by prior order of the Commission or will voluntarily assume the obligation to flow-through such amounts, a report setting forth the details of such obligation or an agreement assuming an obligation to flow-through the refund shall be filed by such a party within ten days.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

CENTRAL ILLINOIS LIGHT COMPANY AND PANHANDLE EASTERN PIPE LINE COMPANY, DOCKET NO. CP65-406

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued August 9, 1965)

On June 17, 1965, Central Illinois Light Company (Applicant) filed in Docket No. CP65-406 an application pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Panhandle Eastern Pipe Line Company (Respondent) to establish a physical connection of its natural gas transmission facilities with the supply lateral to be constructed by Applicant, to construct appropriate metering facilities and to sell and deliver natural gas to Applicant for resale and distribution in the Villages of Manito and Green Valley, Illinois, as more fully described in the application.

Applicant proposes to construct and operate approximately 14 miles of 4-inch lateral pipeline from a point on Respondent's Peoria lateral to Green Valley and Manito, as well as the distribution systems in the villages.

The estimated volumes of natural gas required to supply the Villages' annual and peak day requirements for the initial three years of proposed operations are stated to be:

	First year	Second year	Third year
Annual (Mcf)	77,745	88,398	96,500
Peak day (Mcf)	668	765	857

The gas requirements for the villages will be made available from Applicant's presently certificated contract demand of 250,000 Mcf per day.

The total cost of the facilities to be constructed by Applicant is estimated to be $442,000, which will be financed from funds on hand. On July 22, 1964, the Illinois Commerce Commission issued an order and certificate of public convenience and necessity authorizing the construction and service, as proposed.

It is proposed that the gas be purchased by Applicant under Respondent's G-2 rate schedule. The application and exhibits demonstrate the project to be economically feasible.

Respondent was notified of the filing of the application by letter dated June 21, 1965. No answer has been received from Respondent.

Due notice of the filing of the application and opportunity for hearing thereon was published in the Federal Register on July 2, 1965 (30 F.R. 8498). No protest, petition to intervene or notice of intervention has been filed.

The Commission finds:

(1) Panhandle Eastern Pipe Line Company, a Delaware corporation having its principal place of business in Kansas City, Missouri, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the

Commission in its order of September 23, 1942, in Docket Nos. G–200 and G–207 (3 FPC 273).

(2) Applicant is a public utility company in the State of Illinois and is authorized to construct and operate facilities to distribute and sell natural gas to inhabitants of the communities along its system.

(3) It is necessary and desirable in the public interest that Respondent be directed to establish physical connection of its transportation facilities with the facilities proposed by Applicant and to sell and deliver up to 857 Mcf of natural gas per day to Applicant, as hereinbefore described and as more fully set forth in the application, as hereinafter ordered and conditioned.

(4) The requirement that Respondent serve Applicant, as requested, will not place an undue burden upon Respondent nor impair its ability to render adequate service to existing customers.

The Commission orders:

(A) Respondent is directed to establish physical connection of its natural gas transmission system with the facilities to be constructed by Applicant and to sell and deliver up to 857 Mcf of natural gas per day to Applicant, all as hereinbefore described and as more fully described in the application.

(B) Applicant shall be prepared to receive natural gas from Respondent within one year from the date of this order.

(C) Respondent shall notify the Commission of the commencement of service within 10 days thereof.

(D) Respondent shall execute and file with the Commission a service agreement with Applicant in accordance with the Commission's Regulations.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

FORT SMITH GAS CORPORATION, DOCKET NO. CP65–411

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued August 9, 1965)

On June 21, 1965, Fort Smith Gas Corporation (Applicant) filed in Docket No. CP65–411 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of facilities required to purchase the production from an additional gas well owned by Steve Gose (Operator), *et al.*,[1] in LeFlore County, Oklahoma, as more fully stated in the application.

Applicant will construct and operate approximately 3,315 feet of 4½-inch gathering line, together with necessary appurtenances and metering and regulating facilities, running from the gas well to a point of connection with Applicant's existing facilities.

Applicant desires the additional gas to maintain and augment its present gas supply and does not propose to serve any new areas.

Applicant will receive an average of 1,000 Mcf of additional gas per day at a price of 12.28 cents per Mcf. The estimated cost of the proposed facilities is $11,899, which will be financed with funds on hand. The proposal appears to be feasible.

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[1] Steve Gose (Operator), *et al.*, were issued a certificate of public convenience and necessity authorizing the sale of additional gas to Applicant in Docket No. CI65–924 on May 11, 1965.

Due notice of the filing of the application was published in the Federal Register on July 2, 1965 (30 F.R. 8499). No protest, petition to intervene, or notice of intervention has been filed in this proceeding.

At a hearing held on August 5, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Fort Smith Gas Corporation, an Arkansas corporation having its principal place of business in Fort Smith, Arkansas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of March 1, 1954, in Docket No. G–2333 (13 FPC 860).

(2) The facilities hereinbefore described and as more fully described in the application in this proceeding are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of said Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Applicant, Fort Smith Gas Corporation, authorizing the construction and operation of facilities as hereinbefore described and as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be completed and placed in actual operation and the transportation of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within one year from the date of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

MICHIGAN WISCONSIN PIPE LINE COMPANY, DOCKET NO. CP65–191

FINDINGS AND ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued August 9, 1965)

On May 19, 1965, Michigan Wisconsin Pipe Line Company (Petitioner) filed in Docket No. CP65–191 a petition to amend, as supplemented on June 25, 1965,

the Commission's order issued March 30, 1965, 33 FPC 655, in said docket to authorize certain changes in the maximum daily quantities of natural gas to be delivered by Petitioner to five of its existing customers commencing on September 1, 1965, and to authorize service to American Gas Company under Petitioner's FPC Gas Rate Schedule SGS–1 in lieu of Petitioner's FPC Gas Rate Schedule ACQ–1, under which American Gas presently receives service, all as more fully set forth in the petition to amend in this proceeding.

The order of March 30, 1965, authorized Petitioner to construct and operate certain facilities and to sell and deliver an additional 75,000 Mcf per day of natural gas to certain existing customers. Since the date of authorization the following customers have requested changes in maximum daily quantities: American Gas Company (American Gas), Keokuk Gas Service Company (Keokuk), Michigan Gas and Electric Company (Michigan Gas), North Central Public Service Company (North Central) and Wapello Light Company (Wapello). Petitioner states that, since the preparation of the original application in this proceeding, the foregoing five customers have nominated maximum daily quantities of natural gas somewhat at variance with their prior nominations as set forth in Exhibit I of the original application. Therefore, Petitioner requests authorization to sell and deliver the following revised maximum daily quantities of natural gas to said five customers:

	Mcf at 14.73 psia		
	Exhibit I nomination	Revised nomination	Increase (decrease)
American Gas	1,300	2,880	1,580
Keokuk	10,400	10,100	(300)
Michigan Gas	52,500	53,800	1,300
North Central	17,096	19,000	1,904
Wapello	635	1,019	384

Authorization of the revised volumes will result in a net increase of 4,868 Mcf in maximum daily quantity. Petitioner has sufficient unallocated capacity to render the increased service.

Due notice of the filing of the petition to amend and opportunity for hearing thereon has been given by publication in the Federal Register on May 29, 1965 (30 F.R. 7261). No protest or petition to intervene has been filed in this proceeding.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act, and the public convenience and necessity require that the Commission's order issued March 30, 1965, in Docket No. CP65–191 be amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order issued March 30, 1965, in Docket No. CP65–191 is amended to authorize the changes in the maximum daily quantities of natural gas to be sold and delivered to American Gas, Keokuk, Michigan Gas, North Central and Wapello in accordance with the table hereinabove set forth and to authorize service to American Gas under Petitioner's FPC Gas Rate Schedule SGS–1 in lieu of Petitioner's FPC Gas Rate Schedule ACQ–1, all as hereinbefore described and as set forth in the petition to amend in this proceeding.

(B) In all other respects said order shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

MICHIGAN WISCONSIN PIPE LINE COMPANY, DOCKET NO. CP65-366

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued August 9, 1965)

On May 18, 1965, Michigan Wisconsin Pipe Line Company (Applicant) filed in Docket No. CP65-366 an application pursuant to Section 7(c) of the Natural Gas Act, as implemented by Section 157.7(b) of the Regulations under the Act, for a certificate of public convenience and necessity authorizing the construction during the 12-month period commencing July 13, 1965, and the operation of gas purchase facilities to enable Applicant to take into its certificated main pipeline system natural gas which will be purchased from producers thereof, all as more fully set forth in the application in this proceeding.

The purpose of this "budget-type" application is to augment Applicant's ability to act with reasonable dispatch in contracting for and connecting to its pipeline system new supplies of natural gas in various producing areas generally coextensive with said system.

The total cost of the facilities covered by this application will not exceed a maximum of $3,000,000, with no single project to exceed a cost of $500,000, which costs are proposed to be financed from funds generated from operations.

On June 21, 1965, Great Lakes Transmission Corporation and Trans-Canada Pipe Lines Limited each filed petitions to intervene in this proceeding; however, on July 29, 1965, said petitions were withdrawn.

After due notice, no other petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on August 5, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Michigan Wisconsin Pipe Line Company, a Delaware corporation having its principal place of business in Detroit, Michigan, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of July 14, 1950, in Docket No. G-1302 (9 FPC 167).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit within 60 days after the expiration of the authorization granted hereinafter, a statement in compliance with Subparagraph (3) of Section 157.7(b) of the Commission's Regulations under the Natural Gas Act.

(6) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(7) The authorization hereinafter granted should be limited to construction during the 12-month period commencing July 13, 1965, and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $3,000,000, with no single project to exceed a cost of $500,000.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity is issued authorizing Applicant, Michigan Wisconsin Pipe Line Company, to construct during the 12-month period commencing July 13, 1965, the proposed facilities hereinbefore described, as more fully described in the application in this proceeding, and to operate such facilities only to take natural gas supplies from producers who have received authorization from the Commission to sell natural gas to said Applicant.

(B) Applicant shall submit within 60 days after the expiration of the authorization granted by paragraph (A) above a statement in compliance with Subparagraph (3) of Section 157.7(b) of the Commission's Regulations under the Natural Gas Act.

(C) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(D) The authorization granted in paragraph (A) above is limited to construction during the 12-month period commencing July 13, 1965, and the total expenditures for facilities to be constructed thereunder are limited to a maximum of $3,000,000, with no single project to exceed a cost of $500,000.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

NATURAL GAS PIPELINE COMPANY OF AMERICA, DOCKET NO. CP65-397

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued August 9, 1965)

On June 11, 1965, Natural Gas Pipeline Company of America (Applicant) filed in Docket No. CP65-397 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of a 720 horsepower compressor station at Applicant's Keota Storage Field, Washington County, Iowa, and the withdrawal testing of such Field, all as more fully set forth in the application in this proceeding.

Applicant has been testing and developing the Keota Field pursuant to authorization granted by the Commission's order, issued October 10, 1963, in Docket No. CP64-13, 30 FPC 993. Applicant estimates that there will be approximately 1,000,000 Mcf of the authorized maximum of 1,500,000 Mcf of natural gas injected into the storage field by December 1, 1965. Applicant states that with an inventory volume of 1,000,000 Mcf the field will be sufficiently developed to under-

take the second phase of development which will be withdrawal testing. Therefore, Applicant requests authorization to install compressor facilities in order to conduct withdrawal testing during the winter of 1965–66 to evaluate and determine the deliverability capabilities of Keota Field. Applicant states further that the injection phase of testing was accomplished without the need of compressor facilities; however, such facilities are required for withdrawal testing. The gas to be withdrawn will be for testing purposes only and such gas will not be utilized to provide any additional service to Applicant's customers.

The estimated cost of the proposed facilities is $344,000, which cost will be financed from funds on hand.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on August 5, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Natural Gas Pipeline Company of America, a Delaware corporation having its principal place of business in Chicago, Illinois, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of October 13, 1942, in Docket No. G–235 (3 FPC 830).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the proposed withdrawal testing by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is issued authorizing Applicant, Natural Gas Pipeline Company of America, to construct and operate the proposed facilities and to conduct withdrawal testing of the Keota Storage Field as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities authorized shall be constructed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 6 months from the date on which this order issues.

(D) In addition to the information contained in the quarterly reports required to be filed with the Commission by the order, issued October 10, 1963, in Docket No. CP64–13, Applicant shall also include in such reports the volumes of natural gas withdrawn and the maximum daily withdrawal rates.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

NORTHERN NATURAL GAS COMPANY, DOCKET NO. CP62–85

ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued August 9, 1965)

On June 18, 1965, Northern Natural Gas Company (Applicant) filed in Docket No. CP62–85 an application to amend the certificate of the Commission issued in said docket on September 30, 1963, 30 FPC 859, which authorized Applicant to construct and operate certain facilities and to initiate natural gas service to 76 communities, including a sale to Milwaukee Gas Light Company (Milwaukee) for resale to Camp McCoy, Wisconsin, all as more fully set forth in the application to amend.

Milwaukee has advised the Applicant that it has not received the necessary contracts to sell and distribute natural gas at Camp McCoy. For the reason stated the Applicant requests that the aforementioned certificate authorization covering facilities and volumes of natural gas (first, second and third year contract demand volumes 60 Mcf, 154 Mcf and 273 Mcf respectively) for Milwaukee's service to Camp McCoy be deleted therefrom. Applicant states that when Milwaukee receives the necessary contracts and requests initial service for Camp McCoy, Applicant will seek Commission authority to supply such natural gas requirements.

Due notice of the subject application to amend and opportunity for hearing has been given by publication in the Federal Register on July 13, 1965 (30 F.R. 8806). Milwaukee Gas Light Company filed a petition to intervene in the proceeding, stating however, (1) it joins Northern's request for shortened procedure and does not seek a hearing herein and (2) it supports Northern's proposal to delete the authorization as to McCoy, if the Commission does not find Milwaukee's suggestion acceptable (that the Commission suspend rather than delete the provisions which authorizes the measuring station and which allocate first, second and third year contract demand volumes of natural gas for Camp McCoy). No protest or other petition to intervene has been filed concerning this amendment.

In view of the statements of Applicant and Milwaukee respecting service for Camp McCoy it appears deletion is more appropriate than suspension as suggested by Milwaukee.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued September 30, 1963, in Docket No. CP62–85, be amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order issued September 30, 1963, in Docket No. CP62–85 is amended so as to delete therefrom authorization to Northern Natural Gas

Company for facilities and volumes of natural gas required for service to Milwaukee Gas Light Company for Camp McCoy, Wisconsin, as requested by Applicant in the subject application to amend.

(B) In all other respects said order shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

TENNESSEE GAS TRANSMISSION COMPANY, DOCKET NO. CP60-94

FINDINGS AND ORDER FURTHER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued August 9, 1965)

On May 27, 1965, Tennessee Gas Transmission Company (Applicant) filed an application to amend further the Commission's opinion and order issued September 19, 1963, in Docket No. CP60-94 (G-16841, *et al.*, 30 FPC 759) to authorize the reallocation of volumes of natural gas to be sold and delivered to The Hartford Electric Light Company (Hartford) by Applicant, all as more fully set forth in the application to amend in this proceeding.

The opinion and order of September 19, 1963, authorized Applicant, among other things in Docket No. CP60-94, to sell and deliver a total volume of 14,325 Mcf of natural gas per day to Hartford under two separate gas sales contracts, each concerning a separate service area. By the Commission's order issued May 16, 1963, in Docket No. CP63-247 Applicant was authorized to increase further its daily deliveries to Hartford by 886 Mcf.

Pursuant to a request by Hartford, Applicant proposes herein, as follows, a reallocation of the volumes of natural gas delivered to Hartford for the Stamford and Torrington service areas:

[All volumes Mcf at 14.73 psia]

Service area	Authorized at docket No. CP60-94	Proposed reallocation		CP63-247 authorized increase	Total
		Increase (decrease)	Total		
Stamford	10,985	417	11,402	886	12,288
Torrington	3,340	(417)	2,923		2,923
Total	14,325		14,325	886	15,211

The application indicates that the proposed reallocation will enable Hartford to provide better service in its service areas.

Due notice of filing of the application to amend and opportunity for hearing thereon has been given by publication in the Federal Register on June 12, 1965 (30 F.R. 7685). No protest or petition to intervene has been filed in this proceeding.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's opinion and order issued September 19, 1963, in Docket No. CP60-94 (G-16842, *et al.*) be further amended as hereinafter ordered.

The Commission orders:

(A) The Commission's opinion and order issued September 19, 1963, in Docket No. CP60-94 (G-16842, *et al.*) is further amended to authorize the reallocation of volumes of natural gas to be sold and delivered to Hartford by Applicant in accordance with the table hereinabove set forth, all as hereinbefore described and as set forth in the application to amend.

(B) In all other respects said opinion and order, as amended, shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

TENNESSEE GAS TRANSMISSION COMPANY, DOCKET NO. CP65-342

FINDING AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued August 9, 1965)

On April 26, 1965, Tennessee Gas Transmission Company (Applicant), filed in Docket No. CP65-342 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of facilities and the sale of natural gas to Central Gas Company (Central), a wholly owned subsidiary of an existing customer, Alabama Tennessee Natural Gas Company (Alabama Tennessee), all as more fully set forth in the application.

Applicant proposes to sell and deliver the natural gas requirements of Central [1] commencing no later than November 1, 1965, by utilizing a portion of its unallocated pipeline capacity, and to construct and operate a meter station required therefor. The proposed meter station will be constructed near Applicant's Main Line Valve No. 554 in Lauderdale County, Alabama, at an estimated cost of $18,700, the cost of which will be defrayed from general funds or revolving credit source.

Central's estimated third year annual and peak day natural gas requirements are 187,740 Mcf and 2,023 Mcf, respectively. Central was authorized by Alabama Public Service Commission on April 1, 1965, to construct approximately 18 miles of 3- and 4-inch lines from the Applicant's sales meter to a point near Killen, Alabama. Central will sell to East Lauderdale County Gas District (District) the entire requirements of the District at or near the terminus of the line at Killen, and will also distribute gas in several small communities and to customers adjacent to the 18 mile line.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on August 5, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorization, and upon consideration of the record,

The Commission finds:

(1) Applicant, Tennessee Gas Transmission Company, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order issued July 15, 1947, in Docket No. G-910 (6 FPC 777).

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[1] Central will purchase gas under Applicant's Rate Schedule G-1 at development rate of 29.55 cents per Mcf.

(2) The proposed construction and operation of facilities and sale of natural gas as hereinbefore described, and as more fully described in the application and exhibits in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed construction and operation of facilities and sale of natural gas are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Applicant, Tennessee Gas Transmission Company, authorizing the construction and operation of facilities and the sale and delivery of up to 2,023 Mcf of natural gas per day to Central as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all the applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities authorized shall be completed and placed in actual operation as provided in paragraph (b) of Section 157.20 of the Commission Regulations under the Natural Gas Act, within 12 months from the date on which this order issues.

Before Commissioners: L. J. O'Connor, Jr., Acting Chairman; Charles R. Ross and Carl E. Bagge.

CAROLINA POWER & LIGHT COMPANY AND SOUTH CAROLINA ELECTRIC & GAS COMPANY, DOCKET NO. E-7227

ORDER AUTHORIZING ACQUISITION AND DISPOSITION OF FACILITIES

(Issued August 10, 1965)

Carolina Power & Light Company (Carolina Power) and South Carolina Electric & Gas Company (South Carolina Electric) filed a joint application with the Federal Power Commission on June 10, 1965, and a supplement thereto on June 18, 1965, for an order, pursuant to Section 203 of the Federal Power Act, authorizing the sale by Carolina Power and the acquisition by South Carolina Electric of 39.09 miles of 115 kv transmission line extending from South Carolina Electric's Saluda Hydroelectric plant to the midpoint of the line span over the Wateree River.

Carolina Power is incorporated under the laws of North Carolina and is qualified to do business in South Carolina. It is engaged in the generation, transmission, sale at wholesale, and distribution of electric energy in all or part of 55 counties in North Carolina and 13 counties in South Carolina. Its system is made up of two physically separated Divisions, Eastern and Western, which

are interconnected through the transmission facilities of Appalachian Power Company and Duke Power Company. It owns and operates an extensive interconnected network of electric generation and transmission facilities in North and South Carolina and in addition, it maintains high-voltage interconnections at the North Carolina-Virginia boundary with Appalachian Power Company and Virginia Electric & Power Company and at the North Carolina-Tennessee boundary with Appalachian Power Company and Tennessee Valley Authority.

South Carolina Electric is incorporated under the laws of South Carolina and is qualified to do business in Georgia. It renders electric service to the public in all or part of 24 counties in central, southern, and southwestern sections of South Carolina. It owns and operates the Stevens Creek hydroelectric generating station in Georgia and transmits the energy generated in this station over its transmission lines to its electric utility system in South Carolina where it sells at wholesale for resale part of this energy.

The facilities involved in this transaction consist of a segment of the 115 kv transmission line which extends from South Carolina Electric's Saluda Hydroelectric Plant to Carolina Power's Sumter Substation, including all wood poles and two steel towers, 35.51 miles of 397,500 CM, 26/7 ACSR conductor, 3.58 miles of 4/0, 12-strand copper conductor 39.09 miles of two 5/16" S.M. overhead ground wires for lightning protection, all hardware and support wires attached to the structures, together with all right of way easements owned by Carolina Power and upon which said line is located. This segment is the 39.09 mile portion from Saluda Hydroelectric Plant to the midpoint of the line span crossing the Wateree River, the boundary between the service areas of the companies.

The facilities which are to be transferred have been and are being used for the interchange of electricity between the systems of Carolina Power and South Carolina Electric. After the proposed transfer, the proposed use of the facilities will be the same as the present use thereof, and they will also be used by South Carolina Electric for the transmission of electricity within its own system.

According to the application, the transmission facilities are to be transferred from Carolina Power to South Carolina Electric for a cash consideration of $331,000. These facilities have an original cost less accumulated depreciation of $251,301. Carolina Power will realize a gross profit of $79,699 on the sale of the facilities. However, additional Federal and North Carolina Income Taxes of $42,017 on the profit will reduce the gross profit to a net profit of $37,682. On Carolina Power's books, the net profit of $37,682 will be credited to Surplus and $42,017 will be credited to Taxes Accrued. An electric plant acquisition adjustment of $79,699 will be created on the books of South Carolina Electric and this acquisition adjustment will be eliminated by a debit to Surplus.

According to the application, it is anticipated that, when the facilities described above, which lie wholly within the service territory of South Carolina Electric, are integrated with South Carolina Electric's other facilities, they can be maintained and operated more efficiently and effectively for the transmission of electricity within South Carolina Electric's own system and for the interchange of electricity between the systems of South Carolina Electric and Carolina Power. South Carolina Electric will also be able to use these facilities to supply its distribution system within the area and this should make for better voltage regulation on the distribution system.

Written notice of the application has been given to the North Carolina Utilities Commission and the South Carolina Public Service Commission and to the Governors of those States. Notice was also published in the Federal Register on June 24, 1965 (30 F.R. 8121), stating that any person desiring to be heard or to make any protest with reference to the application, should on or before July 7, 1965, file petitions or protests with the Federal Power Commission, Washington,

D.C., 20426. No petition or protest or request to be heard in opposition to the granting of the application has been received.

The Commission finds:

(1) Carolina Power, a corporation, is a public utility within the meaning of Section 203 of the Federal Power Act, subject to the jurisdiction of the Commission, as heretofore described in the Commission's order issued January 31, 1957, *In the Matters of Carolina Aluminum Company, Carolina Power & Light Company*, Docket No. E-6712 (17 FPC 83).

(2) South Carolina Electric, a corporation, is a public utility within the meaning of Section 203 of the Federal Power Act, subject to the jurisdiction of the Commission as heretofore described and set forth in the Commission's order issued May 24, 1963, *South Carolina Electric & Gas Company and South Carolina Generating Company*, Docket No. E-7085 (29 FPC 1045).

(3) By the proposed transaction, Carolina Power will dispose of part of its facilities subject to the jurisdiction of the Commission and South Carolina Electric will merge or consolidate its facilities, subject to the jurisdiction of the Commission with those of Carolina Power, another person, all within the meaning and subject to the requirements of Section 203 of the Federal Power Act.

(4) The proposed transaction, as described above, upon the terms and conditions set forth in the application, and subject to the provisions of this order will be consistent with the public interest as expressed in Section 203 of the Federal Power Act.

(5) The period of public notice given in this matter is reasonable.

The Commission orders:

(A) The proposed sale by Carolina Power and the proposed acquisition by South Carolina Electric of the aforementioned electric facilities, all as described above, is authorized and approved upon the terms and conditions and for the purposes set forth in the application subject to the provisions of this order.

(B) Carolina Power and South Carolina Electric shall record the proposed transaction herein authorized and the facilities and properties referred to above as provided in the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees.

(C) This authorization shall expire unless the transaction herein authorized and approved is consummated within 90 days from the date of issuance of this order.

(D) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuations, estimates or determinations of cost, or any matter whatsoever now pending or which may come before this Commission or any other regulatory body and nothing herein shall be construed as an acquiescence by this Commission in any estimate or determination of cost or any valuation of property claimed or asserted.

Before Commissioners: L. J. O'Connor, Jr., Acting Chairman; Charles R. Ross and Carl E. Bagge.

IOWA PUBLIC SERVICE COMPANY, DOCKET NO. E-7221

ORDER AUTHORIZING ACQUISITION OF FACILITIES

(Issued August 10, 1965)

Iowa Public Service Company (Public Service) filed an application on April 26, 1965, and an amendment thereto on July 6, 1965, with the Federal Power Com-

mission, for an order pursuant to Section 203 of the Federal Power Act, authorizing the acquisition of electric distribution facilities from the City of Sioux City (City), Iowa.

Public Service is an electric utility organized under the laws of Iowa with its principal business office at Sioux City, Iowa, and is engaged principally in the generation, purchase, transmission, sale at wholesale, and distribution of electric energy in 30 counties in northwestern and north central Iowa, three counties in eastern South Dakota, and one county in northwestern Nebraska. Public Service has a franchise to supply electric energy to the residents of Sioux City.

The City of Sioux City owns the land comprising the Sioux City Municipal Airport and the Sioux City Air Base which is leased to the United States Air Force. Electric energy has been supplied by Public Service, and the Air Force has operated its own electric distribution system which serves the area. In recent years, this area has been annexed into the corporate limits of the City. The City has completed negotiations with the Air Force whereby the latter has turned over to the City the land and the distribution system.

The facilities to be acquired by Public Service are the Airport distribution facilities now owned by the City. The Air Force will retain ownership of a short distribution line which supplies service to the Capehart Housing Development. Public Service states that it cannot acquire ownership to this line because it runs through the incorporated town of Sargeant Bluff wherein it has no franchise to operate. According to the application, Public Service will maintain and expand the service and facilities to the commercial and industrial users at the Airport site.

Public Service represents that the City is not in the business of selling electric energy and is not equipped to maintain adequately such facilities, nor does the City desire to engage in this business. Since Public Service for many years has been supplying the electric energy distributed over the facilities discussed herein, there will be no necessity to construct additional facilities to integrate the distribution system into Public Service's existing facilities or to construct additional generating capacity to supply the requirements of the area. According to the application, this transaction will have no effect on any contract for the purchase, sale or interchange of electric energy.

Public Service's cash consideration for the City's facilities will be $91,250. This amount is based on splitting the difference between Public Service's estimate of depreciated replacement cost of $79,500 and $103,000, which was computed by an engineering firm retained by the City. Since no records of the City or Air Force are available, an estimate of original cost of $102,365.63 was developed, less an accumulated provision for depreciation of $50,000 agreed to by Public Service after discussion with Commission's Staff. The transaction will result in the creation of an acquisition adjustment of $38,884.37 (consideration of $91,250—original cost depreciated of $52,365.63). Public Service proposes to eliminate the acquisition adjustment by a debit to Miscellaneous Debits to Surplus.

Written notice of the application has been given to the State Commerce Commission of Iowa and to the Governor of that State. Notice was published in the Federal Register on May 11, 1965 (30 F.R. 6502), stating that any person desiring to be heard or to make any protest with reference to the application should on or before May 19, 1965, file petitions or protests with the Federal Power Commission, Washington, D.C., 20426. No petition or protest or request to be heard in opposition to the granting of the application has been received.

The Commission finds:

(1) Public Service, a corporation, is a public utility within the meaning of Section 203 of the Federal Power Act, subject to the jurisdiction of the Commission as heretofore described and set forth in the Commission's order issued August 22, 1963, Iowa Public Service Company, Docket No. E-7115 (30 FPC 536).

(2) By the proposed acquisition as described above, Public Service will acquire and merge or consolidate its facilities subject to the jurisdiction of the Commission with facilities of Sioux City, another person, within the meaning and subject to the requirements of Section 203 of the Federal Power Act.

(3) The proposed acquisition of facilities by Public Service, as described above, upon the terms and conditions set forth in the application, and subject to the provisions of this order will be consistent with the public interest as expressed in Section 203 of the Federal Power Act.

(4) The period of public notice given in this matter is reasonable.

The Commission orders:

(A) The proposed acquisition by Public Service of the aforementioned electric facilities, all as described above, is authorized and approved upon the terms and conditions and for the purposes set forth in the application subject to the provisions of this order.

(B) Public Service shall record the proposed transaction herein authorized and the facilities and properties referred to above, as provided in the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees.

(C) The authorization shall expire unless the transaction herein authorized and approved is consummated within 90 days from the date of issuance of this order.

(D) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuations, estimates or determinations of cost, or any matter whatsoever now pending or which may come before this Commission or any other regulatory body.

OPINION NO. 469

MIDWESTERN GAS TRANSMISSION COMPANY, CP64-308, G-18314, G-18315; MILWAUKEE GAS LIGHT COMPANY, CP64-174; NORTH STAR NATURAL GAS COMPANY OF WISCONSIN, INC., CP65-9; GREAT PLAINS NATURAL GAS CO., CP65-13

OPINION AND ORDER MODIFYING AND ADOPTING INITIAL DECISION OF PRESIDING EXAMINER

(Issued August 10, 1965)*

Syllabus

1. Midwestern's exercise of its rights under certificate conditioned to the prior execution of amendment to its contract with Trans-Canada and filing thereof with Commission. P. 460.
2. No amendment to Presidential Permit is necessary since Midwestern does not propose any new construction or change of facilities at International Boundary. P. 460.
3. In weighing conflicting claims of pipeline-distributor and competitive fuel intervener, consideration has been given to fact that former's estimates are

*Initial decision appears on p. 469.

based on actual experiences while latter's calculations are based on survey conducted when natural gas was not available. P. 463.

4. Residents of area involved should not be deprived of right to choose among competing and relatively economic sources of energy. PP. 464; 475.
5. Pipeline-distributor made adequate affirmative showing as to safety and soundness of engineering specifications and design with respect to its use of PVC plastic pipe. P. 464.
6. Commission *rejects* contention that pipeline-distributor does not qualify as a person "engaged or legally authorized to engage in local distribution of natural or artificial gas" within meaning of Section 7(a) of the Gas Act. PP. 464, 465.
7. Great Plains' certificate conditioned to require that no part of fee paid to HD&R [organizing firm] for engineering services which exceeded actual costs be included in plant accounts. PP. 465; 476.
8. There is no evidence that Great Plains' project was organized and conceived solely or primarily for purpose of providing profits for promoters in excess of actual cost incurred in performing necessary engineering services incident to organization and construction of proposed distribution system. P. 465.
9. Commission has jurisdiction over Great Plains' accounts under Section 8 of the Gas Act and authority to regulate propriety and amount of engineering fees to be included in plant accounts. P. 465.
10. In a proceeding under Sections 3 and 7 of the Natural Gas Act, Commission *authorizes* increase in quantity of imported gas; *issues* certificates of public convenience and necessity; and *directs* pipeline to connect its facilities with those of 7(a) applicants for delivery and sale of gas to them.

L. R. Pankonien for Midwestern Gas Transmission Company.

N. J. Lesselyoung for Milwaukee Gas Light Company.

Lambert McAllister and *Francis J. Walsh* for North Star Natural Gas Company and North Star Natural Gas Company of Wisconsin, Inc.

Peyton G. Bowman, III and *Richard M. Merriman* for Great Plains Natural Gas Co.

Thomas M. Knebel for Minn-Dak Fuel Association.

A. R. Renquist for Northern States Power Company.

C. Louis Knight for Staff of the Federal Power Commission.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

BAGGE, *Commissioner:*

This consolidated proceeding involves applications filed by Midwestern Gas Transmission Company (Midwestern) under Sections 3 and 7 of the Natural Gas Act and by Milwaukee Gas Light Company (Milwaukee), North Star Natural Gas Company of Wisconsin, Inc. (Wisconsin North Star), and Great Plains Natural Gas Co. (Great Plains) under Section 7 of the Natural Gas Act.

On June 24, 1964, Midwestern applied for (1) in Docket No. CP64-308 authorization under Section 7(c) of the Act to increase its peak day firm sales of natural gas to four present customers on its northern system by 2,420 Mcf (at 14.73 psia), and (2) in Docket Nos. G-18314 and G-18315 authorization under Section 3 of the Act to increase by 18,360 Mcf (at 14.73 psia) the firm daily contract quantity of natural gas which it is authorized to import from Canada, without increasing the authorized maximum annual quantities of imported gas.

Milwaukee filed an application in Docket No. CP64-174 seeking an order under Section 7(a) of the Act directing Midwestern to sell natural gas to Milwaukee for resale and distribution in the cities of Neillsville, Greenwood, and Loyal, Wis-

consin. Wisconsin North Star in Docket No. CP65–9, and Great Plains in Docket No. CP65–13 applied for orders under Section 7(a) of the Act directing Midwestern to render natural gas service from its northern system. Great Plains further requested authorization under Section 7(c) of the Act to construct transmission lines, a peak shaving plant and distribution facilities.

The above applications were consolidated for hearing by Commission order dated November 9, 1964. Hearings were held on December 15 through 17, 1964, and on January 5, 1965. The following parties were permitted to intervene: Minn-Dak Fuel Association, Inc. (Minn-Dak), an association of petroleum dealers doing business in the area which Great Plains proposes to serve, opposing the Great Plains' proposal and Northern States Power Company (Northern), supporting Midwestern's application. The Public Service Commission of Wisconsin filed a notice of intervention and a reply brief but did not appear at the hearing. Great Plains was permitted to intervene in support of Midwestern's application. On March 31, 1965, the Presiding Examiner, William C. Levy, issued an initial decision in which, subject to certain specific conditions, he issued certificates of public convenience and necessity to the above-listed applicants.

The proceeding is before the Commission on the Examiner's decision, exceptions filed by Great Plains, the Staff, and Minn-Dak, and answers to these exceptions.

Midwestern's Applications

Midwestern's northern system brings gas from Canada to Minnesota, North Dakota and Wisconsin. It extends from the United States-Canada international boundary near Emerson, Manitoba, to a point near Marshfield, Wisconsin, where it connects with the facilities of its principal customer, Michigan Wisconsin Pipe Line Company. Midwestern's northern system facilities were authorized by the Commission on October 31, 1959, in Docket No. G–18313, *et al.* (Opinion No. 331, 22 FPC 775), and Midwestern was given permission to import from Canada a maximum daily quantity of 204,000 Mcf (at 14.73 psia). In Docket No. G–18315, Midwestern was granted a Presidential Permit for the construction, operation and maintenance of facilities for the importation of natural gas.

Midwestern stated that its northern system is presently authorized to make total peak day firm sales of 201,883 Mcf and that the volume of gas needed for company use as fuel on a peak day amounts to 2,056 Mcf; therefore, it has an unallocated peak day volume of gas available for sale of 61 Mcf.

On May 19, 1964, Midwestern and Trans-Canada Pipelines Limited (Trans-Canada) entered into a Precedent Agreement under which Midwestern, beginning November, 1967, will be entitled to purchase a firm peak day volume of 222,360 Mcf (at 14.73 psia), an increase of 18,360 Mcf per day over Midwestern's present peak day volume. Midwestern proposes to utilize 2,420 Mcf per day of this increase by adding to the volume of its present customers, as follows:

Customer	Present contract demand (Mcf)	Incremental peak day volumes requested beginning Nov. 1 (Mcf at 14.73 psia)				
		1964	1965	1966	1967	Total
Northern States Power Co	29,530			1,340		1,340
North Star Natural Gas Co	[1] 1,200			520	260	780
North Central Public Service Co	350	75	50	50	50	225
Village of Perham, Minn	600		50	25		75
Total	31,680	75	100	1,935	310	2,420

[1] For resale in Wadena and Staples, Minn., service areas.

Midwestern also proposes to utilize 7,461 Mcf per day of its increased imports to meet the third year peak day requirements presented by the Section 7(a) applicants in this proceeding and will then have a volume of 8,540 Mcf of unallocated gas available on a firm peak day basis for future service.

Staff did not oppose Midwestern's requests for increase in imports and for additional peak day service, but it urged that Midwestern's certificate be conditioned to require Midwestern to obtain Commission approval of proposed amendments to its gas purchase contract with Trans-Canada. Midwestern replied that Staff's proposed condition is unnecessary and impractical because Midwestern submitted all necessary contract and amendment information by filing with the Commission both the original contract and an amendment dated October 1, 1964, and that neither Midwestern nor Trans-Canada contemplates any changes in this submitted amendment. Midwestern pointed out that the amendment is definite and precise with respect to matters of price and demand quantities and stated that it will execute with Trans-Canada an amendment to its contract exactly in conformance with the evidence presented and with any authorization granted in this proceeding.

The Examiner found on the basis of the record before him that Midwestern's existing facilities are capable of receiving a daily volume of 222,360 Mcf from Trans-Canada, as proposed, and of delivering an additional 16,001 Mcf per day anywhere on the northern system. He found that the technical and economic feasibility of Midwestern's proposals was not disputed and that a study of estimated revenues and expenses showed that Midwestern's income from incremental sales will rise from $2,000 for 1965 to an estimated $41,000 in 1968. The gas purchased will be produced in fields in Canada and will be transported over previously authorized facilities. The Examiner noted that there will be no increase in the annual volume of natural gas to be imported and that Trans-Canada's annual minimum commodity charge to Midwestern will be increased only by the volume of gas actually made available and sold to new customers.

The Examiner approved the authorization of the Midwestern applications, subject to the conditions that Midwestern and Trans-Canada execute a formal amendment to their contract exactly in conformance with the evidence presented and the authorization granted and that this amendment be filed with the Commission. Staff has taken exception to the terms of the conditions imposed upon Midwestern, urging that prior to the exercise of any rights under its certificate, Midwestern should be required to file with the Commission for approval, and to serve upon all parties in this proceeding, the amendment to its gas purchase contract with Trans-Canada. It is our judgment upon consideration of the record in this matter, and particularly in reliance upon the assurance made by Midwestern, that the objectives sought by Staff can be accomplished by conditioning Midwestern's exercise of its rights under its requested certificate to its prior execution of the amendment to its contract with Trans-Canada and the filing thereof with the Commission, without requiring our further approval of such amendment. In all other respects we find that the Examiner's approval of Midwestern's applications is warranted by the record, and we approve and adopt his findings and conclusions.

In Docket No. G–18315 Midwestern requested amendment of the Presidential Permit issued to it on October 31, 1959, to enable Midwestern to increase from 204,000 Mcf to 222,360 Mcf the maximum volume of natural gas which it may import from Canada into the United States in any one day. Staff and the Examiner have taken the position that no amendment to the Presidential Permit is necessary in view of the fact that Midwestern does not propose any new construction or change of facilities at the International Boundary, and the Examiner has held that Midwestern may increase its import volume in this

case under the existing provisions of the Permit. We approve and adopt the Examiner's holding, and we find it to be consistent with the language of Executive Order No. 10485 and Sections 153.10 and 153.11 of the Commission's Regulations.

Milwaukee's Application

Milwaukee seeks authorization in Docket No. CP64-174 to initiate natural gas service to the cities of Neillsville, Greenwood, and Loyal, Wisconsin, and their environs. The proposed transmission and distribution facilities will be constructed at an estimated cost of $850,513. Third year revenues are estimated at $331,611, and third year rate of return is estimated a 5.89 percent. Milwaukee has applied for an order directing Midwestern to connect its facilities to this proposed project. Midwestern has granted its consent. The Public Service Commission of Wisconsin has approved the proposed service, and exclusive franchises have been obtained in each of the specified communities. The testimony presented by Milwaukee is uncontroverted, and no party has intervened in opposition. On the basis of the written and documentary showing submitted by Milwaukee, the Examiner approved Milwaukee's application and directed Midwestern to connect its facilities with those of Milwaukee and to sell and deliver to Milwaukee an additional 1,385 Mcf per day for distribution and sale in the cities of Neillsville, Greenwood, and Loyal.

We find upon consideration of the record in this matter that Milwaukee's application warrants our approval, and we adopt the Examiner's findings and conclusions with respect to this application.

Great Plains' Application

Great Plains, a Minnesota corporation which is also certificated to do business in North Dakota, has applied for an order under Section 7(a) of the Natural Gas Act directing Midwestern to render natural gas service from its northern system and has applied for authorization under Section 7(c) of the Act to construct transmission lines, a peak shaving plant and distribution facilities at a total estimated cost of $3,616,486. The communities which Great Plains proposes to serve are Fergus Falls, Breckenridge, and Pelican Rapids, Minnesota, and Wahpeton, North Dakota, with a total combined 1960 population of 25,637. These communities are presently without natural gas service.

Great Plains' application is opposed by Minn-Dak. Minn-Dak was permitted to intervene in this proceeding, and it attacked Great Plains' proposal on numerous economic and legal grounds.

The Examiner issued a certificate of public convenience and necessity to Great Plains subject to the conditions set forth in his ordering paragraph (G)1 requiring Great Plains to file (a) an acceptable financing plan, (b) a detailed statement of outstanding stock ownership, and (c) contracts on precedent agreements with prospective purchasers of interruptible gas service, and also subject to a limitation in ordering paragraph (G)2 on the amount of fees or engineering services to be included in the Great Plains plant accounts. Great Plains has filed exceptions to condition (G)1(c), and has objected to the limitation in (G)2 on the fees for engineering service. Minn-Dak has filed exceptions asserting that the Examiner is in error for reasons which may be summarized as follows: (1) Great Plains did not show that its proposal is economically feasible or is required by the public convenience and necessity; (2) Great Plains failed to show that the non-metallic pipe it proposes to use will meet the proper standards of safety; (3) Great Plains is not legally qualified to be certificated; and (4) approval of Great Plains' application is contrary to the public interest be-

cause it involves the payment of profits to an unregulated affiliate. For the reasons set forth below, it is our judgment that the Examiner's decision on Great Plains is essentially correct, and we approve and adopt such decision, except as modified below.

Economic Feasibility of Great Plains' Proposal

Great Plains proposes to connect to Midwestern's pipeline in Otter Tail County, Minnesota, and to construct 31.8 miles of 8-inch pipeline southwestward to Fergus Falls, with 5 miles of 3-inch pipeline lateral to Pelican Rapids, and to extend 26.2 miles of 6-inch pipeline westward to Breckenridge and Wahpeton on opposite sides of the Red River boundary between Minnesota and North Dakota. Great Plains has franchises to serve all four communities, and it received a conditional certificate from the North Dakota Public Service Commission.[1]

Great Plains estimated that the original cost of its transmission and distribution facilities will total $3,500,000, and that additional construction costs in the third year will be $116,486. Financing will be handled by the Omaha investment banking firm of Storz-Wachob-Bender Company whose president testified that approximately $2,300,000 will be raised through first mortgage bonds and that $1,200,000 will be obtained from the sale of common stock. Staff asked for more specific financing information and recommended that Great Plains obtain Commission approval of a financing plan which corresponds to that presented to the Securities and Exchange Commission, including a detailed statement showing the distribution of stock. Great Plains did not object to this requirement, and the Examiner included Staff's recommended conditions in his ordering paragraphs (G)1(a) and (b). We find that the insertion of these conditions is appropriate. We also find that Great Plains has in other respects presented an adequate explanation of its financing proposals in connection with its third-year construction costs.[2]

Great Plains proposes to purchase 5,472 Mcf of its peak day requirements and poses to serve will total 26,915 and that in its third year of operation it will serve 4,047 firm customers and 86 interruptible customers, with a peak day requirement of 7,078 Mcf and an annual requirement of 1,416,383 Mcf.

Great Plains proposes to purchase 5,742 Mcf of its peak day requirements and 1,384,263 Mcf of its annual requirements from Midwestern and to obtain the remainder of its needs by manufacturing propane air at its peak shaving plant. Great Plains based its projected rate of customer connection on the assumption that 55 percent of the total residential and commercial customers and 44 percent of the potential space heating customers will be connected by the third year. In arriving at these percentages Great Plains relied upon studies it made of communities which had been connected to natural gas lines in Minnesota, Iowa and Missouri and upon statistical data compiled by the Northern Natural Gas Company from communities served by its system. Great Plains also relied upon surveys it made of the heating needs and costs of the commercial and large volume customers in the four communities it proposes to serve. Great Plains estimated that it will earn a utility income of $213,521 and a rate of return of 6.10 percent by its third year of operation and that its average debt service ratio over a 23-year period during which its first mortgage will be amortized will be 1.97 percent, well above the Commission's standard minimum of 1.5 percent.

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[1] Minnesota does not have a state commission with jurisdiction over the proposed project.

[2] Staff asked about Great Plain's arrangements for financing its third-year construction costs of $116,486, and in reply Great Plains explained that it is relying on an anticipated depreciation reserve of $118,747 and an anticipated working capital balance at the end of the second year of $360,460.

Minn-Dak attacked Great Plains' estimates of residential conversion to natural gas as being unduly high and contended that a survey which it conducted in 1963 in Fergus Falls, Breckenridge and Wahpeton shows that only 33 percent of the residential customers interviewed expressed an interest in converting to natural gas. Staff and Great Plains both challenged Minn-Dak's survey conclusions, pointing out that the survey does not cover commercial and large volume users. Staff also stated that Minn-Dak had submitted incomplete data from the survey, that the survey called for only a "yes or no" reply, therefore not reflecting the attitudes of householders who were undecided and that there is a substantial question as to whether replies given at a time when natural gas was not available will necessarily remain the same after gas has been on the market for two years. Great Plains criticized the survey for seeking replies on the basis of excessive conversion costs and argued that the survey actually corroborated its own market expectations because the reaction of the people surveyed prior to their exposure to a sales campaign showed that a larger number of householders were ready to convert to natural gas than Great Plains had anticipated for its first year's operation.

The Examiner found that Great Plains' estimates of its sales are reasonable and that the market for the proposed project is adequate. He agreed with the criticism leveled against Minn-Dak's survey by Staff and Great Plains and stated that the survey furnished "an insufficient evidentiary basis on which to rest definite conclusions regarding the volumes of gas which can be marketed in the three cities in the third year of Great Plains operation *after* service is installed and an aggressive sales program instituted", citing *East Tennessee Natural Gas Company*, Opinion No. 435, Docket No. CP64–21, July 17, 1964, 32 FPC 158, for the principle that the extent of actual sales depends in large part upon how energetic a sales campaign is conducted. Although Minn-Dak asserted that natural gas will prove to be a more expensive fuel in Fergus Falls then oil, the Examiner gave little weight to this contention, observing that even if the cost of gas should be somewhat higher than that of oil, a consumer might still select gas on the basis of the savings involved in the elimination of oil storage facilities and in the greater life expectancy and lower maintenance costs of gas burning equipment, as well as on the basis of the greater overall convenience in using gas.

We find that the Examiner's position on the above points is well reasoned and adequately buttressed by the evidence of record. In weighing the conflicting claims of Great Plains and of Minn-Dak, we have given consideration to the fact that Great Plains' estimates are based on the actual experiences of communities in Minnesota, Iowa and Missouri, while Minn-Dak's calculations are based upon a survey which was conducted at a time when natural gas was not available. The shortcomings and limitations of Minn-Dak's survey were accurately noted by the Examiner, and his reliance upon the precedent of *East Tennessee Natural Gas Company*, Opinion No. 435, Docket No. CP64–21, July 17, 1964, was appropriate.

We further find that the Examiner was correct in relying upon *East Tennessee Natural Gas Company, et al., supra*, to impose the condition set forth in his ordering paragraph (G)1(c). This condition requires Great Plains to file contracts on precedent agreements with prospective purchasers of interruptible gas service providing for the purchase of at least one-half of the planned sale of 610,841 Mcf per year by the second full year of operation. The record shows that these large volume sales are of critical importance to the feasibility of Great Plains' project. The exceptions filed to this ruling of the Examiner are without merit.

There is no substance to Minn-Dak's exception to the Examiner's ruling on the comparative costs of heating with gas and with No. 2 oil. We approve and adopt

the Examiner's disposition of this question. After observing that there was a conflict in the evidence as to which of the two fuels will prove to be the more economical in the Fergus Falls area,[3] the Examiner found that "This record justifies the conclusion that residents of the area involved should not be deprived of the right to choose among competing and relatively economic sources of energy."

Great Plains' Proposed Use of PVC Plastic Pipe

Great Plains' specifications call for the use of wrapped and coated steel pipe at pressure of 65 psig or more. Its lower pressure systems, particularly those operating at 15 psig, are designed to use non-metallic PVC pipe to handle local distribution. Great Plains' engineer testified that the distribution system was designed on the basis of 15 psig pressure using the Weymouth Gas Flow Formula and was in accordance with the American Standard Code for pressure pipelines—ASA B31.8—1963. He stated that PVC pipe has been used by the Peoples Natural Gas Division of Northern Natural Gas on the distribution systems of 14 communities. No question concerning the safety of Great Plains' design or specifications was raised during the hearing. Minn-Dak, nevertheless, asserted that the Examiner is in error for failing to find that Great Plains did not meet its burden of showing that its proposed use of PVC pipe will meet recognized standards of safety and will not endanger the public welfare.

The local distribution facilities in which the PVC pipe will be used are not subject to the Commission's jurisdiction. Furthermore, the record shows that Great Plains made an adequate affirmative showing as to the safety and soundness of its engineering specifications and design.

Great Plains' Legal Qualifications

Minn-Dak attacked the Examiner's findings concerning Great Plains' legal qualifications on the ground that Great Plains does not qualify as a person "engaged or legally authorized to engage in the local distribution of natural or artificial gas" within the meaning of Section 7(a) of the Natural Gas Act in that it has failed to obtain the necessary local authority to distribute and sell gas in the cities of Breckenridge, Minnesota, and Wahpeton, North Dakota. The crux of Minn-Dak's case is (1) that while Great Plains' franchise from the cities of Fergus Falls, Pelican Rapids and Wahpeton are twenty year periods, its franchise from Breckenridge is limited to a term of two years and (2) that Great Plains' Wahpeton franchise is circumscribed by the fact that the North Dakota Public Service Commission has granted only a conditional certificate.

Minn-Dak's attack merely restates its argument which was rejected by the Examiner. The facts of record and our decisions support the Examiner's position. See *Central City, Kentucky*, 18 FPC 163 (1957); *Tipton County Utilities Co., Inc., et al.*, 15 FPC 1362 (1956); *East Tennessee Natural Gas Co.*, 11 FPC 426 (1952).[4] Great Plains adequately explained that its franchise from Breckenridge is only for a two-year period because that is the maximum limit which the

[3] Great Plains estimated the average annual cost of heating a home with natural gas in the Fergus Falls area would be $189.50 compared with cost of $219.02 with No. 2 oil. Minn-Dak claimed that Great Plains had over-stated the cost of heating with oil by erroneously crediting oil burning equipment with a 70-percent efficiency factor, while the correct efficiency factor is 80 percent, and that on an 80 percent basis the cost of heating a home with No. 2 oil would be only $195.46 compared with a natural gas cost, exclusive of conversion charges, or $218.21.

[4] Minn-Dak's reliance on *Wisconsin Southern Gas Company*, 4 FPC 188 (1944), is misplaced. There, an application was denied because the applicant had not even attempted to secure state approval and had not received any authorization from the largest community to be served.

City Council can grant without a general election. The general election will be held after a supply of natural gas is obtained. Great Plains also explained that the North Dakota Public Service Commission directed Great Plains to appear before it with a Federal Power Commission order so it can ascertain whether a supply of natural gas will be made available to Great Plains for Wahpeton before issuing a final order. These explanations are satisfactory.

Great Plains' Affiliation With Henningson, Durham and Richardson

Great Plains was organized by the Omaha engineering firm of Henningson, Durham & Richardson, Inc. (HD&R), an organization experienced in designing gas transmission and distributing systems. HD&R incorporated Great Plains for the purpose of establishing the gas distribution system here proposed, and its President, Charles W. Durham, is President of Great Plains. HD&R proposes to do the engineering work in designing and constructing the Great Plains system, for which it will charge a fee of 7 percent (about $187,000) of the total construction costs. It intends to operate the system after construction and own at least 10 percent of the stock in the project. At the time of the hearing HD&R owned all of the stock in Great Plains.

Minn-Dak argued that the Examiner's approval of Great Plains' application would violate the "no profits to affiliates" rule which we applied in our decision in *Florida Gas Transmission Company*, 31 FPC 1402, Opinion No. 431, June 8, 1964. Staff, on the other hand, urged that in order to assure consistency with the *Florida Gas Transmission* case, the Examiner should subject the Great Plains' certificate to the requirement that no part of the fee paid to HD&R for engineering services which exceeded actual costs should be included in Great Plains' plant accounts. The Examiner adopted Staff's proposal and included the recommended condition in his ordering paragraph (G)2.

Great Plains and Minn-Dak both have filed exceptions to the Examiner's holding. Great Plains contends that it is a small, local distribution system and is more appropriately subject to regulation by local authorities than by the Commission. It also urges that consideration of the question of its affiliation is premature during the pendency of the *Florida Gas Transmission* appeal. Minn-Dak asserts that the Examiner's condition will not adequately safeguard the interests of Great Plains' consumers and investors and that the public interest requires the denial of Great Plains' application.

We do not find these exceptions persuasive. The Examiner found that there is no evidence of record that the Great Plains project was organized and conceived solely or primarily for the purpose of providing profits for the promoters in excess of the actual cost incurred in performing necessary engineering services incident to the organization and construction of the proposed distribution system. He also found that the Commission possesses jurisdiction over the accounts of Great Plains under Section 8 of the Natural Gas Act and that we have authority to regulate the propriety and amount of engineering fees to be included in its plant accounts. The condition proposed by the Examiner in paragraph (G)2, as applied to the fees to HD&R for engineering services on that portion of the Great Plains' system subject to our jurisdiction, represents a reasonable precautionary action. It is approved and adopted.

The Application of North Star Natural Gas of Wisconsin

Wisconsin North Star applied for an order under Section 7(a) of the Natural Gas Act directing Midwestern to establish a connection of its facilities with Wisconsin North Star's proposed natural gas branch lines and distribution system and to sell and deliver to Wisconsin North Star natural gas for resale

and distribution in the Villages of Boyceville and Colfax, Wisconsin. The population of Boyceville is 660 and that of Colfax 885. Wisconsin North Star was incorporated in July, 1962. It commenced local natural gas distribution to the community of Dresser, Wisconsin, in August, 1963. The company is a wholly-owned subsidiary of North Star Natural Gas Company, a Minnesota corporation (Minnesota North Star).

Wisconsin North Star proposes to spend $230,420 on the expansion of its system to Boyceville and Colfax, of which amount $36,620 will be for transmission lines (3 miles of 2-inch line to Boyceville and 0.8 mile of 2-inch line to Colfax from Midwestern's main line tap) and $193,800 for distribution systems. Third year peak day requirements are estimated at 604 Mcf, with 348 Mcf per day for Colfax and 256 Mcf per day for Boyceville. These estimates were made on the basis of Wisconsin North Star's calculations, after making a house to house survey, that in the third year of operation the meter saturation in the two villages would reach 70 percent of the ultimate potential.

Financing of the Wisconsin North Star proposal is to be handled on the basis of: (1) $162,000 in first mortgage bonds maturing over a 20 year period with no payment on principal for the first five years; (2) $18,000 in debentures maturing in 15 years with no payment on the principal for the first three years and (3) $60,000 in common stock. The applicant computed the rate of return on the $240,000 investment[5] as 4.8 percent for the first year of operation and 10.4 percent in the third year.

The Wisconsin North Star proposal was approved by the Public Service Commission of Wisconsin which, on October 27, 1964, issued a certificate authorizing Wisconsin North Star to construct and operate the proposed facilities and to sell and distribute natural gas at retail in the Villages of Boyceville and Colfax.

Staff questioned the financing proposals and the economic feasibility of Wisconsin North Star's project. The Examiner found, however, that the applicant's presentation both in its initial showing and in its reply brief adequately disposed of Staff's questions. He concluded that Wisconsin North Star had satisfactorily demonstrated that its proposals are economically feasible and can be adequately financed. The Examiner found that Boyceville had a slow but steady increase in population during the period 1930 to 1960 of approximately 19 percent and that Colfax had experienced a similar growth pattern until June 1958 when a tornado destroyed about 45 percent of the town. The Examiner pointed out that Colfax is now making a definite recovery from this destruction. He found that a 70 percent estimate of meter saturation for the two villages is reasonable in light of gas distributor experience in Staples and Wadena, Minnesota, and in Dresser, Wisconsin, where the meter saturation reached 83 percent after 16 months of operation. The Examiner noted that gas sales to two interruptible customers, the Colfax Cooperative Creamery Company and the Boyceville Farmers Cooperatives Creamery Association, will account for 41 percent of the project's total estimated revenues of $186,460 in the third year of operation. He further found that Wisconsin North Star has signed agreements with these two customers providing for five years service, and he concluded that there is no evidence or reason to believe that these customers will terminate or sharply curtail their use of natural gas at the end of the five year term.

We agree with the Examiner that Wisconsin North Star satisfactorily demonstrated that its project is economically feasible and that its financing arrangements are adequate. We accordingly approve and adopt the Examiner's findings and conclusions with respect to this applicant.

[5] In addition to its proposed expenditure of $230,420 on the expansion of its system to Boyceville and Colfax, Wisconsin North Star estimated that it would require approximately $9,580 for legal expenses and contingencies.

The Commission further finds:

(1) Applicants Midwestern Gas Transmission Company and Great Plains Natural Gas Co. are each "a natural-gas company" within the meaning of the Natural Gas Act.

(2) Applicants Milwaukee Gas Light Company and North Star Natural Gas Company of Wisconsin, Inc. are each "engaged or legally authorized to engage in the local distribution of natural or artificial gas to the public" within the meaning of Section 7(a) of the Natural Gas Act.

(3) The proposed facilities of Midwestern and certain of the proposed transmission facilities of Great Plains will be used in the transportation and sale of natural gas in interstate commerce for resale, subject to the jurisdiction of the Commission, and such facilities and proposed sales of natural gas, as more fully described in the applications and record herein, are subject to the requirements of Section 7 of the Natural Gas Act.

(4) The applications of Milwaukee, Great Plains and Wisconsin North Star for orders directing Midwestern to render natural gas service to these applicants and for the construction of facilities necessary for such service are subject to the requirements of Section 7 of the Natural Gas Act.

(5) The construction and operation of the facilities and the sales of natural gas proposed by applicants are required by the public convenience and necessity, and applicants are able and willing properly to do the acts and to perform the service proposed and to conform to the Natural Gas Act and the rules and requirements of the Commission pursuant to the law; therefore, certificates should be issued as hereinafter ordered and conditioned.

(6) The conditions attached to the certificates herein issued are required by the public convenience and necessity.

(7) The ability of Midwestern to render adequate service to its customers will not be impaired, and no undue burden will be placed upon it by reason of the sale, service, facilities or requirements herein ordered.

(8) Except as herein granted, the exceptions to the Examiner's decision should be denied.

The Commission orders:

(A) Certificates of public convenience and necessity are hereby issued to the applicants named in the caption of this decision, subject to the conditions imposed herein, authorizing the sale of natural gas in interstate commerce for resale for ultimate public consumption and for the construction and operation of any facilities necessary therefor which are subject to the jurisdiction of the Commission, all as are more fully described in the applications.

(B) Midwestern is authorized to sell maximum day volumes of natural gas to the following customers in the amounts stated:

Customer	Presently authorized peak day service	Date and volume of proposed peak day service			
		Date of authorization	Nov. 1, 1965	Nov. 1, 1966	Nov. 1, 1967
North Central Public Service Co	350	425	475	525	575
North Star Natural Gas Co	1,200	1,200	1,200	1,720	1,980
Northern States Power Co	29,530	29,530	29,530	30,870	30,870
Perham, Minn. (Village of)	600	600	650	675	675

(C) Paragraph (M) of the orders issued to Midwestern under Docket No. G-18314, on October 31, 1959 (22 FPC 775, 803), is hereby amended to read as follows:

(M) Midwestern is hereby authorized, subject to the conditions specified herein, to import from Canada into the United States a maximum of 222,360 Mcf of natural gas per day at a point of interconnection on the International Boundary near Emerson, Manitoba, and Noyes, Minnesota.

(D) As a condition to the exercise of any right under these orders authorizing an increase in the maximum day volumes of natural gas to be sold by Midwestern and an increase in the maximum day volumes of natural gas to be imported into the United States by Midwestern, Midwestern shall, prior to the exercise of any such right, file with the Commission an executed formal amendment to the gas purchase contract which was made April 14, 1960, by and between Midwestern and Trans-Canada, which amendment shall be exactly in conformance with the evidence presented and the authorization granted in this proceeding.

(E) Midwestern is hereby directed to establish and maintain a physical connection of its transportation facilities with the facilities of Great Plains at a point in Otter Tail County, Minnesota, and to construct, operate and maintain meter facilities at the point of connection at Midwestern's expense and to sell and deliver to Great Plains through said connection natural gas in volumes not to exceed 5,472 Mcf in any one day, as measured at a pressure of 14.73 psia, for resale by Great Plains in Pelican Rapids, Fergus Falls and Breckenridge, Minnesota, and in Wahpeton, North Dakota, as described in this proceeding.

(F) Midwestern shall report promptly to the Commission in writing and under oath the dates of commencement and completion of construction by it and the date of commencement of the above described service to Great Plains.

(G) Great Plains shall report promptly to the Commission in writing and under oath the dates of commencement and completion of construction by it and the date of commencement of operation of its facilities ordered herein.

(H) Prior to the exercise of any right, under the certificate issued to Great Plains herein, there shall be compliance with the following conditions:

1. Great Plains shall file with the Commission under oath, serve on each of the parties to this proceeding and obtain the Commission's approval of a financing plan which shall correspond to the financing plan presented to the Securities and Exchange Commission;

2. Great Plains shall file with the Commission a statement under oath regarding the present outstanding stock of Great Plains showing the type, terms and conditions of such stock, the number of shares issued, when and to whom issued, the present owners, the valuation placed thereon at the time of issue, and the consideration for which they were issued;

3. Great Plains shall file with the Commission acceptable contracts on precedent agreements with prospective purchasers of interruptible gas service providing for the purchase of at least one-half of the planned sale of 610,841 Mcf per year by the second full year of operation;

4. No part of the fee paid to the firm of HD&R for engineering services on any portion of the Great Plains' system subject to the Commission's jurisdiction which exceeds the actual costs incurred in performing such services shall be included in Great Plains plant accounts.

(I) Midwestern is hereby directed to connect its facilities with those of Wisconsin North Star and to sell and deliver to Wisconsin North Star an additional 604 Mcf per day for distribution and sale in Colfax and Boyceville, Wisconsin, as described in this proceeding.

(J) Midwestern is hereby directed to connect its facilities with those of Milwaukee and to sell and deliver to Milwaukee an additional 1,385 Mcf per day for distribution and sale in the cities of Neillsville, Greenwood and Loyal, Wisconsin, and environs, as described in this proceeding.

(K) The Examiner's decision, to the extent not inconsistent herewith, is hereby adopted as part of this Opinion and Order.

(L) Except as herein granted, the exceptions to the Examiner's decision are hereby denied.

INITIAL DECISION

OF THE PRESIDING EXAMINER UPON APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY, AUTHORIZATION TO INCREASE IMPORTS, EXISTING SERVICE, AND PROVIDE NEW SERVICE

(Issued March 31, 1965)

LEVY, *Presiding Examiner:*

This proceeding is before the Federal Power Commission by reason of three applications filed on June 24, 1964, by Midwestern Gas Transmission Company (Midwestern), seeking authorization under Section 7(c) of the Natural Gas Act to increase its peak day firm sales of natural gas to four present customers[1] on its northern system by 2420 Mcf, and to increase by 18,360 Mcf the firm daily contract quantity of natural gas which it is authorized to import from Canada, pursuant to Section 3 of the Act, without increasing the authorized maximum annual quantities of imported gas.

This proceeding also involves three applications filed by Milwaukee Gas Light Company (Milwaukee), North Star Natural Gas Company of Wisconsin (Wisconsin North Star), and Great Plains Natural Gas Co. (Great Plains), pursuant to Section 7(a) of the Act requesting that Midwestern be directed to render natural-gas service from its northern system. Great Plains also seeks authorization under Section 7(c) of the Act to construct transmission lines, a peak shaving plant, and distribution facilities at a total estimated cost of $3,616,486.00.

By order issued November 9, 1964, these proceedings were consolidated and a hearing held on September 15, 16, and 17, 1964, and January 5, 1965. Minn-Dak Fuel Association, Inc. (Minn-Dak), an association of petroleum dealers operating in the area proposed to be served by Great Plains, was permitted to intervene in opposition to the Great Plains proposal. Northern States Power Company (Northern), Minneapolis, and Great Plains were permitted to intervene in support of Midwestern's application. The Public Service Commission of Wisconsin filed a notice of intervention and a reply brief, but did not appear at the hearing. Cross-examination of Milwaukee Gas[2] witnesses was waived with the consent of all the parties, and its testimony and exhibits received in evidence. Briefs were submitted by all parties, and a motion filed by Staff on February 18, 1965, to strike parts of the reply brief of North Star.

Midwestern's Applications

Midwestern's northern system extends from the United States-Canada International Boundary near Emerson, Manitoba to a point near Marshfield, Wis-

[1] Northern States Power Company, North Star Natural Gas Company of Minnesota, North Central Public Service Co. and Village of Perham, Minnesota. Midwestern's original application included a fifth customer, American Gas Co. of Wisconsin, which later canceled its agreement to purchase additional gas.

[2] On December 7, 1964, Milwaukee filed a motion to sever Docket No. CP64-174 from the consolidated proceedings and dispose of Milwaukee's application pursuant to the shortened procedure provided by Section 1.32(b) of the Commission's Rules.

consin where it connects with the facilities of its principal customer, Michigan Wisconsin Pipe Line Company. Construction and operation of Midwestern's northern system which brings gas from Canada to Minnesota, North Dakota, and Wisconsin, were authorized by the Commission on October 31, 1959 (Opinion No. 331) under Docket No. G–18313, *et al.* (22 FPC 775). This same order authorized Midwestern to import from Canada a maximum daily quantity of 204,000 Mcf. Midwestern and Trans-Canada have entered into a Precedent Agreement (Exh. 2) under which Midwestern will be entitled to purchase a firm peak day volume of 222,360 Mcf effective November 1, 1967. This increased peak day volume of gas available from Canada will allow Midwestern to serve the demands of 7(a) applicants in these proceedings. No additional facilities were requested or are required by Midwestern to receive the increased peak day volumes from Trans-Canada or to render the additional service.

The peak day service proposed may be summarized as follows:

Customer	Present contract demand (Mcf) (exhibit 3)	Incremental peak day volumes requested beginning Nov. 1 (Mcf at 14.73 psia)				
		1964	1965	1966	1967	Total
Northern States Power Co.	29,530			1,340		1,340
North Star Natural Gas Co.	[1] 1,200			520	260	780
North Central Public Service Co.	350	75	50	50	50	225
Perham, Minn., Village of	600		50	25		75
Total	31,680	75	100	1,935	310	2,420

[1] For resale in Wadena and Staples, Minn., service areas.

Authorization to import an additional 18,360 Mcf per day from Trans-Canada, its sole source of supply, over the present peak day volume of 204,000 Mcf, will give Midwestern's northern system a gas supply adequate to meet both the 2420 Mcf per day increased requirements of existing customers, as proposed at Docket No. CP64–308, and 7461 Mcf per day of third year peak day requirements presented by the Section 7(a) applicants in this proceeding. In addition, Midwestern will have a volume of 8540 Mcf of unallocated gas available on a firm peak day basis for future service to either new or existing customers. Midwestern's existing facilities are capable of receiving a daily volume of 222,360 Mcf from Trans-Canada, as proposed, and delivering an additional 16,001 Mcf per day anywhere on its northern system (Exhs. 5–9).

The technical and economic feasibility of Midwestern's proposals is not disputed. A study of estimated revenues and expenses shows operating income from incremental sales rising from $2,000 for 1965, to an estimated $41,000 in 1968 (Exh. 10, Tr. 46). (Trans-Canada's annual minimum commodity charge to Midwestern will be increased only by the volume of gas actually made available and sold to new customers.) The gas purchased will be produced from fields in Canada and will be transported over previously authorized facilities (22 FPC 775). The annual volumes of natural gas to be imported will not be increased.

The market evidence submitted by Midwestern's existing customers in support of their applications for additional peak day service is uncontradicted. While Staff questions the adequacy of the supporting data in respect of the presentation of Northern and North Star, it does not oppose authorization of the additional service.

Staff does propose that Midwestern's certificate be conditioned so as to require that "prior to the exercise of any right under the certificate and authorization issued to Midwestern herein, Midwestern shall file with the Commission and serve upon all parties to this proceeding and shall obtain the Commission's ap-

proval of the amendment to the gas purchase contract which was made April 14, 1960, by and between Midwestern and Trans-Canada Pipelines, Limited, which amendment shall effectuate the objectives of Midwestern's application in this proceeding." (Br. pp. 19, 20.) The basis for the proposed condition is Midwestern's alleged failure to place in evidence the proposed amendment to its gas purchase contract with Trans-Canada (Exhs. 1, 2).

Midwestern maintains that the proposed condition is unnecessary and impractical since both the original contract and the amendment dated October 1, 1964, have been filed with the Commission which now has all the information it needs to approve or disapprove Midwestern's proposals. Moreover, argues Midwestern, the condition requested by Staff would require the amendment of its contract with Trans-Canada before it knew whether its proposal would be approved. The letter agreement dated August 19, 1964, in evidence as Exhibit 2, contains the terms of the agreement between Midwestern and Trans-Canada, which terms and conditions are incorporated in the amendment filed with the Commission on October 1, 1964. Since the Commission has before it all of the terms of the proposed amendment agreed to between Midwestern and Trans-Canada, and nothing is left for future agreement, the substance of the proposed amendment can be approved *now* without delaying action by the Commission until after the amendment is formally executed. This approval, however, is subject to the condition, to which Midwestern has no objection, that Midwestern and Trans-Canada will execute a formal amendment to the contract exactly in conformance with the evidence presented and the authorization granted in this proceeding, and that such amendment will be filed with the Commission.

Amendment of Midwestern's Presidential Permit

On October 31, 1959, Midwestern was issued a Presidential Permit for the construction, operation, and maintenance of facilities at the International Boundary and authorized to import from Canada a maximum daily quantity of 204,000 Mcf (22 FPC 775, 800). Midwestern now requests that the Presidential Permit be amended so as to increase from 204,000 Mcf to 222,360 Mcf, the maximum volume of natural gas which Midwestern may import from Canada into the United States in any one day. No alteration of existing facilities, authorized and constructed pursuant to the Presidential Permit, or additional construction, is involved. Article 3 of the Permit reads as follows:

> The natural-gas facilities authorized herein, or which may subsequently be included herein by modification or amendment, may be utilized for the transportation of natural gas from Canada to the United States only in the amount, at the rate, and in the manner authorized by the Commission under Section 3 of the Natural Gas Act.

Staff interprets Article 3 as authorizing Midwestern to use the natural-gas facilities authorized and constructed pursuant to the Permit for the transportation from Canada to the United States of natural gas in any amount which may be authorized from time to time by the Commission under Section 3 of the Natural Gas Act. So long as there is no change in the facilities previously authorized and constructed under the Presidential Permit, there is no limitation on the volumes of gas which the Commission may authorize to be transported. Accordingly, it is Staff's position that no amendment to the Presidential Permit is necessary in view of the fact that Midwestern does not propose any new construction or change of facilities at the International Boundary. As noted previously, Staff does not oppose Commission authorization under Section 3 of the Act of an increase in the maximum daily volume of natural gas which Midwestern may import from 204,000 Mcf to 222,360 Mcf.

Staff's interpretation of the Presidential Permit issued to Midwestern pursuant to Executive Order No. 10485, and Sections 153.10 and 153.11 of the Commission's Regulations, as a facilities permit is not contested in Midwestern's reply brief and is consistent with the language of the Executive Order and the Regulations which deal specifically with the construction, operation, maintenance, and connection of facilities at an International Boundary. No amendment of the Presidential Permit is required and the requested increase in gas import is authorized pursuant to Section 3 of the Act as consistent with the public interest.

Section 7(a) Applications

The three 7(a) applicants, Milwaukee, Wisconsin North Star, and Great Plains, seek a total peak day gas supply of 7461 Mcf, an amount well within Midwestern's additional peak day capacity as proposed in this proceeding.[3] As noted by Staff,[4] each 7(a) applicant must demonstrate the economic feasibility and financeability of its proposed project, the public need for and the benefit from the proposed service, and that Midwestern is the applicant's most feasible source of supply. The cost to Midwestern of necessary side valves and meter stations to render service to each of these applicants is approximately $15,000.

Great Plains

Great Plains proposes to build gas distribution facilities in Fergus Falls, Breckenridge, and Pelican Rapids, Minnesota and Wahpeton, North Dakota, communities presently without natural-gas service. Great Plains has franchises to serve all four towns, and a conditional certificate from the North Dakota Public Service Commission.[5] The Great Plains application is opposed by the Minn-Dak Fuel Oil dealers. Approval is recommended by Staff, subject to certain specified conditions (Staff br. pp. 49–53).

From the point of connection with Midwestern's pipeline in Otter Tail County, Minnesota, Great Plains proposes to construct 31.8 miles of 8-inch pipeline southwestward to Fergus Falls, 26.2 miles of 6-inch pipeline westward to Breckenridge and Wahpeton on opposite sides of the Red River boundary between Minnesota and North Dakota, and 5 miles of 3-inch pipeline lateral to Pelican Rapids, at a total cost of $3,616,486 (Exhs. 49, 50, 51, 55, Tr. 429–435).

Mr. M. J. Warren, president of the investment banking firm of Storz-Wachob-Bender Company (Storz), Omaha, the financial witness for Great Plains, anticipates that the approximately $3,500,000 total financing will consist of $2,300,000 of first mortgage bonds and $1,200,000 of common stock. Staff feels that the tentative financing proposed by applicant is to uncertain and contingent for Commission approval at this time, and the precise method of financing the project should be presented to the Commission before final approval. Accordingly, Staff proposes that Great Plains be required to file and obtain Commission

[3] Allocation of Midwestern's present and potential peak-day gas supply (Mcf/d at 14.73 psia):

Midwestern's present import authorization		204,000
Contract demands of present customers (T. 130, 138)	201,883	
Company use (T. 140)	2,056	
Total of present requirements		203,939
Unallocated gas		61
Increase requested in import authorization		18,360
Midwestern's potential peak-day gas supply		18,421
Proposed increase in contract demands of present customers	2,420	
Requested by 7(a) applicants	7,461	
Potential additional peak-day requirements		9,881
Potential unallocated gas		8,540

[4] Citing *American Louisiana Pipe Line Co.* (16 FPC 897).

[5] Minnesota does not have a state commission with jurisdiction over the proposed project.

approval of a financing plan which shall correspond to the plan presented to the Securities and Exchange Commission, including a statement regarding the number of shares issued, when and to whom issued, and the type, terms, and conditions of such stock. The reply brief submitted by Great Plains does not appear to object to the imposition of such a condition, and the issuance of the certificate will be conditioned accordingly.

Staff also questions how construction for the third year in the amount of $116,486 will be financed. Great Plains points to the reserve for depreciation and amortization ($118,747) and a working capital balance at the end of the second year of $360,460 (Exh. 56, p. 6) for this purpose.

Minn-Dak's Opposition to Great Plains

Minn-Dak is a nonprofit corporation whose membership includes 25 small independent oil jobbers, agents, and cooperatives located and engaged in the distribution and sale of fuel oil in Fergus Falls, Breckenridge, Wahpeton, and Pelican Rapids, the areas (Western Minnesota and North Dakota) involved in the application of Great Plains. They employ 121 persons with an annual payroll of $543,268 and an over-all investment in plant and equipment in excess of $800,000. Sales total about 11,432,494 gallons of fuel oil per year, predominantly for space heating, with annual gross revenues of about $1,693,466.

Minn-Dak opposes the proposed Great Plains project on both legal and economic grounds. It argues that the project is not economically feasible because Great Plains has overestimated the number of residential customers who would convert to gas, the volumes of gas that would be sold to residential users, and the revenues that would be derived from such sales. Rather than benefiting the consumer, authorization would be contrary to the public interest according to the testimony of its policy witness, Mr. Vraspir, because:

> By entering the market at rates pegged to overstated market projections, a gas distributing company is permitted to compete initially at a favorable price advantage. When, after two or three years the market fails to develop as projected, the company can, as a utility, obtain the revenues which do not materialize through higher rates. As a result, the fuel oil retailers, who compete with each other as well as the gas company at prices geared to the market, are hurt in that they have lost a portion of their market as a result of the temporary price disadvantage. More importantly to this Commission, it hurts the consumer who at the prospect of long term fuel economies irrevocably converts or replaces his heating equipment and domestic appliances at great expense only to find that the prospective fuel savings which made the expense feasible and/or desirable will not materialize (Tr. 493, 494).

D. R. Stuart, Great Plains vice president, chief mechanical engineer for the firm of Henningson, Durham & Richardson (HD&R), consulting engineers and architects, and market witness, estimated Great Plains third year peak day gas requirements as 7,078 Mcf and total annual requirements as 1,416,383 Mcf.[4]

[4] Great Plains estimated requirements for natural gas and propane air, 3d year (exhibit 53):

	Population		Number customers, 3d year		Requirements, 3d year (Mcf)	
	1960 actual	1966 estimate	Firm	Interruptible	Peak day	Annual
Breckenridge	4,335	4,695	776	10	1,340	210,968
Fergus Falls	13,733	14,189	1,829	60	3,135	760,127
Pelican Rapids	1,693	1,705	364	5	654	169,928
Wahpeton	5,876	6,326	1,078	11	1,949	275,360
Total	25,637	26,915	4,047	86	7,078	1,416,383

Of this amount, an estimated 5,472 Mcf on a peak day and an estimated 1,384,263 Mcf annually would be natural gas purchased from Midwestern. The remainder would be propane air produced by Great Plains peak shaving plant (Exh. 58). Great Plains projected rate of customer connection assumes that 55 percent of the total residential and commercial customers and 44 percent of the potential space heating customers would be connected by the third year (Exh. 53, p. 11).

Minn-Dak's policy witness, Mr. Vraspir, concluded on the basis of a survey made by Dr. Hektner that Great Plains substantially overestimated the prospective number of residential gas connections by the third year of operation. Based on Dr. Hektner's market surveys, Minn-Dak concludes that the average number of residential gas customers in Great Plains third year of operation would be only 2234 [7] instead of 3682 as estimated by Great Plains (Exh. 69).

However, Minn-Dak's market survey has certain limitations which prevent it being used uncritically as the basis for findings regarding the volumes of gas which can be marketed in the three cities covered by the survey. Minn-Dak's survey covered 16.5 percent, 23.8 percent, and 15.6 percent of the potential residential gas customers in Fergus Falls, Breckenridge, and Wahpeton. It does not include commercial and large volume sales which aggregate 735,755 Mcf, or 54 percent of Great Plains estimated total third year sales of 1,345,565 Mcf. Large volume potential sales alone, which Great Plains lists by name, constitute 45 percent of its estimated third year sales (Exh. 53).

Turning to the survey itself, we are told (Exh. 74) that of the 1071 householders interviewed in the three cities, 341, or approximately one-third, expressed an interest in converting to natural gas for one of more uses. It does not follow that all of the other 730 householders comprising two-thirds of the total number interviewed would not convert to natural gas for any use if in fact gas service was installed and made available on the basis proposed, and one-third of their neighbors converted to gas. The form makes provision for only yes or no answers (Exh. 71), and furnishes an insufficient evidentiary basis on which to rest definite conclusions regarding the volume of gas which can be marketed in the three cities in the third year of Great Plains operation *after* service is installed and an aggressive sales program instituted. On cross-examination Mr. Stuart testified for Great Plains that his estimate for connections by the third year (55 percent of total customers and 44 percent of potential space heating) was conservative and based on actual experience in similar communities (Tr. 456–458, 480). Moreover, the Minn-Dak survey assumes minimum gas conversion costs at prices which are disputed as excessive. Its estimates were not solicited from companies actually engaged or experienced in natural-gas conversion.

Minn-Dak also claims that the cost of heating a home in the proposed service area with oil is 19 percent less than it would be with gas. If conversion costs are not included, the saving is approximately 11 percent (Exh. 70). The dollar figures are $195.46 for No. 2 oil and $218.21 with gas, an annual saving according to Mr. Vraspir of $22.70 with oil. Great Plains estimates $189.50 as the average annual cost of heating a home with gas as against $219.02 with No. 2 oil, an

[7] Exhibit 69:

	Applicant exhibits 43/60	Minn-Dak exhibit 69	Percent of reduction
Number of customers	3,682	2,234	39.3
Annual sales, Mcf	609,810	396,327	35.0
Annual revenue	$759,304	$489,591	35.5
Annual sales all customers, Mcf	1,416,383	1,202,749	15.0
Annual revenue all customers	$1,213,861	$946,148	22.2

annual saving of $29.52 in favor of gas.[8] In evaluating these conflicting estimates it should be observed that even where natural gas costs somewhat more than oil, it may, nevertheless, make for a less expensive total heating system if we include such factors as the extra cost of storage facilities for oil, shorter life expectancy of the oil burner, and higher initial installation costs of oil burning equipment. There are also considerations of delivery, maintenance, and convenience which may influence a customer's choice in the selection of competing fuels. Moreover, Minn-Dak's Exhibit No. 72 shows electricity is the principal fuel used for cooking and water heating in the areas surveyed, which indicates, as noted by Staff, that Great Plains can expect "stiff competition" from the Otter Tail Power Company as well as Minn-Dak's fuel dealers.

Summarizing, the Examiner concludes that Great Plains estimate of its sales is reasonable and that, on the basis thereof, the market for the proposed project is adequate. This record justifies the conclusion that residents of the area involved should not be deprived of the right to choose among competing and relatively economic sources of energy. As noted by the Commission in *East Tennessee Natural Gas Company*, Opinion No. 435, Docket No. CP64–21, issued July 17, 1964, *supra*, the extent of actual sales depends in large part upon how energetic a sales campaign is conducted.

Minn-Dak properly notes that the large volume sales are of critical importance to the feasibility of the project and that applicant has not submitted a single contract or letter of intent to support a single large volume sale. In order to remedy this deficiency and further assure the feasibility of the project, it will be appropriate to require, as did the Commission in the *East Tennessee Natural Gas Company* case, cited *supra*, that before applicant undertakes construction it shall file with the Commission acceptance contracts or precedent agreements with prospective large volume purchasers of interruptible gas service providing for the purchase of at least one-half of the planned large volume interruptible sale of 610,841 Mcf per year by the second full year of operation (Exh. 53, p. 5).

Peak Shaving Facilities

Minn-Dak disputes the economic feasibility of Great Plains proposed peak shaving plant on the ground that the rates proposed would not cover the cost of providing the service. An analysis of Minn-Dak's figures does not support its conclusions. If we assume, as does Minn-Dak, that the unit cost of 32,120 Mcf of peak shaving gas amounts to approximately $1.20 per Mcf, the total cost of 32,120 Mcf of peak shaving gas is $38,544. Applicant's third year firm gas requirements are estimated to be 734,724 Mcf, and peak day requirements, 7078 Mcf. Without peak shaving, the total cost of this volume of gas purchased from Midwestern would be $571,609 annually ($54.60 per year per Mcf of demand and 25.2 cents commodity). If applicant's proposed peak shaving plant is used,[9] annual purchases from Midwestern would be 702,604 Mcf (734,724–32,120) and peak day purchases, 5472 (7078—1606) Mcf, at a total cost of $475,827 ($5472\times\$54.60+702,604\times25.2$). Adding the cost of applicant's peak shaving gas, $38,544, gives a total of $514,371 or an annual saving resulting from the use of the proposed peak shaving plant of $57,238 ($571,609—$514,371).

Minn-Dak alleges (Br. p. 30) that the consumer would pay 50 cents for 500 cubic feet of gas which costs applicant 60 cents to supply. Minn-Dak's conclusion

[8] Applicants purchase gas cost in this proceeding is based on a demand charge from Midwestern of $4.55 per Mcf and a commodity charge of 25.2 cents per Mcf (Exh. 53, p. 3). On December 30, 1964, 32 FPC 1548, the Commission approved a settlement in Docket No. RP61–19, *et al.*, under which the rate to be applicable to Great Plains will be $3.96 demand and 25.01 cents commodity, thus lowering Great Plains gas purchase costs.

[9] Peak shaving supplies 32,120 Mcf annually and 1606 Mcf of the estimated peak day volume.

that the rates to be charged by Great Plains for firm gas delivered during peak periods will not recover the costs properly allocated to such peak gas is without merit. Great Plains spreads such costs over its annual deliveries and block rates so that it may have a schedule of rates applicable uniformly throughout the year. This rate practice is common in the gas distribution industry and prevents unduly burdensome charges during any particular monthly billing period.

Minn-Dak's Legal Objections

Minn-Dak objects to approval of the Great Plains application on two specific legal grounds: (a) that Great Plains has not yet obtained the necessary local authority to distribute and sell gas in the Cities of Wahpeton and Breckenridge, and (b) that approval would violate the "no profits to affiliates" rule recently applied by the Commission in *Florida Gas Transmission Company*,[10] (Opinion No. 431, decided June 8, 1964, 31 FPC 1402, rehearing denied August 5, 1964, Opinion No. 431-A, 32 FPC 519).

The evidence indicates that Great Plains holds valid franchises to sell and distribute natural gas and to construct, operate, and maintain the necessary distribution facilities in the four communities to be served (Exh. 46). It has been authorized to transact business in the State of North Dakota conditional upon Federal Power Commission approval. This does not constitute a bar to certification under Section 7(a) of the Natural Gas Act.[11] Applicant will not be able to proceed without approval by North Dakota before commencing construction. (See *Central City, Kentucky*, 18 FPC 163 (1957)). The franchise secured from Breckenridge is limited in term to two years because that is the maximum limit which the City Council can grant without a general election.

Great Plains was organized by HD&R, which will receive a fee of 7 percent (about $187,000) of the total construction costs for engineering services and supervision. The record indicates that HD&R is a well established engineering firm with broad experience, a staff of about 275 engineers, architects, and other personnel, which organized Great Plains, proposes to do the engineering work, operate the system, and own at least 10 percent of the stock in the project (Tr. 404). There is no evidence that the project was organized and conceived solely or primarily for the purpose of providing profits for the promoters in excess of actual costs incurred in performing necessary engineering services incident to the organization and construction of the proposed distribution system. In order to assure consistency with the Commission's decision in the *Florida Gas Transmission* case, cited *supra*, Staff proposes the insertion of a condition in the Great Plains certificate providing that no part of the fee paid to the firm of HD&R for engineering services which exceeds the actual costs incurred in performing such services shall be included in Great Plains plant accounts. In order to eliminate any possibility of fees in excess of legitimate costs, Staff's proposed condition will be adopted. The Commission, clearly, has jurisdiction over the accounts of Great Plains under Section 8 of the Act and can regulate the propriety and amount of engineering fees to be included in

[10] Where the Commission ordered Florida Gas Transmission Co. to eliminate $8,187,110 from its plant accounts because that was the total of payments to affiliated engineering and construction companies in excess of actual costs. These payments, the Commission found, violated the "no profits to affiliates" rule which precludes allowing the profits of affiliates as an item of cost in the plant accounts or rate base. "The purpose of the rule is to prevent insiders taking advantage of their position and creating costs which are not subject to the check of ordinary business relationships." (p. 1408).

[11] See *East Tennessee Natural Gas Co.*, 11 FPC 426; *Tipton County Utilities Co. Inc.* (15 FPC 1362 (1956)).

the plant accounts. The absence of jurisdiction over Great Plains rates does not justify denial of the application as urged by Minn-Dak (Br. p. 16).

Staff proposes that Midwestern be directed to serve Great Plains in volumes not to exceed 5,472 Mcf in any one day and not to exceed 1,384,263 Mcf during any calendar year. The suggested limitation on the annual load factor is not in the public interest since Great Plains should be able to purchase at a higher annual load factor if justified by actual market demand and the availability of the gas for sale by Midwestern.

The North Star 7(a) Application

Wisconsin North Star, incorporated in July 1962, seeks to expand local natural-gas distribution, which commenced in August 1963,[12] from Dresser, Wisconsin to two new communities near the Midwestern line, the Villages of Boyceville (pop. 660) and Colfax (pop. 885). The project is estimated to cost $230,420 of which $36,620 is for transmission lines (3 miles of 2-inch line to Boyceville and 0.8 mile to Colfax from Midwestern's main line tap) and $193,800 for distribution systems (Exh. 67). Third year peak day requirements are 604 Mcf, 348 Mcf per day for Colfax and 256 Mcf per day for Boyceville. On October 27, 1964, the Public Service Commission of Wisconsin issued a certificate authorizing Wisconsin North Star to construct and operate the proposed facilities and to sell and distribute natural gas at retail in the Villages of Boyceville and Colfax.

Wisconsin North Star operates solely within the State of Wisconsin and is a wholly owned subsidiary of North Star Natural Gas Company, a Minnesota corporation.

Staff recommends that the proposed Wisconsin North Star project be denied on the ground that the record does not show that the project can be adequately financed or that it is economically feasible. Specifically, Staff objections focus on the alleged absence of an adequate market as indicated by the lack of population growth, the excessive estimate of meter saturation, and the risk of dependence upon two interruptible customers.

Boyceville has had a slow but steady increase in population (1930–1960) from 573 to 660, or aproximately 19 percent. Colfax had a similar growth pattern until June 1958, when a tornado destroyed approximately 45 percent of the town with a loss of 19 lives. However, the village has averaged five new homes a year since 1961 and its further growth is indicated by the construction of a new elementary school in 1963, a new church, an addition to the high school, and a new nursing home scheduled for construction in 1965 (Exh. 26, Tr. 332). North Star's president and treasurer, Mr. Carter, estimated on the basis of a house to house survey that in the third year of operation the meter saturation in the two villages would reach 70 percent of the ultimate potential. Based on the survey and recent experience in the operation of distribution facilities in Staples and Wadena, Minnesota and Dresser, Wisconsin, where meter saturation reached 83 percent after 16 months of operation, Wisconsin North Star's estimate of meter saturation in Boyceville and Colfax appears reasonable. The estimated rate of return in the third year is 10.4 percent, which, as noted by the Wisconsin Public Service Commission, allows some leeway along with contingencies in the estimate of meter saturation.

Staff is concerned with the project's dependence upon two interruptible customers (Colfax Cooperative Creamery Company and Boyceville Farmers Cooperative Creamery Association) whose sales ($76,750) comprise 41 percent of the project's total estimated revenues ($186,460) in the third year of operation. The economic feasibility of the proposed project depends on the estimated

[12] Pursuant to Commission authorization issued March 5, 1963, Docket No. CP63–44 (29 FPC 426).

revenues from these two customers. However, unlike the Great Plains application recommended for approval by the Staff, and numerous Section 7(a) applications approved by the Commission without customer contracts, applicant has submitted signed agreements with the two cooperatives providing for five year service (Exhs. 43, 44). Dependence upon interruptible sales is not in and of itself a basis for denying natural-gas service to new communities where the estimate of interruptible sales is reasonably conservative and adequate to justify the estimated revenues and rate of return. There is no evidence or reason to believe that these two customers will terminate or sharply curtail their use of natural gas at the end of the five year term. North Star's reply brief notes that the Boyceville Cooperative Creamery Association practically doubled its output capacity in 1964 and the Colfax Creamery has an expansion planned to start immediately upon the availability of natural gas. Moreover, we are mindful of the finding of the Public Service Commission of Wisconsin that the project as proposed "is conservatively estimated to be economically feasible."

The project cost of $240,000 is to be financed on the basis of $162,000 in first mortgage bonds maturing over a 20 year period with no payment on principal for the first five years, $18,000 in debentures maturing in 15 years with no payment on principal for the first three years, and the remaining $60,000 to be in common stock issued by Wisconsin North Star (Exh. 42). Mr. Carter computed the rate of return on the $240,000 investment as 4.8 percent for the first year of operation, increasing to 10.4 percent in the third year.

Staff emphasizes alleged inconsistencies and apparent contradictions in applicant's testimony regarding the purchase and ownership of Wisconsin North Star's common stock. The record is sufficiently clear, however, that the stock of Wisconsin North Star is wholly owned by North Star Natural Gas Company, the Minnesota Corporation, whose stock in turn is owned by Carleton Beh Co., John Gertz, and George Carter. Under the proposed plan of financing, the individual owners will pay $60,000 in cash for common stock in Minnesota North Star, the parent corporation. Minnesota North Star will receive common stock of the wholly owned subsidiary, Wisconsin North Star in exchange for the $60,000. This was the method used in financing Wisconsin North Star's service to Dresser, Wisconsin, previously approved by the Commission (29 FPC 426). North Star Wisconsin has already issued $106,000 par value common stock in connection with financing the gas system at Dresser, Wisconsin.

By amendment to its Articles of Incorporation dated September 28, 1964, North Star Wisconsin was authorized to increased its authorized capital stock to 500,000 shares at $1 per share common stock. Upon completion of the financing of the Boyceville and Colfax systems, the total capitalization and security ratios would be, as noted by the Public Service Commission of Wisconsin:

	Amount	Percent
Bonds	$162,000	47
Debentures	18,000	5
Common stock	166,000	48
Total	346,000	100

The Wisconsin Commission concludes that the security ratios are reasonable and meet the reasonable ratio provisions of Section 184.04(4) of the Wisconsin Statutes. The record, as supplemented by amendments to North Star's 7(a) application and documents attached to North Star's reply brief, supports the conclusion that the project proposed by Wisconsin North Star can be adequately financed and is economically feasible.

Staff Motion to Strike

On February 18, 1965 Staff moved to strike certain parts of North Star's reply brief on the ground that they were based on materials outside the record, principally documents attached to the reply brief as follows:

(1) Copy of letter dated February 9, 1965, from Joseph E. Casey, Vice President, Carleton D. Beh Co., Des Moines, Iowa to Mr. Lambert McAllister and Mr. Francis J. Walsh, Washington;

(2) Copy of letter dated December 14, 1964 from R. J. Allender, Vice President, Carleton D. Beh Co. to Mr. George Carter, c/o Walsh & McAllister, Washington;

(3) Copy of amendment to the Articles of Incorporation of North Star Natural Gas Company of Wisconsin, Inc., dated September 16, 1964, and copy of certificate of Secretary of State, State of Wisconsin, dated October 12, 1964.

These documents all relate to applicant's proposed financing and clarify the alleged inconsistencies described in Staff's brief. Staff concluded (p. 65) with the invitation that these inconsistencies "should be explained." The documents attached to applicant's reply brief are relevant and material and consist of copies of public documents and letters explaining facts which are elsewhere in evidence[18] and undisputed. Accordingly, Wisconsin North Star's reply brief will be deemed to include a motion to reopen the record for the purpose of admitting in evidence all of the documents attached to the reply brief and such motion will be granted for the reasons hereinabove indicated. The letter dated February 9, 1965 will be received in evidence as Exhibit No. 77, the letter dated December 14, 1964 was received in evidence as Exhibit No. 42 and the copy of the amendment to Wisconsin North Star's Article of Incorporation will be received in evidence as Exhibit No. 78.

Milwaukee Gas Light Company

Approval of Milwaukee's 7(a) application for an order directing Midwestern to connect its facilities with the proposed Milwaukee project is not disputed by any of the parties. The testimony presented by Milwaukee is uncontroverted and no party has intervened in opposition. Milwaukee will construct transmission and distribution facilities in the Cities of Neillsville, Greenwood, and Loyal in Clark County, Wisconsin and environs at a total estimated cost of $830,513, with anticipated third year revenues of $331,611, and an estimated third year rate of return of 5.89 percent. The Public Service Commission of Wisconsin has approved the proposed service and exclusive franchises have been obtained in each of the specified communities.

ADDITIONAL FINDINGS AND CONCLUSIONS

Upon consideration of the entire record in this proceeding including the pleadings, the evidence adduced, and the briefs filed, it has been found and concluded, in addition to the findings and conclusions heretofore stated, that:

(1) Each applicant is "a natural-gas company" within the meaning and purview of the Natural Gas Act.

(2) Applicants proposed facilities will be used in the transportation and sale of natural gas in interstate commerce for resale, subject to the jurisdiction of the Commission, and such facilities and the proposed sales of natural gas, as more fully described in the applications and record herein, are subject to the requirements of Section 7 of the Natural Gas Act.

(3) Subject to the requirements and conditions of this opinion and order, the construction and operation of the facilities and the sales of natural gas proposed

[18] The letter of December 14, 1964 is already in evidence as Exhibit No. 42.

by applicants are required by the public convenience and necessity, and applicants are able and willing properly to do the acts and to perform the services proposed, and to conform to the Natural Gas Act and the rules and requirements of the Commission pursuant to the law; and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) The conditions attached to the certificate herein issued are required by the public convenience and necessity.

(5) The ability of Midwestern to render adequate service to its customers will not be impaired and no undue burden will be placed upon it by reason of the sales, service, facilities, or requirements herein ordered.

ORDER

WHEREFORE, *It Is Ordered*, subject to review by the Commission on appeal or upon its own motion, as provided by its Rules of Practice and Procedure, that:

(A) Certificates of public convenience and necessity are hereby issued to the applicants named in the caption of this decision, on the conditions set forth herein, authorizing the sale of natural gas in interstate commerce for resale for ultimate public consumption, and for the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, all as more fully described in the applications.

(B) Midwestern is authorized to sell maximum day volumes of natural gas to the following customers in the amounts stated:

Customer	Presently authorized peak day service	Date and volume of proposed peak day service			
		Date of authorization	Nov. 1, 1965	Nov. 1, 1966	Nov. 1, 1967
North Central Public Service Co.	350	425	475	525	575
North Star Natural Gas Co	1,200	1,200	1,200	1,720	1,980
Northern States Power Co	29,530	29,530	29,530	30,870	30,870
Perham, Minn. (Village of)	600	600	650	675	675

(C) Paragraph (M) of the orders issued to Midwestern under Docket No. G–18314, on October 31, 1959 (22 FPC 775, 803), is hereby amended to read as follows:

> (M) Midwestern is hereby authorized, subject to the conditions specified herein, to import from Canada into the United States a maximum of 222,360 Mcf of natural gas per day at a point of interconnection on the International Boundary near Emerson, Manitoba and Noyes, Minnesota.

(D) Midwestern Gas Transmission Company is hereby directed to establish and maintain physical connection of its transportation facilities with the facilities of Great Plains Natural Gas Co. at a point in Otter Tail County, Minnesota, and to construct, operate and maintain meter facilities at the point of connection at Midwestern's expense, and to sell and to deliver to Great Plains through said connection natural gas in volumes not to exceed 5,472 Mcf in any one day, as measured at a pressure of 14.73 pounds psia, for resale in Pelican Rapids, Fergus Falls, and Breckenridge, Minnesota, and Wahpeton, North Dakota, as described in this proceeding.

(E) Midwestern shall report promptly to the Commission in writing and under oath the dates of commencement and completion of construction by it and the date of commencement of service to Great Plains as ordered herein.

(F) Great Plains shall report promptly to the Commission in writing and under oath the dates of commencement and completion of construction by it and the date of commencement of operation of its facilities as ordered herein.

(G) As conditions to the exercise of any right under the certificate issued to Great Plains herein, and prior to the exercise of any such right, there shall be compliance with the following conditions:

1. Great Plains shall file with the Commission under oath and serve on each of the parties to this proceeding and obtain the Commission's approval of:

(a) A financing plan which shall correspond to the financing plan presented to the Securities and Exchange Commission; and also

(b) A statement under oath regarding the present outstanding stock of Great Plains showing, among other things, the type, terms and conditions of such stock, the number of shares issued, when and to whom issued, the present owners, the valuation placed thereon at the time of issue, and the consideration for which they were issued.

(c) Great Plains shall file with the Commission acceptable contracts on precedent agreements with prospective purchasers of interruptible gas service providing for the purchase of at least one-half of the planned sale of 610,841 Mcf per year by the second full year of operation.

2. No part of the fee paid to the firm of HD&R for engineering services which exceeds the actual costs incurred in performing such services shall be included in Great Plains plant accounts.

(H) Midwestern is hereby directed to connect its facilities with those of North Star of Wisconsin and to sell and deliver to North Star of Wisconsin an additional 604 Mcf per day for distribution and sale in Colfax and Boyceville, Wisconsin, as described in this proceeding.

(I) Midwestern is hereby directed to connect its facilities with those of Milwaukee Gas Light Co. and to sell and deliver to Milwaukee Gas an additional 1385 Mcf per day for distribution and sale in the Cities of Neillsville, Greenwood, and Loyal in Clark County, Wisconsin and environs, as described in this proceeding.

(J) Upon final execution, Midwestern shall file promptly with the Commission a copy of the amendment to its gas purchase contract with Trans-Canada.

WILLIAM C. LEVY,
Presiding Examiner.

Before Commissioners: L. J. O'Connor, Jr., Acting Chairman; Charles R. Ross and Carl E. Bagge.

THE NORTHERN ELECTRIC COOPERATIVE, INC., DOCKET NO. E-6670

ORDER AUTHORIZING TRANSMISSION OF ELECTRIC ENERGY TO CANADA AND SUPERSEDING PREVIOUS AUTHORIZATION

(Issued August 10, 1965)

The Northern Electric Cooperative (Northern), a corporation organized and existing under the laws of the State of Montana, with its principal place of business at Opheim, Montana, filed an application on February 8, 1965, as supplemented on June 10, 1965, for a supplemental order, pursuant to Section 202 (e) of the Federal Power Act, authorizing an increase in the amounts of electric energy which Northern is presently authorized to transmit from the United States to Canada.

By Commission order issued April 17, 1963 in the above docket (29 FPC 768), Northern was authorized to transmit electric energy from the United States to Canada at three points on the international border between the United States and Canada as follows:

Line No. 1: 20,000 kilowatt-hours per year at a rate of transmission not to exceed 20 kilowatts;

Line No. 2: 12,000 kilowatt-hours per year at a rate of transmission not to exceed 15 kilowatts; and

Line No. 3: 25,000 kilowatt-hours per year at a rate of transmission not to exceed 25 kilowatts.

Northern now seeks authorization to transmit electric energy from the United States to Canada in the following amounts and at the following rates of transmission:

Line No. 1: 24,000 kilowatt-hours per year at a rate not to exceed 24 kilowatts;

Line No. 2: 18,000 kilowatt-hours per year at a rate not to exceed 20 kilowatts; and

Line No. 3: 36,000 kilowatt-hours per year at a rate not to exceed 35 kilowatts.

The amounts of electric energy which Northern proposes to export like those amounts presently exported pursuant to the afore-mentioned authorization are to be transmitted to the Province of Saskatchewan, Canada, from points within the State of Montana over Northern's three 7.2 kv single phase lines which, as indicated above, are designated as Line No. 1, Line No. 2, and Line No. 3, respectively. These lines are covered by a Permit signed by the Chairman of the Federal Power Commission on December 12, 1956, as modified by the above-mentioned April 17, 1963 order of the Commission, all in the above docket.

According to the application, the increased amounts of electric energy will be used by Northern to meet the expanding electric requirements of its retail customers in Canada.

The Fort Peck Project of the United States Bureau of Reclamation will continue to be the source of the electric energy which is exported by Northern.

Written notice of the application has been given to the Board of Railroad Commissioners of Montana and to the Governor of that State. Notice of filing of the application has also been given by publication in the Federal Register on July 14, 1965 (30 F.R. 8867), stating that any person desiring to be heard or to make any protest with reference to the application should, on or before July 26, 1965, file with the Federal Power Commission, Washington, D.C., 20426, a petition or protest. No petition or protest or request to be heard in opposition to the granting of the application has been received.

The Commission finds:

(1) The transmission of electric energy from the United States to Canada, as limited herein and as hereinafter authorized, will not impair the sufficiency of electric supply within the United States and will not impede or tend to impede the coordination in the public interest of facilities subject to the jurisdiction of the Commission.

(2) The period of public notice given in this matter is reasonable.

The Commission orders:

(A) Northern is hereby authorized to transmit electric energy from the United States to Canada in accordance with the terms and conditions set forth in the application and subject to the provisions of this order.

(B) The electric energy which Northern is hereby authorized to transmit from the United States to Canada shall be in the maximum amount of 24,000 kilowatt-hours per year at a transmission rate not to exceed 24 kilowatts for

Line No. 1, the maximum amount of 18,000 kilowatt-hours per year at a transmission rate not to exceed 20 kilowatts for Line No. 2, and the maximum amount of 36,000 kilowatt-hours per year at a transmission rate not to exceed 35 kilowatts for Line No. 3. The energy which Northern is hereby authorized to export shall be transmitted over the facilities specified in the Permit signed by the Chairman of the Federal Power Commission on December 12, 1956, as modified by Commission order issued April 17, 1963, as referred to above.

(C) The authorization herein granted may be modified from time to time or terminated by further order of the Commission, but in no event shall such authorization extend beyond the date of termination or expiration of the Permit signed by the Chairman of the Federal Power Commission, referred to in Paragraph (B) above.

(D) Northern shall conduct all operations pursuant to the authorization herein granted in accordance with the provisions of the Federal Power Act and pertinent rules and regulations or orders issued by the Commission.

(E) Northern shall install and maintain adequate metering equipment to measure the flow of all electric energy transmitted from the United States to Canada over each of the afore-described three lines pursuant to the authority herein granted; shall make, keep, and preserve full and complete records with respect to the movement of such energy; and shall furnish in triplicate to the Commission, with respect to such transmission of energy, reports annually on or before February 15 showing (with respect to each of the afore-described three lines) the total kilowatt-hours delivered, the maximum kilowatts of transmission, and the consideration received therefor during each month of the preceding calendar year.

(F) This authorization to transmit electric energy from the United States to Canada shall not be transferable or assignable, but in the event of the involuntary transfer of facilities used for such transmission by operation of law (including such transfers to receivers, trustees, or purchasers under foreclosure or judicial sale), shall continue in effect temporarily for a reasonable time thereafter, pending the making of an application for permanent authorization and decision thereon, provided notice is promptly given in writing to the Commission accompanied by a statement that the physical facts relating to sufficiency of supply, rates, and nature of use remain substantially the same as before the transfer.

(G) This authorization shall be without prejudice to the authority of any State or State regulatory commission for the exercise of any lawful authority vested in the State or State regulatory commission over Northern.

(H) This authorization is without prejudice to the authority of this Commission, or any other regulatory body, with respect to rates, service, accounts, valuation, estimates or determinations of cost, or any other matter whatsoever now pending or which may come before this Commission or other regulatory body, and nothing herein shall be construed as an acquiescence by this Commission in any estimate or determination of cost or any valuation of property claimed or asserted.

(I) The authorization herein granted shall supersede that heretofore granted by Commission order issued April 17, 1963, referred to above.

Before Commissioners: L. J. O'Connor, Jr., Acting Chairman; Charles R. Ross and Carl E. Bagge.

NORTHERN NATURAL GAS COMPANY, CP65–1, CP65–91, CP65–338; NATURAL GAS PIPELINE COMPANY OF AMERICA, CP65–169, CP65–325; TRANSWESTERN PIPELINE COMPANY, CP65–208, CP65–236, CP65–237, CP65–320

ORDER RESCINDING ORDER GRANTING TEMPORARY CERTIFICATES TO NATURAL GAS PIPELINE COMPANY OF AMERICA AND TRANSWESTERN PIPELINE COMPANY, AND GRANTING NEW TEMPORARY CERTIFICATE TO NATURAL

(Issued August 10, 1965)

On July 23, 1965, 34 FPC 110, the Commission issued an order granting temporary certificates of public convenience and necessity to Natural Gas Pipeline Company of America (Natural) and Transwestern Pipeline Company (Transwestern), authorizing them to construct and operate facilities and to exchange, transport, and sell natural gas in interstate commerce for resale as described in their respective applications under docket Nos. CP65–320, CP65–325, and a portion of CP65–169 comprising Phase 1 of the consolidated proceedings in the above-entitled cases.

The order granting the temporary certificates stated in part:

(E) The temporary certificates issued to Natural and Transwestern by this order are subject to further conditions, as follows:

* * * * * * *

(5) The certificates issued herein shall be void unless they are accepted in writing by both Natural and Transwestern within seven days after the date of this order.

On July 27, 1965, Natural filed an unconditional acceptance in writing of the temporary certificate issued to it by the Commission's order of July 23, 1965.

Transwestern, however, did not file an acceptance as contemplated by the Commission's order but instead, in a letter dated July 30, 1965, it attached a reservation to its acceptance as follows:

> * * * To avoid delaying Natural's project with respect to its Louisiana, mainline and storage facilities, Transwestern accepts the certificate issued it by such order with the express understanding and reservation that by such acceptance it does not obligate itself nor does it propose to install the facilities authorized prior to final Commission decision in Phase 1.

The Commission finds, therefore, that the said condition on which the temporary certificates were issued to Natural and Transwestern was not fulfilled and that, therefore, the temporary certificates which were granted to both Natural and Transwestern should be rescinded.

In its application for the temporary certificate Natural alleged, and submitted supporting evidence, that the additional volumes of gas which it proposes to sell and deliver will be needed by its customers during the winter of 1965–66 in order to avoid serious shortages of gas which would require curtailment of firm service. Natural further alleges that it must commence construction by August 1, 1965, if the proposed facilities are to be put in operation in time for the 1965–66 winter heating season. Lastly, that the temporary certificate requested by it is needed in order to assure maintenance of adequate service in Natural's market areas.

The Commission finds, therefore, that the public convenience and necessity require that Natural be granted a temporary certificate authorizing the construction of all of the facilities which Natural was authorized to construct by the Com-

mission's order issued July 23, 1965, granting it a temporary certificate and to operate the additional storage withdrawal facilities, *except* facilities which would be used to transport gas which Natural will purchase from producers in the Indian Basin and Dagger Draw areas in Eddy County, New Mexico to a point of connection with Transwestern's 24-inch West Texas lateral and to effect an exchange of such gas with Transwestern.

The Commission finds further:

(1) The Natural Gas Pipeline Company of America, a Delaware corporation having its principal office in Chicago, is engaged in the transportation of natural gas in interstate commerce and the sale in interstate commerce of natural gas for resale and it is a "natural-gas company" as defined in the Natural Gas Act.

(2) The facilities for which Natural is granted a temporary certificate of public convenience and necessity to construct and operate will be used for the transportation and sale for resale of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof will be subject to the requirements of Section 7(c) of the Natural Gas Act.

(3) Natural is able and willing to do the acts and perform the services proposed in its application for a temporary certificate and to conform to the provisions of the Natural Gas Act and the rules and regulations of the Commission thereunder.

(4) The temporary certificate granted to Natural is needed in order to assure maintenance of adequate service to Natural's present customers.

(5) Public convenience and necessity require that the temporary certificate issued hereinafter and the rights granted therein be conditioned as hereinafter provided.

The Commission orders:

(A) The temporary certificates issued on July 23, 1965, to Natural and Transwestern are rescinded.

(B) A temporary certificate of public convenience and necessity is issued to Natural Gas Pipeline Company of America authorizing it:

1. To construct and operate facilities to increase its storage withdrawal capacity by 50,000 Mcf per day to a total capacity of 1,000,000 Mcf per day;

2. To construct, but not operate, facilities to increase the daily design sales capacity of its transmission system by 185,000 Mcf to a total of 2,154,000 Mcf;

3. To construct, but not operate, facilities to transport natural gas to be produced from reserves located in the West Cameron Blocks 17–49 Field Area, south Louisiana, to a point of connection with Natural's existing Gulf Coast line in Montgomery County, Texas;

all as described in Natural's applications under Docket Nos. CP65–325 and CP65–169 and in Phase 1 hearing exhibit 71.

(C) The certificate issued by this order and the exercise of the rights granted therein are conditioned upon compliance by Natural with all applicable Regulations of the Commission under the Natural Gas Act, and particularly Section 157.20 of said Regulations.

(D) The certificate issued by this order and the exercise of any right thereunder are subject to the further condition that in the event the Commission's decision in Phase 1 or Phase 2 of the hearing, which will be held in the future in these consolidated proceedings, results in any of the temporarily-authorized facilities which are constructed by Natural not being permanently certificated, the cost of such facilities will be excluded from Natural's rate base.

(E) The certificate issued to Natural by this order and the exercise of any right thereunder are subject to the further condition that the cost of facilities

constructed by Natural to enable it to take gas produced in the West Cameron Blocks 17–49 Field Area, south Louisiana, which is to be purchased from The California Company, will not be included in Natural's rate base until after an FPC certificate authorizing the sale of such gas has been issued to, and accepted by The California Company, which has a contract for the sale of such gas to Natural.

(F) The certificate issued herein shall be void unless it is accepted in writing by Natural within seven days after the date of this order.

OPINION NO. 470

PHILLIPS PETROLEUM COMPANY, DOCKET NOS. G–16611, G–16612; KERR-MCGEE OIL INDUSTRIES, INC., DOCKET NOS. G–16718, G–16719; THE JUPITER CORPORATION, DOCKET NO. G–16679

OPINION AND ORDER ISSUING CERTIFICATES

(Issued August 11, 1965)*

Syllabus

1. Producers' sales to Jupiter as of November 5, 1958 [non-jurisdictional prior thereto], should be considered initial sales and usual in-line pricing concepts should be applied. P. 488.
2. Commission *rejects* argument that Rollover Field sales be treated as made directly to pipeline, ignoring intervening sales to Jupiter and subsequently by it to pipeline. P. 488.
3. In *Union Texas* in-line price prior to 1963 was fixed at 18.5 cents per Mcf for offshore gas and 20 cents per Mcf for onshore gas—those prices should be applied to instant sales by Phillips and Kerr-McGee from Rollover and Hog Bayou Fields. P. 489.
4. Under its contracts with producers and pipeline, Jupiter would be entitled to no more than 2.4 cents above price producers may lawfully collect from it. P. 489.
5. Jupiter's temporary authorization amended to provide that as of date suppliers' 18.5 cents permanent certificate rates become effective, Jupiter's price for sale to pipeline shall be 20.9 cents. P. 489.
6. In determining the status in 1965 of transportation arrangement which ceased in 1958, circumstances of sale placed in proper historical context dictate solution without need for determining application of *Lo-Vaca*. P. 489.
7. Even were sale to Niagara jurisdictional under *Lo-Vaca*, Commission would not require that everything done pursuant to contrary official advice be undone—sales having terminated in 1958, prospective compliance with *Lo-Vaca* would be meaningless. P. 490.
8. In a proceeding under Section 7 of the Natural Gas Act, Commission *issues* certificates of public convenience and necessity; *amends* temporary authorization of Jupiter Corporation and *defers* decision on its application for permanent certificate.

Commissioner Bagge *not participating.*

Kenneth Heady for Phillips Petroleum Company.
Jack Conn for Kerr-McGee Oil Industries, Inc.

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*Initial decision appears on p. 491. Rehearing denied by order issued October 8, 1965, 34 FPC 1124.

William Brackett for The Jupiter Corporation.
Morton Simons for Long Island Lighting Company.
David B. Ward for Staff of the Federal Power Commission.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

SWIDLER, *Chairman:*

These proceedings are before us after being severed from the certificate proceedings in *Union Texas Petroleum, et al.*, Docket No. G–13221, *et al.*, Opinion No. 436, issued July 23, 1964, 32 FPC 254, wherein we determined the in-line price for sales from Southern Louisiana. The reason for severing these proceedings arose from a contention made in its exceptions by Long Island Lighting Company (Lilco) as to the date on which jurisdiction attached to these sales and, therefore, the proper initial contract price.[1]

Phillips Petroleum Company (Phillips) and Kerr-McGee Oil Industries, Inc. (Kerr-McGee) sold federal domain gas from the Rollover Field off the shore of Louisiana and from the Hog Bayou Field, also off the shore of Louisiana, but within the state's jurisdiction. The contract for the Rollover sales was dated in February 1953, and provided that Phillips and Kerr-McGee would sell gas for 14 cents per Mcf to The Jupiter Corporation (Jupiter) which in turn would transport the gas ashore, process it and sell it for 16.4 cents to Niagara Gas Transmission, Limited (Niagara) for export to Canada. In practice Jupiter delivered the gas onshore to Tennessee Gas Transmission Company (TGT) which transported the gas to the Canadian border and delivered it to Niagara near Buffalo, New York.

The gas produced in the Hog Bayou Field was sold by Phillips and Kerr-McGee directly to Niagara and delivered by the producers to TGT for transportation under the same terms as the Rollover gas. Since all of the gas purchased by Niagara was delivered into TGT's main transmission line, it was commingled with gas destined for resale by TGT to its domestic customers and the deliveries to Niagara were not the same gas but equal volumes.

TGT was certificated to transport the gas for Niagara by the Commission's Opinion No. 261, 12 FPC 311, wherein the Commission found after a contested proceeding that the sale of this gas in foreign commerce would not adversely affect domestic consumers.

Niagara was not in a position to take the gas in 1953. While waiting for Niagara to ready itself to take the gas from these fields, Phillips, Kerr-McGee, and a predecessor of Jupiter, Marine Gathering Company, made interim sales to TGT at prices from 3.8 cents to 9.3 cents per Mcf. Following the Supreme Court decision in *Wisconsin* v. *Phillips Petroleum Company*, 347 U.S. 642, the producers, including Jupiter's predecessor, applied for certificates for these interim sales to TGT. When Niagara was ready to receive the gas, the producers, again including Jupiter's predecessor, now Commonwealth Oil Co., applied to withdraw the applications for the sales to TGT. In replying to Phillips' Notice of Withdrawal, the Secretary of the Commission by letter dated June 20, 1958, stated:

"* * * inasmuch as the sale of gas covered by your related FPC Gas Rate Schedule No. 181 no longer constitutes a sale of natural gas for resale in interstate commerce subject to the jurisdiction of this Commission, but is a sale for resale to Niagara Gas Transmission, Limited, for exportation into the Dominion of Canada, said rate schedule, as supplemented, is also, considered withdrawn."

[1] One of the applicants, Jupiter Corporation, has subsequently injected into the proceedings the question whether its application in Docket No. G–16679 to sell gas to Tennessee Gas Transmission Company involved a jurisdictional sale or a non-jurisdictional gathering function for offshore producers who sell the gas to the pipeline.

A similar letter was sent to Kerr-McGee. By order issued July 25, 1958, in Docket No. G–2692, Jupiter's predecessor was permitted to abandon the sale to TGT and withdraw an application filed for the sale to Niagara on the ground that it was non-jurisdictional. Thereafter the parties regarded the sale to Niagara as not subject to Commission jurisdiction.

On September 22, 1958, as provided in the contract between the sellers and Niagara, and as agreed to by TGT, the price to Niagara was raised to 21.3333 cents plus tax reimbursement, effective November 1, 1958. On November 5, 1958, the contracts were assigned by Niagara to TGT because Niagara now was able to obtain gas from Canadian sources. The selling parties, including Jupiter's predecessor, Commonwealth Oil Company, applied for certificates for these sales at the redetermined price. Hearings on the new applications were held in 1959 and in his decision issued on June 17, 1960, Presiding Examiner Samuel Binder ruled that the applicable price line for these sales was 16.4 cents and that contrary to the contention of Lilco the sales were not jurisdictional prior to November 5, 1958, (*infra*, p. 491, at 494). Only the producers excepted to this decision. Instead of deciding the case, the Commission consolidated the dockets with the Southern Louisiana area rate proceeding, Docket No. AR61–2. Later the dockets were severed from this proceeding and consolidated in the *Union Texas* proceeding. In the *Union Texas* proceeding Examiner Robert Weston in his decision issued January 14, 1964 (32 FPC 279, at 309–311) found an in-line price of 20 cents for the Hog Bayou sales, an in-line price of 20.9 cents for the Jupiter sales to TGT, and an in-line, offshore, price of 18.5 cents for the Phillips and Kerr-McGee sales to Jupiter.[3]

The issue which caused us to sever these dockets once more, 32 FPC 270–273 was the renewal by Lilco of its argument made to Examiner Binder, but not to Examiner Weston, that the sales to Niagara were subject to Commission jurisdiction and hence that any increase in the price for these sales required a filing under Section 4 of the Natural Gas Act and could not be considered an initial price for a sale to TGT. In support of its argument Lilco cites the Commission decision in *Lo-Vaca Gathering Company*, 26 FPC 606 affirmed *sub nom. California* v. *Lo-Vaca Gathering Company*, 379 U.S. 366, reversing 323 F. 2d 190 (CA5–1963.)

Based on the record made in these proceedings, the history of the sales by Phillips, Kerr-McGee, and Jupiter, the examiners' decisions, the various briefs and the oral argument heard on February 26, 1965, we are of the opinion that the applications by the producers to sell to Jupiter as of November 5, 1958, should be considered as initial sales and that the usual in-line pricing concepts should be applied to the sales. We reject the argument made for the first time by Jupiter in the remanded proceeding that we should treat the sales from the Rollover Field as made directly by Phillips and Kerr-McGee to TGT and ignore the intervening sales to Jupiter and subsequently by it to TGT. Nothing in the record now before us justifies any such determination.

We are aware that Jupiter is contending in the pending Section 5(a) proceeding in Docket No. RI63–212, *et al.* that with respect to these sales, among others, it should be treated as performing only a non-jurisdictional gathering function so that its price for transporting the gas from the Rollover Field to TGT's onshore facilities would not be subject to our ratemaking jurisdiction either as a sale or as jurisdictional transportation. We do not believe we need to await the resolution of this question to pass upon the price at which Phillips and Kerr-McGee are entitled to be certificated for their Rollover sales since in any event they can secure only the in-line price for the gas sold from the federal domain as limited by their contractual rights.

[3] As used herein, "offshore" indicates acreage located in the federal domain and "onshore" indicates acreage located within the Louisiana tax jurisdiction.

The in-line price prior to 1963 was determined in the *Union Texas* proceeding to be 18.5 cents per Mcf for offshore gas and 20 cents per Mcf for onshore gas and these prices should be applied to the sales by Phillips and Kerr-McGee from the Rollover Field and the Hog Bayou Field. The underlying basis for these prices is fully discussed in the Union Texas opinion and there is no need to repeat that discussion. Thus, we shall authorize Phillips and Kerr-McGee to receive 18.5 cents for their Rollover sales to Jupiter. Refunds due for any excessive charges collected since 1958 for these sales by the producers will be determined on the same basis as for the other producers in the *Union Texas* case to which the doctrine announced in *P.S.C. of New York* v. *F.P.C.*, 329 F. 2d 242 (CADC–1962) cert. den. 377 U.S. 963, will be applicable.

We cannot take final action on Jupiter's application because of the unresolved jurisdictional question. This does not mean, however, that we must continue in force a temporary certificate under which Jupiter is authorized to collect 22.8333 cents. Assuming *arguendo* that Jupiter is correct in claiming that its transportation activities are non-jurisdictional it is clear that under its contracts with the producers and TGT it would be entitled to no more than 2.4 cents above the price which the producers may lawfully collect from it. Assuming Jupiter's operations are jurisdictional, either as sales or transportation, the maximum price for which there is any justification on this record is also 2.4 cents. It is far from clear that if we were writing on a clean slate we could find on this record that certificating Jupiter's "sale" to TGT at a price of 2.4 cents above the in-line price for offshore gas was in the public interest. Here there are many complicating circumstances. In view of the long history of this sale, the pendency of a jurisdictional question in a different proceeding with respect thereto, and that in the near future in that proceeding we can fix the just and reasonable rate for such operations, assuming we find Jupiter to be jurisdictional, we would not be inclined to disagree with the examiner in fixing a 20.9 cent initial price for this "sale" despite the bareness of record support therefor.

Accordingly, we shall amend the outstanding temporary under which TGT is purchasing gas from Jupiter to provide that as of the date on which the 18.5 cents permanent certificate rates become effective for Phillips and Kerr-McGee the price for the "sale" by Jupiter to TGT shall be 20.9 cents. Such an amendment will fully protect Jupiter's rights in the 5(a) proceeding while at the same time obviating any claim that because of filed rate concepts TGT is required to pay and Jupiter is entitled to collect a price which would give it more than 2.4 cents in the light of what it would now be obligated to pay to Phillips and Kerr-McGee.

We now take up Lilco's contention. The physical characteristics of the transportation for Niagara by TGT conform with the commingling theory of the *Lo-Vaca* case in that the gas delivered to TGT in Southern Louisiana was not the same gas delivered to Niagara near Buffalo.

If this sale were now before us for the first time it would be necessary to determine whether *Lo-Vaca* controlled. However, we conclude that in determining the status in 1965 of an arrangement which ceased in 1958 the circumstances of the sale placed in a proper historical context dictate the solution without need for determining the application of those two cases.

The contract was originally written in 1953 when none of the parties believed the sale to be jurisdictional no matter how it was drafted. During the period after June 7, 1954, when the gas was sold to TGT, the producers obtained temporary certificates and filed the rates. When the interim sale to TGT was terminated the producers were advised by an official communication from the FPC (the Secretary's letter of June 20, 1958) that the sales were no longer juris-

dictional. Presumably this letter reflected the belief of the Commission at that time[2] and no one took issue with it. In the interest of orderly administration we cannot now hold that such an interpretation has no relevance. There may be situations in which the public interest will require retroactive application of Commission reinterpretations of the statute, thereby depriving a party of rights which he could have exercised if he had not accepted the initial interpretation. This does not seem to be such a case. We should be loath to disturb arrangements presented to and approved by us, and accepted by all parties in good faith.

The rates for the sale of this gas were filed with us in 1954. When we were advised that the sales were to be made to a new purchaser we did not order a supplemental filing. With complete knowledge of the circumstances of the change we accepted withdrawal of the certificate applications and removed the rate schedules from our files. We thus rendered it impossible to file changes in the rates prior to November 5, 1958. Had we advised the producers in good time that the sales to Niagara were jurisdictional and retained the filings, the producers undoubtedly would have filed the changes to validate the rate which came before us in the application filed November 5, 1958.

Even if we were to find that the sale to Niagara was jurisdictional under the *Lo-Vaca* holding we would not require that everything done pursuant to contrary official advice be undone.[3] We would, of course, require prospective compliance. The sales having terminated in 1958, such a prospective requirement would be meaningless.

The Commission finds:

Finding paragraphs 1 through 7 of Opinion No. 436, *Union Texas Petroleum*, issued July 23, 1964, 32 FPC 254, 271–272 are applicable to the applicants, Phillips and Kerr-McGee, in Docket Nos. G–16611, G–16612, G–16718, and G–16719.

The Commission orders:

(A) Permanent certificates are hereby issued to Phillips and Kerr-McGee effective July 23, 1964, subject to the conditions set forth below, to authorize the sales and services as proposed in the above dockets and as more fully described in the respective applications.

(B) The initial price in the rate schedules applicable to the sales certificated in paragraph (A) shall not be more than 18.5 cents per Mcf for the sales to Jupiter from the Rollover Field and 20 cents per Mcf for the sales to TGT from the Hog Bayou Field.

(C) Phillips and Kerr-McGee shall refund to the purchasers all amounts collected since July 23, 1964, in excess of the prices set forth in paragraph (B), together with 7 percent interest to the date on which the refunds are made. Any refunds which may be due for the period from November 5, 1958, to July 23, 1964, will be determined in the manner set forth in ordering paragraph (C) of Opinion No. 436 and the parties to this proceeding may make filings as provided in that opinion.

(D) A decision on the application for a permanent certificate by Jupiter in Docket No. G–16679 is hereby deferred until the record in Docket No. RI63–212 comes before the Commission. The temporary certificate issued to Jupiter on May 24, 1962, is amended to add a condition that: "As of July 23, 1964, the price provided in the rate schedules covering the sale to TGT of the gas obtained from Phillips and Kerr-McGee shall not exceed 20.9 cents per Mcf."

Commissioner Bagge *not participating.*

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[2] Examiner Binder so held and no exception was taken to his holding.

[3] Order No. 174, 13 FPC 1195; *Linkletter* v. *Walker*, 381 U.S. 618 (June 7, 1965) 33 L.W. 4576.

INITIAL DECISION
OF THE PRESIDING EXAMINER UPON APPLICATION FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

(Issued June 17, 1960)

BINDER, *Presiding Examiner:*

These proceedings involve five applications for certificates of public convenience and necessity filed pursuant to Section 7(c) of the Natural Gas Act (Act) by the three applicants named in the caption. The material facts are as follows: Phillips Petroleum Company (Phillips) as Operator, and Kerr-McGee Oil Industries, Inc. (Kerr-McGee) a signatory party, own 50 percent interest each in leases covering described acreage in Rollover and Hog Bayou Fields, offshore Louisiana, from which the gas involved here is produced and each producer has filed applications (1) seeking authority to sell natural gas produced in Rollover Field for resale in interstate commerce to Commonwealth Oil Company (Commonwealth) and (2) applications to sell natural gas produced in Hog Bayou Field to Tennessee Gas Transmission Company (Tennessee) for resale in interstate commerce. A major part of the gas involved in these proceedings is produced in Rollover Field, offshore Louisiana. The gas produced in Rollover Field is sold to Commonwealth and resold by the latter to Tennessee, which resells it in interstate commerce. Commonwealth filed an application pursuant to Section 7(c) of the Act seeking authority to resell to Tennessee the natural gas produced in Rollover Field which it purchases from the independent producers. Commonwealth is not, insofar as these proceedings are concerned, a producer of natural gas but rather is a gatherer, transporter and purchaser of natural gas from the Rollover Field, and is a seller of such gas to Tennessee. Commonwealth transports the natural gas from a platform in Rollover Field to a point of connection with the facilities of Tennessee, a distance of approximately ten miles.

The Hog Bayou gas is gathered and delivered to Tennessee's facilities directly by the producers.

It will be observed that Tennessee acquires all of the gas involved in these proceedings and that the price to it is 21.3333 cents per Mcf, plus tax reimbursement for all of the gas whether it comes from Hog Bayou or Rollover Fields. Insofar as the Hog Bayou sale is concerned, Tennessee pays 21.3333 cents per Mcf plus tax reimbursement directly to the producers for the gas. Insofar as Rollover Field gas is concerned, Commonwealth resells such gas to Tennessee at a price of 21.3333 cents per Mcf plus tax reimbursement and Commonwealth is permitted under its contractual arrangements to keep for itself only a limited amount of the proceeds which it receives from Tennessee. In this instance, based upon the volumes delivered, it is 2.4 cents per Mcf which is the same amount per Mcf as it would obtain were the price 16.4 cents per Mcf plus tax reimbursement, which it was for approximately five years prior to November 1, 1958.

It is obvious that Commonwealth's revenues are limited to specified and definite amounts for the services it performs and its retained revenues, insofar as these proceedings are concerned, bear no relation to the price of the product it sells. In this respect Commonwealth is not an independent seller in the sense in which such terms normally are understood, *i.e.*, it is not a person who has the right to retain all the economic benefits of its contract of sale particularly when a rise in the product occurs, a right which accrues normally to an independent entrepreneur. Its economic rights and the revenue which it is entitled to retain

are strictly limited under the contracts which it has executed to a specific amount dependent not on the price at which it sells its gas but dependent solely on the volume it gathers and delivers. Thus neither its gross nor its net income, insofar as this case is concerned, is enhanced by the rise in rate level from 16.4 cents to 21.3333 cents per Mcf. This, of course, is a perfectly legitimate business arrangement and no criticism of it is intended by these comments. It is referred to here simply so that Commonwealth's position in this litigation may be fully understood.

At the volumes which it is contemplated will be delivered here Commonwealth will obtain 2.4 cents per Mcf for all gas which it gathers, transports and delivers to Tennessee and this is all that it will receive no matter what price Commonwealth receives from Tennessee. The balance of the purchase price goes to the independent producers. In these circumstances the price level in the contract between the producers and Commonwealth, insofar as its impact on consumers is concerned, is more illusory than real, and it is of little, if any, importance from a public standpoint as a component in the ultimate judgment to be made whether the issuance of a certificate would serve public convenience and necessity. From the standpoint of consumer impact the rate of 21.3333 cents per Mcf plus tax reimbursement which is paid by Tennessee for the gas it sells to the public in various states is the figure which is of importance in this case. The public impact will be felt at the 21.3333 cent rate level and not at the price in the contract between the producers and Commonwealth. The price which Tennessee will pay on the basis of the applications filed in these proceedings is, as has been noted, 21.3333 cents per Mcf at 15.025 psia plus tax reimbursement for each Mcf of gas involved in these proceedings whether sold to it by the producer or Commonwealth and that is the salient fact.

Three dockets, namely, Docket No. G–16611, Docket No. G–16718, and Docket No. G–16679, relate to the sale of natural gas produced from a single lease covering the S/2 of Block 39, Rollover Field, offshore Vermilion Parish, Louisiana. This is the gas which is sold to Commonwealth and resold by the latter to Tennessee for resale in interstate commerce. The other two dockets involved in these proceedings, namely, Docket No. G–16612 and Docket No. G–16719, relate to the sale of gas directly to Tennessee for resale in interstate commerce and is gas produced by Phillips, as Operator, and sold by it and Kerr-McGee as signatory parties from the leases in the Hog Bayou Field covering Blocks 32 and 33, West Cameron area, Louisiana. In the latter two dockets the independent producers do their own gathering and make delivery themselves to a point of connection with Tennessee's facilities.

The volumes of natural gas involved here are important. The Rollover leases controlled by applicants cover 2500 gross acres and their Hog Bayou leases cover 14,762 gross acres. Tennessee has estimated the reserves in Rollover and Hog Bayou Fields as 566,675,000 Mcf as of November 1, 1958, all of which under the agreements is dedicated to it. Under the contracts involved herein Tennessee is to take at this time gas at the rate of 60.7 million cubic feet of gas per day from Rollover and Hog Bayou Fields. The Hog Bayou contract provides that the daily amount to be taken from the latter field shall be equal to the excess of Tennessee's requirements over the average daily volume of gas available from Rollover Field received by it through Commonwealth.

In further specific detail the background facts regarding the sale from Rollover Field may be stated as follows: Phillips Petroleum and Kerr-McGee entered into a contract with a company called the Marine Gathering Company (Marine) on February 6, 1953, for the sale of the gas produced from the Rollover Field. Commonwealth Oil Company is the successor of Marine and for

the purposes of this decision Commonwealth and Marine are considered to be the same person. On the same day that the producers entered into the contract of sale with Marine the latter entered into a contract with a Canadian company, Niagara Gas Transmission Ltd., (Niagara) for the sale of the same gas which Marine was obtaining from the producers. In addition, an agreement was entered into with Tennessee Gas Transmission Company for the transportation of the gas at a point on shore in Louisiana where Marine's gathering facilities were located to a point at the international border for delivery to Niagara.

The transportation and exportation by Tennessee were authorized by a certificate of public convenience and necessity and an export permit to Tennessee was issued in Docket No. G–1921, *et al.*, in Opinion No. 261, on September 1, 1953, 12 FPC 311. The price provided for in the contract between the producers and Marine on February 6, 1953, was 16.4 cents per Mcf, less the amount obtained by Marine for gathering and getting the gas on shore to a point of connection with Tennessee's facilities, an amount which varied with the volume transported.

The contract between Marine and Niagara provided for the sale of the same gas to Niagara at the same price, *i.e.*, 16.4 cents to Niagara. Apparently Marine's economic interest in the transaction from the beginning to the present time is limited to what it obtains from the producers for the service it renders in picking up the gas at the offshore platform in the Rollover Field, transporting it through its facilities to the shore line and up to the point where the gas is delivered into Tennessee's facilities. The economic advantages to Commonwealth under the contract are the same no matter what price is obtained from the purchaser of gas from Commonwealth. In other words, even where the purchaser is required to pay more for the gas because of the operation of escalation clauses contained in the contracts, the entire additional amount obtained from the gas goes to the producers.

The escalation provisions in the contracts contain clauses for price redetermination every five years on the basis of the average of the three highest prices paid by pipelines in an area defined in the contract. The first step escalation took place November 1, 1958. As a result of the operation of this escalation clause the price of the gas which Commonwealth bought initially from Phillips and Kerr-McGee increased from 16.4 cents per Mcf plus taxes to 21.3333 cents per Mcf plus taxes.

There is no proof here that the producers incurred greater costs in producing the gas between 1953 and 1958, nor was there proof presented of any other basis on which increases in rates for natural gas companies are normally granted by the Commission. Accordingly there is no economic justification in this record for the increase in rate level other than such economic "justification" as is implicit in the concept of getting as much as the traffic will bear. The difficulty of the concept in this instance is that we are dealing with a commodity which the Supreme Court has held to be one which Congress has directed be regulated rather than with an unregulated commodity. The fact that field prices of gas increased in this area between 1953 and 1958 is not a ground of itself which entitles a producer to an increase in the rates he was receiving prior to the date when the increase in rates went into effect. The law requires more than this to establish that the issuance of a certificate at the increased rate would serve public convenience and necessity. Four days after the increase to 21.3333 cents per Mcf plus taxes went into effect, to wit, on November 5, 1958, Niagara ceased purchasing from Commonwealth and assigned its rights in the gas purchase contract to Tennessee.

The Hog Bayou Sale

The sale of gas from Hog Bayou is based on a contract entered into on the same day that the contract for the sale of gas from Rollover Field was executed. However, this transaction was a direct sale by the producers to Niagara without participation by Marine. Under the Hog Bayou contract, the independent producers employed their own gathering facilities. The Hog Bayou contract between the producers and Niagara carried the same original purchase price to Niagara as did the gas from Rollover, namely, 16.4 cents per Mcf plus taxes and Tennessee also transported this gas northwards for delivery to Niagara. On November 1, 1958, the operative provisions of the escalation clause in this contract which were the same as those in the Rollover contract went into effect and this resulted in the price of the gas to Niagara being increased from 16.4 cents per Mcf to 21.3333 cents per Mcf plus taxes. Just as in the case of Rollover gas Niagara ceased importation of the Hog Bayou gas and its rights were assigned to Tennessee on November 5, 1958, and Tennessee has been receiving the gas ever since such date.

Prior to the assignment to Tennessee the contracts were modified to provide that commencing May 1, 1957, and thereafter, Niagara would purchase annually an average of 60,700 Mcf per day from Rollover and Hog Bayou Fields and also provided that out of the latter amount 10,700 Mcf would be taken from Hog Bayou Field. Tennessee by reason of the assignment acquired the rights theretofore held by Niagara.

The position of the applicants is that the sale of gas from the two fields with which we are concerned here, when originally made, were sales not subject to the Natural Gas Act, since they did not involve sales in interstate commerce within the meaning of the Act, but rather were sales in foreign commerce and therefore not subject to the Act. It is therefore claimed by the applicants that the first sale in interstate commerce, *i.e.*, the initial sale, within the meaning of the Act took place at the time that the rights of Niagara to take gas were assigned to Tennessee, to wit, on November 5, 1958, and that consequently there was no obligation to institute a proceeding subject to Section 4(e) of the Act by reason of the increase in the rate level on November 1, 1958, from 16.4 cents per Mcf plus tax reimbursement to 21.3333 cents per Mcf plus tax reimbursement. This contention appears to be legally sound.[1]

While the contracts for the disposition of the gas by the producers were executed in February 1953, no deliveries could be made until November 1954. In fact, Niagara did not actually accept deliveries under the Hog Bayou contracts until June 1957. It appeared further that from June 1954 to November 1954 in the Rollover Field the producers sold gas to Tennessee for the latter's system requirements at 3.8 cents per Mcf, plus the gathering charge made by Marine. Later the price was increased to 8.3 cents. Subsequently, Hog Bayou gas was sold for 9.3 cents.

It was claimed by the applicants that these were "distress" sales. While this claim may be correct no evidence was presented on the point, nor was the extent of the "distress," if any, ever delineated on a "cost" or any other basis. Moreover, no evidence was presented by producers which tended to establish that a rate level of 21.3333 cents per Mcf would tend to serve public convenience and necessity more than a rate level of 16.4 cents per Mcf, the latter being the rate level just four days before the contract of sale was assigned to Tennessee and the "initial" rate established. Moreover there was no claim by applicants that the 16.4 cent level was a "distress" sale or that the sellers would not earn a just and reasonable return at this level or that it was an unjust and unreason-

[1] *Cf. Border Pipe Line Co.* v. *Federal Power Commission*, 171 F. 2d 149 (D.C. Cir. 1948).

able rate level. No evidence was presented to show that a rate level of 21.3333 cents per Mcf plus tax reimbursement would serve public convenience and necessity better than, or even as well as, a rate of 16.4 cents per Mcf plus tax reimbursement, the rate in effect prior to the operation of the escalation clause. Nor is there any evidence in the record which would show whether either the 16.4 cent plus sale tax reimbursement level or the 21.3333 cent plus tax reimbursement rate level is unjust or unreasonable or just and reasonable. In effect there is no cogent evidence in this proceeding relating to the justness or reasonableness of the rate level sought to be imposed or the justness or reasonableness of the 16.4 cent per Mcf rate level or vice versa.

It should be observed that the undersigned is not suggesting that the applicants should have undertaken a full rate case presentation. The only observation that the examiner makes in this connection is that there was wholly absent any basis justifying the price level at issue here. In this connection it should be observed that the burden of establishing that it would serve public convenience and necessity to issue a certificate at the 21.3333 cent per Mcf level is on the applicants and not on the staff or interveners. That burden was not met here any more than it was met in the *CATCO*[2] or *Transco* cases.[3]

Further the fact that gas prices in a particular area went up substantially in such area is no ground for authorizing a sale at the high level to producers who only four days before were selling gas from the same fields at very substantially lower levels. In fact the "initial" price here is more than 25 percent higher than the price at which the gas was sold in "foreign" commerce only four days before. In fact we have the anomalous situation of gas being sold in the "unregulated" market at 16.4 cents per Mcf, but where it enters the "regulated" market the price proposed is more than 25 percent higher than in the "unregulated" market only four days before.

The Staff and the interveners other than Tennessee object to the applications being granted unless the price is conditioned to a level to Tennessee no greater than 16.4 cents per Mcf plus tax reimbursement. As the price issue developed, no proof was developed that it would not serve public convenience and necessity if certificates were issued at the 16.4 cent price level. On the other hand, it was contended that the issuance of a certificate permitting the 21.3333 cent rate level would involve the issuance of a certificate at a level which was not established as comporting with the concept of public convenience and necessity as claimed by interveners and subsequently espoused in the *CATCO* case by the Supreme Court.

Of course, it was claimed by applicants that the issuance of a certificate at the 21.3333 cent rate level would serve public convenience and necessity but this claim was based on assertion rather than proof. The essential objection to unconditioned certification made by interveners and the Staff was that the evidence presented by applicants did not establish that it would serve public convenience and necessity to issue certificates at an increased rate level which was reached only after escalation provisions had been put into effect, *i.e.*, that there was a want of proof to establish the public convenience and necessity would be served by the issuance of the certificates at the higher level within the meaning of the *CATCO* case. Indeed, the evidence is entirely wanting on the basis of the Supreme Court's views as expressed in *CATCO* to establish that it would serve public convenience and necessity to issue certificates authorizing producers to obtain 21.3333 cents per Mcf for the gas being sold here. In fact the only basis claimed for issuing a certificate at this rate level was

[2] *Atlantic Refining Co., et al.* v. *P.S.C. of New York, et al.*, 360 U.S. 378.
[3] *Public Service Commission* v. *F.P.C.*, 361 U.S. 195.

that this figure represented an "initial" price, and others in the area were selling at this price when the escalation provisions became effective in 1958. There was no attempt other than this factually correct claim made to establish that the price level was such as would serve public convenience and necessity.

It may be urged that there was no evidence that 16.4 cents is a just and reasonable rate level. It is true that there was no evidence presented by applicants as to what a just and reasonable rate level for the gas involved here would be or as to what rate would hold the line of protection for consumers against rate levels which would not be in the public interest within the meaning of the Natural Gas Act. There was, of course, no burden on Staff or interveners to establish that any particular rate level would serve public convenience and necessity. Such burden rested solely on the applicants. This leaves the record in a state where the only rate level to which there is no serious objection is the 16.4 cent rate level, a rate agreed upon in the contract executed in 1953 and a rate which was in effect up to only four days before the new high rate was established. The contracts provided that the 16.4 cent rate was not to be changed unless the rate level in the area rose. It is true as applicants claim that gas is being sold at the price sought here and, in fact, contracts at somewhat higher prices have been executed but there has been no unreversed adjudication on the principles enunciated in *CATCO* on which a finding has been made that issuance of a certificate at this rate level in this area would serve public convenience and necessity.

The fact of the matter is that had the gas which was sold been sold in interstate commerce from the time the contract was executed until November 1958, it would have been necessary for applicants to institute a Section 4 proceeding to obtain the increase which went into effect as a result of the operation of the escalation clause and it would have been necessary to establish by material evidence that such rate was just and reasonable. The fact that the escalation clause went into operation and that thereby a higher rate went into effect on November 1, 1958, is no proof whatever that the difference between the 16.4 cent level and the 21.3 cent rate level is one which was justifiable on principle under the Natural Gas Act or was a rate which reasonably impelled a conclusion that the granting of the application at the higher rate would serve public convenience and necessity or that it would serve public convenience and necessity as well as the lower rate. The language of the Supreme Court in the *CATCO* case is enlightening on this particular point:

> * * * The purpose of the Natural Gas Act was to underwrite just and reasonable rates to the consumers of natural gas. *Federal Power Commission* v. *Hope Natural Gas Co.*, 320 U.S. 591, 88 L ed 333, 64 S Ct 281 (1944). As the original § 7(c) provided, it was "the intention of Congress that natural gas shall be sold in interstate commerce for resale for ultimate public consumption for domestic, commercial, industrial, or any other use at the lowest possible reasonable rate consistent with the maintenance of adequate service in the public interest." 52 Stat. 825.[7] The Act was so framed as to afford consumers a complete, permanent and effective bond of protection from excessive rates and charges. The heart of the Act is found in those provisions requiring initially that any "proposed service, sale, operation, construction, extension, or acquisition * * * will be required by the present or future public convenience and necessity," § 7(e), 15 USC § 717(f)(e), and that all rates and charges "made, demanded, or received" shall be "just and reason-

[7] The 1942 amendments to § 7, 56 Stat. 83 were not intended to change this declaration of purpose. See Hearings, House Interstate and Foreign Commerce Committee, on HR 5249, 77th Cong. 1st Sess 18–18; HR Rep No 1290, 77th Cong. 1st Sess; S Rep No. 948, 77th Cong. 2d Sess.

able," § 4, 15 USC § 717(c). The Act prohibits such movements unless and until the Commission issues a certificate of public convenience and necessity therefor, § 7(c), 15 USC § 717f(c). Section 7(e) vests in the Commission control over the conditions under which gas may be initially dedicated to interstate use. Moreover, once so dedicated there can be no withdrawal of that supply from continued interstate movement without Commission approval. The gas operator, although to this extent a captive subject to the jurisdiction of the Commission, is not without remedy to protect himself. He may, unless otherwise bound by contract, *United Gas Pipe Line Co.* v. *Mobile Gas Service Corp.*, 350 U.S. 332, 100 L ed 373, 76 S Ct 373 (1956), file new rate schedules with the Commission. This rate becomes effective upon its filing, subject to the 5-month suspension provision of § 4 and the posting of a bond, where required. This not only gives the natural gas company opportunity to increase its rates where justified but likewise guarantees that the consumer may recover refunds for moneys paid under excessive increases.

* * * * * * *

Moreover, the fact that the Commission was not given the power to suspend initial rates under § 7 makes it the more important, as the Commission itself says, that "this crucial sale should not be permanently certificated unless the rate level has been shown to be in the public interest." 17 FPC 563, 575; 360 U.S. 378, pp. 388, 389 and 390.

The Court was, of course, talking in the context of a proposed sale in the continental shelf area off the coast of Louisiana and the potential of this vast acreage of which the gas involved here is a part.

The instant proceeding is in a number of major aspects similar to the *CATCO* case. The Court's observations in *CATCO* are equally pertinent to the situation before the Examiner.

Experience under the Act shows that when a pipeline has to pay more for the gas it purchases it is required as a matter of ordinary business prudence to pass that increase on to the public unless it is making an excessive rate of return and can thus absorb an increase in its purchased gas costs without so doing. There is no indication in the evidence presented, nor is it even claimed in this proceeding, that Tennessee is making an excessive return on its rate base and therefore no such assumption could or will be made here. In these circumstances it is reasonable to assume that if and when Tennessee buys gas at prices which are at the level proposed here it will have to pass those higher gas costs on to the public which eventually consumes its gas.

The Supreme Court in *CATCO* speaking in the context of the consideration to be given the prices for gas in a certificate proceeding pointed out that the Act was not intended to "provide a windfall for the natural-gas company with a consequent squall for the consumers."

In the light of the *CATCO* and *Transco* cases it is imperative that protection must be afforded consumers against prices which are not justifiable as affording reasonable safeguards to consumers in certificate, as well as rate, cases and the Court's holding is to the effect that certificates of public convenience and necessity may not be issued where it has not been shown that the rate level at which the gas is to be sold is one which affords reasonable safeguards to consumers against excessive rates.

The evidence is that Niagara assigned its rights to Tennessee and there is no evidence that Tennessee conducted any arm's-length negotiations with anyone relating to the price of gas. When the assignment was made the price had escalated just four days before to 21.3333 cents per Mcf plus tax reimbursement and there is no evidence that the price was discussed on any basis but the inten-

tion implicit in the escalation clause which was to increase the price to producers if others sold at higher prices—a standard of price determination which is unrecognized in the regulatory process, and in fact is the negation of regulation and is contrary to the entire concept of "holding the line."

It would appear unreasonable, however, to assume that the transactions between the producers on the one hand, and Niagara on the other, or the transactions between Commonwealth and Niagara were eleemosynary in character. There is no evidence whatever of any affiliation between the buyer and the sellers of the gas. It would not be unreasonable, in the absence of evidence to the contrary, to assume that the negotiations between these parties were conducted at arm's-length and in good faith. Unfortunately, from the standpoint of the applicants herein, the fact that the transaction which took place may have taken place and most probably did take place at arm's-length is not in and of itself a basis upon which it can be assumed that the issuance of a certificate at the rate level reached by the parties by operation of escalation clauses would serve public convenience and necessity.

The New York Public Service Commission points out that there is no evidence in the record of "need" by Tennessee for this gas. In Commission order, issued January 28, 1959, 21 FPC 70, the Commission granted a certificate in Docket No. G–11107 authorizing a substantial increase in Tennessee's capacity and substantial additional sales to its customers, including customers in New York State. The gas reserves which are the subject of these proceedings were considered in that docket as part of Tennessee's total system supply and formed part of the basis for the Commission's authorizations to Tennessee in this docket. In addition, Tennessee presented a witness in this proceeding whose testimony was uncontradicted and whose testimony indicated a need for the gas supply proposed to be sold by the applicants.

There was not in this proceeding a full-scale presentation of Tennessee's total supply in relation to its requirements, and there are natural gas companies which have larger reserves in relation to their requirements than has Tennessee. However, this is not to say that Tennessee's reserves are inadequate but simply to point out that any claim that the dedication and sale of this gas to Tennessee would not serve public convenience and necessity would appear to be without basis. Ordinary prudence impels the management of large pipeline companies to replace gas which is consumed with new purchases and take additional steps where necessary to improve the relationship between reserves and requirements.

The principal issue in these proceedings is not whether the addition of this gas supply is necessary or desirable from the standpoint of the public interest but whether the public convenience and necessity would be served if the certificate authorizations sought here were granted in such manner as to permit these sales to be made at the escalated price, namely, 21.3333 cents per Mcf plus tax reimbursement, without proof that this level would serve public convenience and necessity.

Since the applicants have presented no proof that the consumers would be protected adequately within the meaning of the Act as interpreted in *CATCO* by a sale at this level, or that the consumers would be afforded protection at all, it does not appear that applicants have met the standards laid down by the Supreme Court requisite for the grant of a certificate.

It is noted that the applicants in their initial brief cited as precedent, among other cases, *Hope Natural Gas Company, et al.*, Docket No. G–12571, *et al.*, issued March 31, 1958, 19 FPC 405, the Commission's Opinion No. 315, in the *Transco-Seaboard* case, 20 FPC 264; the *Trunkline Gas Company* Opinion No. 321;[4] and a

[4] The Commission's Opinion No. 321 was issued May 22, 1959, 21 FPC 704, just one month prior to the issuance of the Supreme Court's Opinion in CATCO.

decision issued by the undersigned in Docket No. G–12580, 22 FPC 906, involving sales by independent producers to El Paso Natural Gas Company in the Aneth Field.

The most important cases decided recently which are relevant to this matter have been the so-called *CATCO* and the *Transco Seaboard* cases. Such precedents as may have been established in decisions prior to the *CATCO-Transco-Seaboard* decisions, insofar as they are inconsistent with these cases, must bow to the pronouncements of the Supreme Court. It is axiomatic that when the Supreme Court has spoken, all decisions of lower tribunals must thereafter be consistent with the Court's holding.

Recognition of this essential position may be found in the Commission's action in Docket No. G–16603, *et al.*, involving Transcontinental Gas Pipe Line Corporation. It will be recalled that in this docket an examiner issued a decision on October 2, 1959, 22 FPC 841, which involved, among other things, the problem of whether a certificate of public convenience and necessity should be issued to certain producers, including Kerr-McGee and Phillips, for the sale of natural gas in interstate commerce produced by them offshore Louisiana. The examiner authorized the sale of natural gas in this case at the initial price of 21.5 and 22.0 cents per Mcf plus tax reimbursement, *i.e.*, at rate levels substantially consistent with those proposed here.

The Public Service Commission of the State of New York, the United Gas Improvement Company, and the Long Island Lighting Company filed exceptions to the examiner's decision insofar as it authorized the issuance of unconditioned certificates to the independent producer applicants.

The Commission, in its order of November 17, 1959, 22 FPC 836, at pp. 838, 839 modifying and affirming the examiner[5] said, among other things, that:

> These interveners contend that these prices have not been shown to be required by the public convenience and necessity, and that the examiner erred in relying on the decision of the Court of Appeals for the Third Circuit in *United Gas Improvement Co., et al.* v. *F.P.C., et al.*, Nos. 12797 and 12805, 269 F. 2d 865, since this case is now the subject of a petition for certiorari in the United States Supreme Court. These contentions are without substance. The evidence of record in these proceedings supports the examiner's finding that the prices proposed will not establish any new price plateau,[3] will not

[3] See also the discussion and cases cited in *South Georgia Natural Gas Co., et al.*, Opinion No. 325, Docket Nos. G–9892, *et al.*, issued August 7, 1959, 22 FPC 211, 218–221, and in *Texas Gas Transmission Corp., et al.*, Opinion No. 327, Docket No. G–17335, *et al.*, issued August 10, 1959, 22 FPC 378, 386–388, showing that the present price plateau in this area does not rest solely upon the so-called "Catco" contracts or the Commission's certification of the "Catco" sales, and that producer prices comparable to those here proposed were not in effect disapproved by the Supreme Court's decision in the "Catco" case.

> trigger increases in other contracts under which Transco purchases gas in southern Louisiana, or elsewhere, and are not out of line with the prices which we have authorized to be paid by Transco and others in the area. The record also shows that there is an urgent need for these additional volumes of gas. In these circumstances, giving consideration to both the evidence as to price and the evidence of need for the gas, we conclude that the examiner properly found the proposed sales to be required by the public convenience and necessity and that certificates should be issued without condition as to price. This action is in accord with the decision of the

[5] The modifications of the examiner's decision were in regard to matters other than the producer prices.

United States Supreme Court in the "Catco" case, *Atlantic Refining Co., et al.* v. *Public Service Commission, et al.*, 360 U.S. 378, as well as with the decision of the Court of Appeals in the *United Gas Improvement Co.* case, which was decided in the light of and in reliance upon the Supreme Court's "Catco" decision.

Thereafter, the same parties who had objected to the issuance of unconditional certificates to the independent producers filed applications for rehearing of the Commission's order of November 17, 1959, *supra*, authorizing the sale of gas from South Louisiana and offshore Louisiana at the proposed initial prices of 21.5 and 22.0 cents per Mcf plus taxes.

On December 4, 1959, the Supreme Court granted a petition for a writ of certiorari from the Third Circuit's decision in the *Transco Seaboard* case, vacated the judgment of the Court of Appeals in that case and remanded the matter to that Court with directions to remand the case to the Federal Power Commission for reconsideration and redetermination in the light of *Atlantic Refining Company* v. *Public Service Commission of New York*, 360 U.S. 378.[6]

Subsequent to the Supreme Court's order in *Transco Seaboard*, the Commission, on January 15, 1960, granted the applications for rehearing filed by the interveners in Docket No. G–16603, *et al.* [unreported] but has not taken any further action in the matter.

In the light of the Supreme Court's determination it appears clear that reliance upon Opinion No. 315, *i.e.*, *Transco Seaboard*, in which the Third Circuit Court of Appeals affirmed the Commission's order in Opinion No. 315 is not well founded. As a matter of legal duty heed must be paid to the order of the Supreme Court vacating the Third Circuit's affirmance of the Commission's order in Opinion No. 315.

In legal principle the cases under consideration, insofar as the matter of conditioning prices is concerned, are not different from the *CATCO*, the *Transco Seaboard* case, or the case in Docket No. G–16603, *et al.* The Commission has not taken any action in either *CATCO*, the *Transco Seaboard* or in connection with the Transcontinental Gas Pipe Line Corporation case, Docket No. G–16603, *et al.* Consequently, there are no recent Commission decisions following the Supreme Court's action in *CATCO* and *Transco Seaboard* for the examiner to follow as precedent. In addition, reliance upon the examiner's decision in the Aneth case as a precedent for the issuance of a certificate to producers without price condition would not be well-founded because the Commission in its order in that case modified the examiner's decision by conditioning the certificate to a lower price than that reached in the contract between the producers and the buyer of the gas.

It seems clear enough, however, from the decisions of the Supreme Court that prices for gas in the Gulf offshore Louisiana at the level sought here for purchasers who have shown need for the gas cannot be justified on the kind of evidentiary showing and rationale employed here. The price of 21.3333 cents per Mcf plus taxes reached here was based simply on the operation of an escalation clause in a contract, not on the basis of any evidence showing that the initial or escalated price was one which should be authorized in a certificate proceeding where it is necessary to establish that the grant of the application at the rate level sought would serve public convenience and necessity by protecting the consumer against increased rate levels not justified by the evidence presented. As may be pointed out, had the gas in this proceeding been gas sold in interstate commerce rather than in foreign commerce, the applicants could not obtain 21.3333 cents without instituting a rate proceeding. The fact that the

[6] *United Gas Improvement Co., et al.* v. *F.P.C.*, 361 U.S. 195.

gas had been formerly sold in foreign commerce rather than in interstate commerce provides no justification on this record for increasing the price from 16.4 cents to 21.3333 cents. If this were the case then every seller in the Gulf offshore Louisiana which has a contract entered into in earlier years should be permitted to increase the rate level because in the last few years sellers in this area have been in a position to get more for their gas from necessitous buyers. The fact that gas could have been, or was to be sold in foreign commerce at escalated prices, *i.e.*, without the benefits of consumer protection commanded by the Act, is no reason for authorizing such unregulated and unjustified prices when the situation is changed to one where the Commission is under a Congressionally imposed duty to protect the consumers of the United States against excessively high prices.

The only justification which has been offered for issuing a certificate at this rate level is the undeniable fact that other sellers in the area are at this time, and at the time of the hearing were, getting prices substantially similar to those which are sought here.

The decisions of the Supreme Court in the *CATCO* and *Transco Seaboard* cases were made in a factual context not essentially dissimilar from that presented here. The effect of the Supreme Court's decisions is to destroy the basic pattern and legal reasoning upon which the producers and applicants in the Louisiana Gulf Coast, including the instant applicants, have up to now rested their cases for unconditioned certificates.

If certificates are to be granted at these rate levels, different and better proof and certainly different rationalization would have to be offered than was presented here.

The fact that a high, or at least a higher price level than existed a short time before is reached in an unregulated market is not a good ground for holding that it is a price level which should be authorized in a Section 7 proceeding in which the standards inherent in the phrase "public convenience and necessity" must be met.

The Staff submitted one exhibit which in reality is no more than a price distribution table showing some of the prices obtained in recent years for gas sold in Cameron and Vermilion Parishes, Louisiana, where the gas involved here is produced. It will be noted in this connection that a substantial number of the rate level figures cited are those involved in Opinion No. 315, *i.e.*, *Transco Seaboard*, and accordingly the value of this exhibit as precedent for establishing a price pattern which should be followed here is highly questionable. In addition, this table does not purport to show the average price of gas in the area but the price reached in very recent times, and the prices shown are not claimed to have any relationship whatever to normal regulatory standards. The fact that other persons in the area may be getting a certain price for gas in recently executed contracts does not by itself, and particularly in the absence of a determination that the new price is just and reasonable or affords adequate protection to consumers, establish that applicant has met the burden of proof required under the Act.

The price of the gas being sold in these proceedings was 16.4 cents per Mcf plus tax reimbursement on November 1, 1958. It rose to 21.3333 cents per Mcf plus tax reimbursement solely by reason of the operation of an escalation clause, *i.e.*, on the basis of "fair field price standards." This is an inadequate reason to establish that certification at the higher prices would serve public convenience and necessity.

On the basis of the evidence presented two possible courses are available. One would be to deny the application and the other would be to grant the application conditioned at a price of 16.4 cents per Mcf plus tax reimbursement. The

latter course is available not because it has been established that 16.4 cents per Mcf is a just and reasonable price but simply because the evidence presented does not indicate that the latter price is higher than is adequate for the protection of consumers against excessive or unreasonable prices. Nor is there any evidence that this level would be unjust or unreasonable to applicants. Nor is there even any claim that this rate level would be confiscatory.

In these circumstances, it will be found and concluded that certificates of public convenience and necessity should be issued herein but that such certificates should be conditioned at a rate level not to exceed 16.4 cents plus tax reimbursement. The 16.4 cent price would hold the line of prices in this case at that level which was in effect prior to the operation of the escalation clauses.

ADDITIONAL FINDINGS AND CONCLUSIONS

Upon consideration of the entire record herein, the evidence adduced, and the briefs filed, it is found and concluded, in addition to the findings and conclusions hereinbefore set out, that:

(1) The Phillips Petroleum Company, Kerr-McGee Oil Industries, Inc., and Commonwealth Oil Company, applicants herein, are "natural-gas companies" within the meaning of the Natural Gas Act.

(2) The sales of natural gas proposed by Phillips Petroleum Company and Kerr-McGee Oil Industries, to Tennessee Gas Transmission Company, the purchaser herein, and the sales by Phillips Petroleum Company and Kerr-McGee Oil Industries, Inc., to Commonwealth Oil Company and the sales by the latter to Tennessee Gas Transmission Company as purchaser are, and will be, sales of natural gas in interstate commerce requiring certificates of public convenience and necessity under the Natural Gas Act.

(3) The proposed sales of natural gas by Phillips Petroleum Company and Kerr-McGee Oil Industries, Inc., to Tennessee Gas Transmission Company have not been shown to be required by the public convenience and necessity at the price of 21.3333 cents per Mcf plus tax reimbursement for the natural gas which underlies and is the subject of the contracts between the sellers and the purchaser.

(4) The proposed sales of natural gas by Phillips Petroleum Company in Docket No. G–16611 and Kerr-McGee Oil Industries, Inc. in Docket No. G–16718 to Commonwealth Oil Company at the price of 18.9333 cents per Mcf plus tax reimbursement and the resale of such gas by the latter at the price of 21.3333 cents per Mcf plus tax reimbursement for the natural gas which underlies the contracts between the sellers and the purchasers have not been shown to be required by the public convenience and necessity at the aforesaid price levels.

(5) The sales of natural gas proposed in Docket Nos. G–16612 and G–16719 are required by the public convenience and necessity at a price not exceeding 16.4 cents per Mcf plus tax reimbursement to Tennessee Gas Transmission Company, and such price or rate is prescribed herein to protect the consuming public until the just and reasonable rate for the service is determined by the Commission.

(6) The sales of natural gas proposed in Docket Nos. G–16611 and G–16718 are required by the public convenience and necessity at a price not exceeding 16.4 cents per Mcf plus tax reimbursement by Phillips Petroleum Company and Kerr-McGee Oil Industries, Inc., to Commonwealth Oil Company less the gathering charge of the latter which on the volumes proposed to be certificated here is 2.4 cents per Mcf. and such price or rate is prescribed herein to protect the consuming public until the just and reasonable rate is determined by the Commission.

(7) The sales of natural gas proposed in Docket No. G–16679 by Commonwealth Oil Company to Tennessee Gas Transmission Company in Docket G–16679

are required by the public convenience and necessity at a price not exceeding 16.4 cents per Mcf plus tax reimbursement, and such price or rate is prescribed herein to protect the consuming public until the just and reasonable rate for the service is determined by the Commission.

ORDER

WHEREFORE, *It Is Ordered*, subject to review by the Commission, pursuant to its Rules of Practice and Procedure, that:

(A) Certificates of public convenience and necessity are hereby issued to Phillips Petroleum Company, Kerr-McGee Oil Industries, Inc., and Commonwealth Oil Company, authorizing the sale in interstate commerce of natural gas for resale to Tennessee Gas Transmission Company, as described in the applications filed in this proceeding, subject to the terms and conditions of this order.

(B) There shall attach to the certificates issued under paragraph (A) and to each of them and to the exercise of the rights thereto the condition that the recipients of said certificates file with the Commission within seventy (70) days of the issuance of this order rate schedules or supplements thereto providing for rates as set forth in findings (5), (6), and (7) herein under the gas purchase contracts involved in these proceedings in lieu of the prices provided for in the contracts between the parties.

(C) The certificates issued to the producers under paragraph (A) of this order are not transferable in any manner and shall be effective only so long as the applicants continue the operations authorized by this order in accordance with the provisions of the Act and the rules, regulations and orders of the Commission.

(D) The grant of the certificates to the applicants herein shall not be construed as a waiver of the requirements of Section 4 of the Act, or of Section 154 of the Commission's Regulations thereunder requiring the filing of rate schedules for the service herein authorized; and is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against the applicants. Further, the Commission's action in this proceeding shall not foreclose nor prejudice any future proceedings or objection relating to the operation of any price or related provision in the gas purchase contracts herein involved.

(E) Upon the acceptance of the certificates granted herein and the filing of revised rate schedules as provided herein, the temporary authorizations for service heretofore granted to the applicants herein shall expire.

SAMUEL BINDER,
Presiding Examiner.

Before Commissioners: L. J. O'Connor, Jr., Acting Chairman; Charles R. Ross and Carl E. Bagge.

ZENITH NATURAL GAS COMPANY,[1] DOCKET NO. CP65-387

FINDINGS AND ORDER AFTER STATUTORY HEARING PERMITTING AND APPROVING ABANDONMENT OF SERVICE AND FACILITIES

(Issued August 11, 1965)

On June 2, 1965, Zenith Gas System, Inc., filed in Docket No. CP65-387 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval of the Commission to abandon the sale of natural gas heretofore authorized in Docket No. G-12013 to Cities Service Gas Company from the Blanche

[1] Application filed by Zenith Gas System, Inc.

Sterling Gas Unit, Hartner Field, Barber County, Kansas, all as more fully set forth in the application.

The last production from the subject unit was in September 1962 and production facilities were removed in 1963. By letter agreement dated May 15, 1963, the related gas purchase contract was cancelled due to depletion of reserves.

By order issued May 28, 1965, in Docket No. CP65-316 (33 FPC 1137) Zenith Natural Gas Company was authorized, effective on June 8, 1965, to acquire and operate certain jurisdictional facilities of Zenith Gas System, Inc., in Kansas. Zenith Gas System, Inc., FPC Gas Tariff, Original Volume No. 2, was cancelled by said order. Rate Schedule F-1, under which the subject sale was made, was a part of said tariff. The certificate issued in Docket No. G-12013 was terminated by the order of May 28, 1965.

After due notice no petition to intervene, notice of intervention or protest to the granting of the application has been received.

At a hearing held on August 5, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits thereto, submitted in support of the authorization sought herein and upon consideration of the record,

The Commission finds:

(1) Zenith Natural Gas Company, a Delaware corporation having its principal place of business in Tulsa, Oklahoma, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of May 28, 1965, in Docket No. CP65-316 (33 FPC 1137).

(2) The sale and facilities proposed to be abandoned as hereinbefore described, all as more fully described in the application in this proceeding, are in interstate commerce subject to the jurisdiction of the Commission, and the abandonment thereof is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(3) The proposed abandonment is permitted by the public convenience and necessity and should be approved as hereinafter ordered.

The Commission orders:

Permission for and approval of the abandonment of service and facilities as hereinbefore described, all as more fully described in the application in this proceeding, are granted.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., PROJECT NO. 2338

ORDER APPROVING REVISED PROJECT EXHIBITS

(Issued August 12, 1965)

On July 1 and 19, 1965, Consolidated Edison Company of New York, Inc., filed application for Commission approval of revised Exhibits J, L and M for its proposed Cornwall Pumped Storage Project No. 2338, located primarily in the Village of Cornwall and Towns of Cornwall and Highlands, on the Hudson River, New York, navigable waters of the United States. The application was filed pursuant to Articles 30, 31, 32 and 33 of the license.

Exhibit L—Supplement C shows that a weir will be installed and measurements will be made as required by Article 30. *Exhibit J-1 (FPC No. 2338-30) General Map*, is similar to license Exhibit Nos. 18 and 19, except that it shows

thereon the proposed park area for the Village of Cornwall, New York, to be formed from excavated material from the tunnel and powerhouse construction. *Exhibit L–1 (FPC No. 2338–8)—Plan—Penstock and Station*, and *Exhibit L–1A (FPC No. 2338–9) Cross Section of Penstock and Station*, are similar to license Exhibit Nos. 20 and 21, respectively, except for the redesignations. *Exhibit L–2 (FPC No. 2338–33) Tunnel & Intake Sections* (with the omission thereon of the typical dike section, which is shown on a separate drawing) is similar to license Exhibit No. 15, except that the intake structure shown thereon has been modified in accordance with the results of hydraulic model studies made pursuant to Article 32 of the license. *Exhibit L–2A (FPC No. 2338–34) Dike Sections*, supersedes license Exhibit Nos. 36, 38 and 39, and in general, shows the same design for the dikes, except that provisions are now included in the initial dike construction for the future raising to accommodate an ultimate water surface elevation of about 1,210 feet. Dike 3, facing Clove Creek, which is slightly over 3 feet lower than the other dikes, has not been model tested to withstand overtopping, as required by Article 32 of the license, and such model testing is still required.

Exhibit L–3 (FPC No. 2338–35) Cornwall East Switching Station—Modified Plan, and *Exhibit L–3A (FPC No. 2338–36)—Cornwall East Switching Station—Modified Elevation*, supersede license Exhibit Nos. 22A and 23A, providing for rearrangement of facilities and provisions for handling the proposed ultimate installation of about 3000 Mw.

Finally, *Exhibit M—Revised 7/16/65—General Description of Equipment in Three Sheets*, supersedes license Exhibit M since it shows minor changes in the specifications of the equipment.

The Commission finds:

(1) The following described revised exhibits conform to the Commission's Rules and Regulations and should be approved as part of the license for the project subject to model testing of the dike facing Clove Creek and it's further approval pursuant to Article 32 of the license.

Exhibit designation	FPC No.	Title
J—Sheet 1 (revised Mar. 24, 1965)	2338–30	General Map.
L—Sheet 1	2338–8	Plan—Penstocks and Station.
L—Sheet 1A	2338–9	Cross Section of Penstocks and Station.
L—Sheet 2 (revised Mar. 24, 1965)	2338–33	Tunnel and Intake Sections.
L—Sheet 2A (revised Mar. 24, 1964)	2338–34	Dike Sections.
L—Sheet 3 (dated Apr. 23, 1965)	2338–35	Cornwall East Switching Station—Modified Plan.
L—Sheet 3A (dated Apr. 23, 1965)	2338–36	Cornwall East Switching Station—Modified Elevation.
M—Revised (filed with the Commission on July 19, 1965).	----------	General Description of Equipment in Three Sheets.

(2) The following described exhibits now part of the license and which have been superseded are hereby eliminated from the license:

Exhibit No.

15	Sections & Details (exclusive of Typical Dike Detail)
18	General Map
19	Site Plan
20	Plan—Penstocks and Station
21	Cross Section of Penstock and Station
22A	Cornwall East Switching Station, Modified Plan
23A	Cornwall East Switching Station, Modified Elevation
36	Proposed Dike Design (Dikes 3 Facing Clove Creek)
38	Proposed Dike Crest, Dikes 1, 2, 4, and 5
39	Proposed Dike Crest & Toe Detail—Dike 3
M	General description of Equipment in Three Sheets.

The Commission orders:

(A) The revised exhibits as described in finding (1) above are hereby approved as part of the license for Project No. 2338.

(B) The exhibits described in finding (2) above as being superseded are hereby eliminated from the license for the project.

(C) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this order. In acknowledgment of the acceptance of this order, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: L. J. O'Connor, Jr., Acting Chairman; Charles R. Ross and Carl E. Bagge.

MIDWESTERN GAS TRANSMISSION COMPANY, DOCKET NOS. RP61-19 AND RP62-7; NATURAL GAS PIPELINE COMPANY OF AMERICA, DOCKET NO. RP63-6

ORDER DENYING APPEAL FROM PRESIDING EXAMINER'S RULING

(Issued August 12, 1965)

Pursuant to Commission order issued April 21, 1965, hearings were commenced on July 13, 1965, on the issue whether Midwestern Gas Transmission Company's (Midwestern's) rates should be computed as if it were still using liberalized depreciation for income tax purposes even though it had changed to straight-line depreciation. The issue was more fully stated by the Commission in its order issued October 13, 1964, as follows: "The question as to the proper treatment of depreciation in computing income taxes for rate-making purposes is one of the most important issues in this case, making a difference of close to $2 million in MGT's total cost of service. It is appropriate, before deciding this question, that MGT be given the opportunity to present evidence to show why it had changed to straight-line depreciation, how the use of liberalized depreciation in computing taxes for rate-making purposes might adversely affect its interests, the effect of its change to straight-line depreciation on the rates to be charged to its customers *vis-a-vis* the Commission's determination in Opinion No. 417, the method to be used in applying accumulated deferred taxes against its increased tax costs and any other relevant facts." (32 FPC 993 at p. 996)

The City of Chicago, Illinois (Chicago), an intervener in the above-entitled proceedings, at the opening of hearings on July 13, 1965, moved that the Presiding Examiner recess the hearings until an appropriate date subsequent to review and final decision of the court of last resort of Commission Opinion Nos. 417 and 417-A (Alabama-Tennessee Natural Gas Company, Docket No. G-5471, *et al.*) 31 FPC 208, 928. Chicago stated (Tr. 9) that to "proceed with this hearing without finality of Alabama-Tennessee having been determined will cause a waste of time and money through cross-examination and briefing procedures to the Presiding Examiner and subsequent decisions and before the Commission which may possibly be rendered moot and of no practical value should Alabama-Tennessee be over-ruled." Staff counsel joined in and supported the motion.

Midwestern objected, stating (Tr. 24) that a granting of the motion would have "most severe adverse consequences on Midwestern" in that any adjustments in rates which might result from these proceedings are to be effective as of October 13, 1964; that Midwestern has a right to know what its rates are

as of that date; and that if Chicago were to prevail on the merits, a revenue deficiency in excess of $1.9 million per annum, from and after that date, might result.

The Presiding Examiner denied the motion and subsequently, in compliance with Chicago's request, certified the question to the Commission for review.

Movants attempt to support the requested recess of these proceedings until final court action on Commission Opinion Nos. 417 and 417–A is not persuasive. Commission's Opinions and orders carry with them a presumption of validity which will continue unless set aside by the Commission on reconsideration or by the courts.[1] In a similar situation, it was held that a party is not entitled to a postponement in anticipation of a possible new justification which some future event might supply.[2] The company is entitled to know, as soon as possible, what its rights and obligations are. Additionally, it is our view that the filing was untimely. Our order was issued on April 21, 1965. Clearly, a motion to recess such proceedings should not be delayed until the date of hearing and the witnesses are presented and ready for cross-examination. Further, the balancing of the equities between the cost to the parties of trying the issue at this posture of the case as against the possible added cost to the company which may result from delay, weigh heavily in favor of continuing the hearings as scheduled without the recess sought.

The Commission finds:

Good cause has not been shown for postponement of the scheduled hearings in these proceedings.

The Commission orders:

The appeal of the City of Chicago from the ruling of the Presiding Examiner in these proceedings is hereby denied.

[1] *Northern Natural Gas Company*, 11 FPC 278, 281; *F.P.C.* v. *Hope Natural Gas Company*, 320 U.S. 591, 602; *Panhandle Eastern Pipe Line Company* v. *F.P.C.*, 179 F. 2d 896, 902.

[2] *Panhandle Eastern Pipe Line Company* v. *F.P.C.*, 206 F. 2d 606, 608.

NORTHERN NATURAL GAS COMPANY, CP65–1, CP65–91, CP65–338; NATURAL GAS PIPELINE COMPANY OF AMERICA, CP65–169, CP65–325; TRANSWESTERN PIPELINE COMPANY, CP65–208, CP65–236, CP65–237, CP65–320

ORDER ADOPTING INITIAL DECISION OF PRESIDING EXAMINER

(Issued August 13, 1965)*

Syllabus

1. Requested condition by pipeline-intervener to prevent prejudice to its application in another docket, and agreed to by pipeline-applicant, found unobjectionable. PP. 510, 511.
2. Proposal that certificate be conditioned to require applicant to account for excess revenues rejected since accounting demanded seems futile and has no rational basis. PP. 511, 512.
3. Mere showing that pipeline would receive excess revenues on an incremental basis is insufficient to justify suggested certificate accounting condition; no showing has been made that pipeline's revenues are excessive on a system-wide basis. P. 512.

*Initial decision appears on p. 509.

4. Proper method of constructing pipeline's rates and question of whether a particular rate should be related to a single line or entire system cannot be adequately explored within limited compass of certificate proceeding. P. 512.
5. Issuance of certificate to Natural Gas Pipeline is without prejudice to determination in any future rate case of what part, if any, of facilities authorized here shall be included in rate base; suggestion that no part be included unless producer certificates are issued is rejected. P. 513.
6. Grant of certificate under Section 7 should not be considered decisive of possible future proceedings under Section 5. P. 514.
7. Commission *issues* certificates of public convenience and necessity under Section 7 of the Natural Gas Act.

F. Vinson Roach, Jack C. Osborne, Daniel B. O'Brien, Justin R. Wolf, and *Charles A. Case, Jr.* for Northern Natural Gas Company.

Charles C. McDugald, William W. Brackett and *Paul E. Goldstein* for Natural Gas Pipeline Company of America.

Raybourne Thompson, James W. McCartney, H. Curran, W. H. Drushel, Jr. for Transwestern Pipeline Company.

John W. Scott and *Louis L. DaPra* for Minnesota Valley Natural Gas Company.

C. Frank Reifsnyder, Stanley S. Harris and *E. G. Najaiko* for El Paso Natural Gas Company.

Robert M. Olson, W. L. Cole and *John Ormasa* for Pacific Lighting Gas Supply Co., Southern California Gas Co., and Southern Counties Gas Co. of California.

Richard F. Babcock and *F. P. Bosselman* for Peoples Gas Light and Coke Company and North Shore Gas Company.

Jack F. Kinney for Iowa Public Service Co.

Justin A. Stanley and *John L. McCausland* for Northern Illinois Gas Company.

Joseph T. Morrow and *Edward S. Schroer* for Northern Indiana Public Service Co.

John F. Gaston for Iowa Electric Light and Power Co.

Charles R. S. Anderson for Iowa Southern Utilities Co.

Raymond F. Simon and *Mathias M. Mattern* for City of Chicago, Illinois.

Mark W. Putney for Iowa Power and Light Company.

Lloyd J. Marti for Western Power & Gas Co.

Keith M. Stidd for City of Minneapolis, Minnesota.

George C. Mastor for Minneapolis Gas Company.

Arthur R. Renquist for Northern States Power Company.

Sherman S. Poland for Central Illinois Electric & Gas Company.

John A. Ferguson, Jr. for Gulf Pacific Pipeline Company.

Richard Tuttle, J. Calvin Simpson, Lawrence Q. Garcia for Public Utilities Commission and People of the State of California.

Edward J. Hartman for Iowa-Illinois Gas and Electric Company.

C. Louis Knight and *Agnes Mae Wilson* for the Staff of the Federal Power Commission.

Before Commissioners: L. J. O'Connor, Jr., Acting Chairman; Charles R. Ross and Carl E. Bagge.

On August 3, 1965, the Presiding Examiner, Arthur H. Fribourg, issued an initial decision herein under Section 7 of the Natural Gas Act granting certificates of public convenience and necessity to each of the applicants in the proceeding involved in Phase I of these proceedings in accordance with their applications in Docket Nos. CP65-320, CP65-325, and CP65-169. No exceptions have been filed to the examiner's decision within the four-day period from the date of the decision stipulated by the parties for the receipt of exceptions.

The Commission further finds:

Upon consideration of the entire record in these proceedings, including the evidence adduced, the briefs filed, and the presiding examiner's initial decision, said decision should be adopted as the decision of the Commission in this case.

The Commission orders:

The initial decision of the presiding examiner issued herein on August 3, 1965, is hereby adopted and such decision shall become effective as the decision of the Commission as of the date of issuance of this order.

INITIAL DECISION
OF THE PRESIDING EXAMINER GRANTING CERTIFICATES UNDER SECTION 7 OF THE NATURAL GAS ACT

(Issued August 3, 1965)

FRIBOURG, *Presiding Examiner:* This decision relates to the same projects dealt with in the Commission's order of July 23, 1965, 34 FPC 110, issuing temporary certificates.

At the time of the hearings the situation appeared as one of great urgency, which may now be relieved by the Commission's grant of the temporary authorizations. The parties, in order to expedite the proceedings, agreed, with the Examiner's consent, not to submit briefs to the Examiner. Instead, oral argument was held on July 14, two days after the close of the hearing, and it was agreed to serve proposed findings and conclusions by July 21 by air mail. The last set of these was actually received by the Examiner on Friday, July 23. The parties have stipulated on the record without objection that they shall serve any exceptions to the Examiner's decision by air mail within four days of their receipt of the decision, and objections to the exceptions by air mail within four days of receipt of the exceptions.

This portion of the proceedings, which the Commission designated as Phase I in its order of June 4, comprises Docket Nos. CP65–320, CP65–325, and those portions of CP65–169 not involving the construction of gathering facilities in the Permian Basin.

Because it appeared that the hearings would probably be lengthy and that therefore Natural's Permian Basin line could not be built in time for the coming heating season, Natural and Transwestern agreed upon a temporary exchange of gas in order to provide an adequate supply for Natural's short-term needs. The exchange would involve a maximum of 130,000 Mcf per day, and would continue until the hearings in Phase II have been concluded and the construction of any facilities authorized thereunder have been completed. The exchange is desired so as to permit Natural to make its Permian Basin gas available to supply the needs of Natural's markets while Phase II is being decided, and particularly to meet those needs during the 1965–6 heating season. While this temporary exchange is in effect, Natural will pay Transwestern $59,000 per month plus 2.4 cents per Mcf for all gas exchanged in any one year up to 36,500,000 Mcf and 0.8 cents per Mcf for any additional volumes exchanged during the year.

The exchange is essential to the uncontested portion of Natural's expansion program under which it proposes, in this Phase I, to increase the maximum daily withdrawal capacity of its storage facilities by 50,000 Mcf, to raise the maximum inventory limitations of three storage fields, to increase the daily design sales capacity of its system by 185,000 Mcf, to transport and sell approximately 169,700 Mcf of natural gas to seventeen of its resale customers, to transport

22,700 Mcf for sale to its direct customer, Phillips Petroleum Co., and to construct and operate facilities for the transportation of natural gas to be produced from reserves located in the Indian Basin and Dagger Draw areas of Southeastern New Mexico to Transwestern's West Texas lateral in Eddy County, Texas, and from the West Cameron Block 17–49 Field Area of South Louisiana to a connection with its own existing Gulf Coast Line in Montgomery County, Texas. Under the exchange agreement Natural would deliver gas from its Indian Basin and Dagger Draw reserves to a connection with the Transwestern line in Eddy County, New Mexico. It would also deliver from its Bluitt reserves into Transwestern's existing Bluitt lateral in Roosevelt County, New Mexico.

Transwestern would redeliver equivalent volumes to Natural at points in Hansford and Gray Counties, Texas, where the two lines cross. Transwestern would build 35.2 miles of 24-inch loop line along its West Texas lateral and would install certain metering, compressing and other facilities. Natural proposes to spend $40,150,000 and Transwestern $3,391,000 on the Phase I construction.

Transwestern's application, as amended, provides that:

> In the event the final determination in the comparative proceedings in FPC Docket Nos. CP65–1, *et al.*, is adverse to Transwestern and its applications filed in CP65–208, CP65–236 and CP65–237 are denied and additional sales or deliveries from its system have not materialized, Transwestern will not include the cost of the facilities installed for the interim service in its rate base in any rate increase proceeding until such time as Transwestern can make proof that the additional capacity which such facilities provide is needed.

There is no dispute on the questions of markets, cost or design of facilities, gas supply, financing, economic feasibility, or the proposed changes in Natural's storage capacity. The Presiding Examiner finds that the unanimity in these regards is justified by the evidence of record, and concludes that the construction, sales, transportation, and the exchange of gas proposed in Phase I are required by the public convenience and necessity. The uncontested evidence of record shows that without the additional supplies of gas sought in this proceeding, Natural's utility and municipal customers will suffer a deficiency of over 200,000 Mcf on the peak day of this coming winter, and that there is no other source of supply capable of meeting these needs.

The issues here relate to the conditioning of the certificates. Three participants urge that the certificates be granted only conditionally.

Gulf Pacific Pipeline Company requests a condition to prevent prejudice to its own application pending in the consolidated proceedings in Docket Nos. CP63–204, *et al.* Prejudice, it says, may arise in the following way. The 35.2 miles of loop line along Transwestern's West Texas lateral will be required, irrespective of the outcome of Phase II of this proceeding, whenever Transwestern's maximum day deliveries to California increase to 640,000 Mcf. If Transwestern's interim service to Natural proposed in Phase I is terminated prior to a final Commission order in CP63–204, the existence of the 35.2 miles of loop line could be cited as argument in support of Transwestern's application in that proceeding at the expense of Gulf Pacific's application.

Transwestern has stated that it has no objection to the proposed condition. At the oral argument, the Presiding Examiner suggested that such a condition would make little difference, since he could not, by means of a condition, foreclose anything that another Examiner or the Commission might do in another docket. Gulf Pacific counsel responded that he believed this to be correct, but desired the additional protection because "* * * we have been met with this line

of argument for a considerable number of years," *i.e.*, that Transwestern's existing capacity should give it priority.

Viewed as an agreed-upon restriction on Transwestern's position in another docket, the condition is unobjectionable, and it is therefore included as a part of this decision. It should be understood, however, that its inclusion is not intended to prejudge, restrict, or in any way affect the action of the Presiding Examiner or of the Commission in that or any other docket.

The State of California asks for a condition requiring Transwestern

> to account for revenues from the exchange in excess of the incremental cost of service applicable to the proposed new facilities pending a determination in Phase II of these consolidated proceedings of the amount of such revenues payable to its existing customers to compensate for the loss of use of existing facilities currently serving such existing customers.

California would require all or part of such excess revenues to be passed on to Transwestern's existing customers as rate relief. The basis for this demand is that Transwestern's Panhandle lateral, which was constructed to serve the California market, will now transport gas in the opposite direction to serve the purposes of the exchange with Natural. The cost of service of this lateral, says California, is reflected in the rates charged California customers, and since the exchange will produce a substantial excess of revenues over incremental costs, California is entitled to share in that excess. The exchange, says California,

> will have an immediate impact upon the California market in that a facility presently dedicated to that market will be put to a use entirely unrelated to that market, although its cost of service is and will be reflected in the rates paid by that market.

As the Commission observed in *Colorado Interstate Gas Co.*, Docket No. CP64-294, 33 FPC 281 (Opinion No. 450, February 18, 1965), there are situations in which it will consider the effect of the grant of a certificate upon the rates charged to existing customers. Here, however, the "impact" alleged by California is not such that Transwestern's service to it will be impaired. During the probable period of the interim exchange, California will have as much gas available to it as before, at the same price, and special provisions acceptable to California and to Transwestern's California customers have been made to limit any possible reduction in the Btu content of the gas as a result of the interchange.

California is not claiming that the price Transwestern will receive is not in the public interest. (In this connection it should be noted that Natural, who is the party that will pay the price, states that its rates are already adequate to cover the expenses to be incurred under the interim exchange agreement and that it does not intend to pass any of these expenses on to its customers. It will live within its present rate framework.) California seeks not to lower the price but to share in it. In this respect its position is much like that of the Kansas-Nebraska Natural Gas Company, Inc., in the *Colorado Interstate* proceeding, *supra*. Kansas-Nebraska was seeking to condition a certificate to be issued to its supplier for a sale of gas to a third party. The condition it sought was a lowering of the rate that its supplier was charging it. The reason advanced was much the same one that California advances here, namely, that the line had been built to serve it and was now being diverted to another use. This Commission correctly held that such a question is not properly part of a certificate case.

Even if it were proper to raise this issue in this type of proceeding, however, there would be serious question as to the legality of the condition California seeks. To order a refund to California customers, the Commission would have to decide that the rate *to them* was unjust and unreasonable, or discriminatory,

which is a finding it can only make in a rate case. The Natural Gas Act gives the Commission no reparation power. Assuming that Transwestern were to be required to keep account of the profits it makes as the result of rates charged Natural on the exchange of gas, the Commission could not force it to turn all or part of those profits over to its California customers at some later date. That would not be a refund of any money that any California customer would have paid. It would be a dividend declared by the Commission to California customers out of Transwestern's profits, and plainly illegal. Therefore, although the Commission may prescribe the form in which interstate pipeline accounts are kept, the accounting demanded here seems futile, and consequently should be denied. Conditioning must have a rational basis.

Transwestern has stated on the record that it would refuse a certificate so conditioned.

Staff argues against California's proposal on the ground that the mere showing that Transwestern would receive excess revenues on an incremental basis is insufficient to justify the suggested condition. Staff points out that California has failed to show that Transwestern's revenues are excessive on a systemwide basis. The Examiner agrees that there has been no such showing. Certainly the proper method of constructing Transwestern's rates and the question whether a particular rate should be related to a single line or to the entire system is a matter that can not be adequately explored within the limited compass of a certificate proceeding under Section 7 of the Act.

For the foregoing reasons the Examiner rejects California's proposal.

Staff proposes that the certificate to be issued to Natural be conditioned to provide that the cost of facilities to be constructed to enable Natural to receive gas from the California Company in the West Cameron Block 17–49 Field Area of Southern Louisiana and also to receive gas in the Indian Basin and Dagger Draw Areas of New Mexico shall not be included in Natural's rate base until

> certificates authorizing the sale of such gas have been issued to, and accepted by, the California Company and producers of gas in the Indian Basin and Dagger Draw Areas who have contracts for the sale of such gas to Natural, and who are able to produce and sell to Natural such gas in volumes aggregating at least 130,000 Mcf of gas per day.

Whether Commission policy requires the pipeline or the producer to be certified first is a matter of some doubt. During oral argument the following colloquy with Staff counsel took place:

> PRESIDING EXAMINER: What has been the Commission's policy on that, Mr. Knight? Which comes first, the chicken or the egg? Does the producer have to have his certificate to sell before the pipeline gets authority to take, or vice versa, or doesn't it matter?
>
> Mr. KNIGHT: I do not know that there has been a policy in that regard. * * *

Apparently the policy is a flexible one depending on the needs of the case. In *The California Company*, 22 FPC 211, 239, the Commission permanently certificated a large sale for future delivery even though the pipeline buyer had no facilities built to receive the gas. Producer certificates have been issued even where there was some question as to the jurisdictional status of some of the related pipeline facilities. *Medina Gathering Corp.*, 30 FPC 227. On the other hand in *E. E. Fogelson*, 31 FPC 476, the Commission refused to issue certificates to producers on the ground that to do so would be to prejudge pending proceedings in the docket in which a pipeline was seeking permission to connect with them. Yet in *Turnbull & Zoch Drilling Co.*, Docket No. G–17960, order issued September 29, 1964, 32 FPC 877 at p. 878, it held that " * * * the *Fogelson* rule as enunciated was not intended to be as broad as the Examiner suggests," and

producer certificates were granted because the pipelines there, unlike the situation in *Fogelson*, were not objecting to the grant of producer certificates and the pending pipeline application was not the subject of a competitive proceeding. Subsequently, *Fogelson* was relied on as the basis for refusing a producer certificate in *First Transportation Gas Corporation, Inc.*, Docket No. CI61-985, order issued November 24, 1964, 32 FPC 1362.

The present question is the mirror image of that presented in those cases. Instead of the question whether producer certificates should issue before the pipeline can take, we have here the question whether pipeline construction should be authorized before the producers are certificated. Staff here is attempting to guard against prejudgment of certain pending producer certificate cases. Staff counsel stated, as part of the colloquy above referred to:

> * * * I thought that condition would protect the Commission against any pressure arising out of the fact that certain facilities might have been constructed, the cost incurred, and then the argument be made that you authorized these facilities and therefore you ought to go ahead and certificate these producers.

There is another consideration not mentioned by the Staff which is probably of greater importance. The Commission may be presumed to be capable of withstanding pressure of the type mentioned and of judging the producer certificates independently of what is done here. But if those certificates are for any reason denied, Natural may have built its facilities to no purpose. In that event the facilities should not automatically become part of Natural's rate base. If Natural wishes to build in the face of the risk that there will be no gas supply, its customers should not have to pay for construction not used and useful.

It is impossible to say now whether producer certificates will be granted. The examiner therefore will direct that the certificate to Natural be issued without prejudice to the determination, in any future case involving Natural's rates, of what part, if any, of the facilities hereby authorized shall be included in the rate base. This provision is fairer than Staff's suggestion that no part be included unless 130,000 Mcf of producer certificates are issued. If, for instance, some lesser amount should be certificated, the construction now proposed may be both used and useful, though not to the extent now planned or hoped for. In such circumstances the Commission in a rate proceeding may be justified in including only part of the original cost in the rate base. Such a determination need not be made now if Natural accepts the risk that it may be made then.

Staff also proposes a condition that

> in the event that the Commission's decision in Phase II of this proceeding * * * results in any of the Phase I facilities not being fully used, a proportionate part of the cost of such facilities will be excluded from Transwestern's rate base and from Natural's rate base until the full capacity of such facilities is needed.

Staff gives no indication in its proposed findings and conclusions as to what is meant by "fully used," or "until the full capacity of such facilities is needed," nor did it do so in the oral argument. The condition is included among Staff's proposed conclusions but finds no basis in any of its proposed findings.

Transwestern has stated on the record that in the event that the final determination of Phase II of this proceeding is adverse to it and its applications in Docket Nos. CP65-208, CP65-236 and CP65-237 are denied, Transwestern will not include the cost of the facilities installed for interim service in its rate base in any rate proceeding until it can prove that the additional capacity supplied by such facilities is needed.

Natural's counsel conceded on oral argument that in a rate proceeding

> * * * anybody can challenge the question of whether or not our facilities are both used and useful, and to the extent they are not they are excluded from the rate base, as I understand my administrative law and the law here before the Commission, but I don't think we should be required to go beyond that, Your Honor. We accept that responsibility that we must always show that all items of our rate base are used and useful in a rate proceeding. This we will do; this we have always done.

The Examiner believes that the grant of a certificate under Section 7 should not be considered decisive of possible future proceedings under Section 5. If it is shown in a rate proceeding that certain property is neither used nor useful it seems reasonable to exclude it from the rate base. In a certificate case like the present one there may be value in incorporating this thought into the certificate. It reduces the chance that in a future rate proceeding a party will point to the certificate to support the claim that the authorized construction must necessarily be a part of the rate base, even though at the time of authorization the possibility existed that the construction would not be useful.

Staff's proposal, however, goes too far in its attempt to govern the course of a possible future rate case. If the certificate is issued without prejudice to a determination of rate-base in any other proceeding, the public will be adequately protected. It is not necessary to determine, in this certificate case, a rate-base question which has not arisen, which may not arise and which calls for no decision at this time. It is sufficient if the Commission has a free hand when and if the time comes, and puts the parties on notice of that fact now.

ADDITIONAL FINDINGS AND CONCLUSIONS

Upon consideration of the record, including the oral arguments of counsel and the proposed findings and conclusions, it is found and concluded with respect to Phase I of these proceedings in addition to the findings and conclusions heretofore stated, that:

(1) The applicants, Natural Gas Pipeline Company of America and Transwestern Pipeline Company, are engaged in the sale of natural gas in interstate commerce for ultimate public consumption, subject to the jurisdiction of this Commission, and each is a "natural-gas company" within the meaning of the Natural Gas Act.

(2) Each applicant is able and willing properly to do the acts and perform the services proposed in their respective applications in Docket Nos. CP65–320, CP65–325 and CP65–169, and to conform to the requirements of the Natural Gas Act and the requirements, rules and regulations of the Commission under that Act.

(3) The construction and operation of the proposed facilities, including storage facilities, and the transportation, sale and exchange of natural gas proposed by the applicants are required by the public convenience and necessity, and certificates therefor should be issued as hereinafter ordered and conditioned.

(4) The rate proposed by Transwestern for service to Natural as a rate for the interim exchange here involved is required by the public convenience and necessity.

(5) The findings and conclusions herein made are without prejudice to any position any participant may desire to take with respect to any of the issues in Phase II of this proceeding.

ORDER

WHEREFORE, *It Is Ordered:*

(A) A certificate of public convenience and necessity is hereby issued to each of the applicants authorizing them to construct and operate the facilities,

including storage facilities, and to transport, exchange and sell natural gas as described in their applications in Docket Nos. CP65–320, CP65–325 and CP65–169, to the extent involved in Phase I of these proceedings, upon the terms and conditions of this order.

(B) In the event that the final determination in the comparative proceedings in Docket No. CP65–1, *et al.*, is adverse to Transwestern, and its applications filed in Docket Nos. CP65–208, CP65–236 and CP65–237 are denied, and additional sales or deliveries from its system have not materialized, Transwestern shall not include the cost of the facilities installed for the interim service in its rate base in any rate increase proceeding until such time as Transwestern can make proof that the additional capacity which such facilities provide is needed.

(C) The authorization issued to Transwestern is without prejudice to the application of Gulf Pacific Pipeline Company in the consolidated proceedings at Docket No. CP63–204, *et al.*

(D) All authorizations herein granted are without prejudice to any future determination, in any Commission proceeding, of what portion, if any, of the facilities herein authorized shall be included in the respective rate bases of the applicants.

(E) Natural shall enrich the gas delivered to Transwestern from reserves in the Indian Basin and Dagger Draw areas in accordance with its letter agreement with the Pacific Lighting Companies dated April 16, 1965 and accepted by them by letter of July 7, 1965.

(F) Transwestern shall guarantee that, subject to the assurances given by Natural, the exchange of gas pursuant to their temporary exchange agreement will not cause the thermal content of gas delivered by Transwestern to California to fall below 1,065 Btu per cubic foot.

(G) The certificates granted hereby and the rights to be exercised thereunder are conditioned upon compliance by the applicants with all applicable regulations of the Commission under the Natural Gas Act and particularly Section 157.20 of those Regulations.

ARTHUR H. FRIBOURG,
Presiding Examiner.

Before Commissioners: L. J. O'Connor, Jr., Acting Chairman; Charles R. Ross and Carl E. Bagge.

KANSAS-COLORADO UTILITIES, INC., DOCKET NO. CP65–418

FINDINGS AND ORDER AFTER STATUTORY HEARING PERMITTING AND APPROVING ABANDONMENT OF FACILITIES AND ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued August 16, 1965)

On June 28, 1965, Kansas-Colorado Utilities, Inc. (Applicant) filed in Docket No. CP65–418 an application pursuant to Sections 7(b) and 7(c) of the Natural Gas Act for permission and approval to abandon certain natural gas facilities and for a certificate of public convenience and necessity authorizing the construction and operation of meter stations and the sale of natural gas on an interruptible basis for resale to Plateau Natural Gas Company (Plateau), parent company of Applicant, all as more fully set forth in the application.

Applicant seeks permission and approval to abandon by transfer to Plateau the facilities serving the so-called Wilcon, Coldwater, Rehm, East Rehm and parts of the Sedan and Romero irrigation systems in Texas and New Mexico,

which facilities were heretofore authorized to be acquired and constructed by Applicant by Commission order issued June 1, 1965, 33 FPC 1142, in Docket No. CP65–55. Plateau will render the natural gas service for irrigation by means of the above facilities in place of Applicant.

The ultimate rates to be charged by Plateau will be the same as those proposed by Applicant in Docket No. CP65–55.

Applicant proposes to construct and operate 16 meter stations in Dallam and Hartley Counties, Texas, and Union County, New Mexico for measurement of the natural gas sold by it to Plateau for resale to irrigation customers. The sale will be made under Applicant's I–1 Rate Schedule, on file with the Commission. Plateau's third year requirements are estimated to be 2,534,609 Mcf.

Total estimated cost of Applicant's proposed construction is $29,480, and will be financed with cash on hand.

Projected third year revenues and expenses indicate that Applicant will realize a 6 percent rate of return on its investment from the proposed sale to Plateau, as compared to 5.63 percent in the original proposal. Thus the project appears feasible.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on August 12, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits thereto, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Kansas-Colorado Utilities, Inc., a Kansas corporation having its principal place of business in Colorado Springs, Colorado, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of October 5, 1953, in Docket No. G–2138 (12 FPC 750).

(2) The proposed construction and operation of facilities and sale of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The proposed construction and operation of facilities and sale of natural gas by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) The proposed abandonment of facilities by Applicant is subject to the provisions of Subsection (b) of Section 7 of the Natural Gas Act.

(6) The proposed abandonment of facilities by Applicant is permitted by the public convenience and necessity, and approval therefor should be granted as hereinafter ordered.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Applicant, Kansas-Colorado Utilities, Inc., authorizing the construction and operation of facilities and sale of natural gas hereinbefore described, as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation, and the sale of natural gas shall be undertaken, as provided by paragraph (b) of Section 157.20 of the aforesaid Regulations, within one year from the date on which this order issues.

(D) Permission for and approval of the abandonment by Applicant of the facilities hereinbefore described, as more fully described in the application in this proceeding, are granted.

(E) Applicant shall advise the Commission of the date of abandonment of said facilities within 10 days thereof.

(F) The interruptible service authorized herein shall be curtailed or interrupted to the extent required to meet existing or future contracted maximum delivery obligations of Applicant for firm service to its customers.

Before Commissioners: L. J. O'Connor, Jr., Acting Chairman; Charles R. Ross and Carl E. Bagge.

THE SUSQUEHANNA POWER COMPANY AND PHILADELPHIA ELECTRIC POWER COMPANY, PROJECT NO. 405; PHILADELPHIA ELECTRIC COMPANY, PROJECT NO. 2355

ORDER FURTHER AMENDING LICENSE FOR PROJECT NO. 405 AND DENYING APPLICATION FOR APPROVAL OF AGREEMENT BETWEEN LICENSEES FOR PROJECT NOS. 405 AND 2355

(Issued August 16, 1965)*

On December 21, 1964, the Susquehanna Power Company and Philadelphia Electric Power Company, joint licensees of Project No. 405 (Conowingo) filed an application for an amendment of the license which would add the following conditions:

(1) The Conowingo Reservoir shall be available to Project No. 2355, Muddy Run, as a source of water and as a lower pool for the period of Muddy Run license;

(2) The operation of the Conowingo Project shall be such as not to affect injuriously the operation of the Muddy Run Project during the period of the Muddy Run license.

Public notice of this application was issued on February 8, 1965. A supplemental application for amendment of the license was filed by Conowingo on May 13, 1965, seeking a modification of Article 27 deleting therefrom the requirement that the Philadelphia Electric Power Company secure Commission approval of any security issue to which it is a party.

At the time of filing its initial application for amendment of its license, Conowingo together with Philadelphia Electric Company, Licensee for Project No. 2355 (Muddy Run) filed an application for the approval of an agreement entered into between themselves on December 16, 1964. This agreement provides in substance for the joint use of the Conowingo Reservoir by the parties for the full term of the Muddy Run license as well as for the installation in Conowingo's powerhouse of equipment designed to operate Muddy Run by remote control.

In support of its initial application for amendment of its license Conowingo refers to the following language in the Commission's Opinion No. 443, dated September 21, 1964 (32 FPC 826) as amended by order issued November 9, 1964, 32 FPC 1288:

> In addition, we shall by Article 15 of the Muddy Run license require Muddy Run to coordinate its operation with that of Conowingo, and by

*See order issued October 5, 1965, granting rehearing for further consideration.

Article 43 require Muddy Run to avoid any action to impair the existing Conowingo operations. Under these circumstances, we do not believe that in order to protect Muddy Run the Conowingo license needs to be modified to add reciprocal articles providing that the licensee thereof will (1) permit the use of its reservoir by Muddy Run, and (2) will not operate Conowingo in a manner inconsistent with the optimum operation of Muddy Run. If, however, the licensees of the Conowingo project were desirous of including additional license terms and conditions to this effect in the license we would not object to the amendment of the Conowingo license to incorporate appropriate terms and conditions.

While the Commission remains amenable to the addition to the Conowingo license of appropriate conditions regarding the use of the Conowingo Reservoir by Muddy Run, the conditions proposed by Conowingo exceed the term of the Conowingo license and to that extent we believe that these conditions are inappropriate.

Conowingo's license expires in 1976; Conowingo seeks to add conditions to be effective until 2014, some 38 years beyond the term of the license. It is fundamental that the terms and conditions of a license may not extend for a period beyond the expiration of its term.

In a letter dated March 30, 1965, the Philadelphia Electric Company, licensee for Muddy Run, cites as a precedent for the requested amendment the Commission's order issued October 12, 1962, in the matter of Alabama Power Company's Jordan Nos. 1 and 2 development, Project Nos. 618 and 2146, respectively (28 FPC 584), and in particular Article 39 of the license for Project No. 618, which reads as follows:

> *Article 39.* In the event that this development is acquired by an entity other than the original licensee, it shall be maintained so as to permit Jordan No. 2 development to be operated in accordance with the provisions of Article 49 of the license for Project No. 2146 and shall be operated on the water made available by and in accordance with the provisions of such Article 49. Any water releases required by Articles 15, 18 or 34 of this license shall be made from water available to the new licensee pursuant to the terms of the aforesaid Article 49.

While Article 39 does not become applicable until Project No. 618 is acquired by some other entity, Article 39 does not purport to remain in effect beyond the license term of Project No. 618.

As we stated in our Opinion No. 443, it is not necessary to amend the Conowingo license in order to permit the use of the Conowingo reservoir by Muddy Run or to insure that Conowingo will not operate its project in a manner inconsistent with the optimum operation of Muddy Run. We believe, however, that the addition of the conditions suggested by Conowingo, limited, of course, to the duration of the Conowingo license, would be appropriate and would call attention to the joint use status of the reservoir at the expiration of the Conowingo license. We think it would also be appropriate at this time to add two standard conditions, relating to coordinated project operations and multiple use of reservoir waters, currently incorporated in licenses issued by the Commission. Accordingly, we shall amend the license for Project No. 405, to include the aforementioned conditions.

In connection with the proposed amendment, we have received letters from the Lancaster County Planning Commission, the Pennsylvania Fish Commission and the Federated Sportsmen of Lancaster County, respectively, urging that the Licensees provide access to the Conowingo reservoir in Pennsylvania for recreational purposes. On June 8, 1965, the Licensees for Conowingo submitted a recreational plan for the Conowingo project which does not include facilities

recommended by those Pennsylvania interests. While we do not intend to pass upon this plan in the instant order we are concerned with the requests of the Pennsylvania interests and shall seek Conowingo's cooperation with regard thereto. In any event, the Commission will give consideration to providing access to the Conowingo reservoir in Pennsylvania in passing upon the recreational plan for the Muddy Run Project.

The agreement for which Conowingo and Muddy Run seek Commission approval purports to transfer property rights. As envisioned by the Commission in its Opinion No. 443, granting license for Muddy Run, the property rights to be transferred are, for example, interests of land in or near the reservoir previously under the exclusive control of Conowingo which would be required by Muddy Run for its intake and powerhouse facilities. The acquisition of such rights by agreement would obviate the necessity of invoking Section 21 of the Act in order to acquire easements or such other land rights as may be necessary for the use of the Conowingo reservoir, including the location of Muddy Run intake facilities therein.

The rights involved in the subject contract, however, are of a different order. One of these is a right granted by Conowingo to Muddy Run to use the Conowingo reservoir for the full term of Muddy Run's license. The Commission provided for the joint use of the Conowingo reservoir by Conowingo and Muddy Run pursuant to its authority under Section 10(a) of the Federal Power Act, as set forth in its Opinion No. 443, making clear the separate identities of the respective projects. For the reasons already expressed we cannot in effect extend the Conowingo license beyond its expiration date.

A further right granted by the proposed agreement for the term of the Muddy Run license would permit the licensee for Muddy Run to install equipment in the Conowingo powerhouse for its operation by remote control from Conowingo and provide for ingress and egress. Recognizing the corporate relationship between the licensees, we believe it would not be contrary to the public interest to have the Muddy Run plant operated by remote control from the Conowingo powerhouse and we would have no objection to the installation of necessary equipment upon Commission approval of plans therefor. While we would likewise not object to an agreement between Muddy Run and Conowingo providing for such an installation for the term of the Conowingo license, as indicated in Opinion No. 443, the Commission is given no authority to approve agreements which might impair the rights of successors to the Licensee. Notwithstanding that the agreement might well be adhered to by a future operator of Conowingo, the Commission is not disposed to approve such an agreement which extends beyond Conowingo's license term.

The agreement also provides for reimbursement to Conowingo by the Licensee for Muddy Run for damages during construction of Muddy Run. It should be noted that Section 10(c) of the Federal Power Act imposes a liability upon a Licensee for all damages occasioned to the property of others as a result of construction. In any case, an agreement covering this subject does not require our approval.

Conowingo in its supplemental application for amendment seeks the deletion of subparagraph (b) of Article 27 which requires that Philadelphia Electric Power Company obtain approval of the Commission for the issuance of securities. The requested deletion is consonant with suggestions made by the Commission in letters to Licensee dated February 26, 1946 and March 19, 1965, respectively.

The Article 27(b) requirement of the license was necessary when the license was issued in 1926 because the State of Pennsylvania had no jurisdiction over the issuance of securities by Licensee. Since that time, however, jurisdiction

to regulate the issuance of securities by utilities operating within the State of Pennsylvania was conferred upon the Pennsylvania Public Utility Commission in 1937 and thus subparagraph (b) of Article 27 is no longer applicable.

Subparagraph (a) of Article 27 of the license requires the Susquehanna Power Company to secure approval of its security issues from the Public Service Commission of Maryland. The provisions of Section 204(f), enacted as part of the Federal Power Act in 1935, exempts from approval by this Commission the issuance of securities of a public utility organized and operating in a State under the laws of which its security issues are regulated by State commission. Since Susquehanna is required by State law to obtain the approval of the Maryland Commission in connection with security issues, the retention of subparagraph (a) of Article 27 is not necessary. We shall therefore delete Article 27 in its entirety.

The Commission finds:

(1) It is consistent with the public interest that the license for Project No. 405 be further amended as hereinafter provided.

(2) Approval of the agreement between Licensees for Conowingo and Muddy Run covering a period extending beyond the term of Conowingo's license is inconsistent with the provisions of the Federal Power Act.

The Commission orders:

(A) The license for Project No. 405 is hereby amended by deleting therefrom Article 27 and adding thereto the following articles:

(1) *Article 36:* The Conowingo Reservoir shall be available to Project No. 2355, Muddy Run, as a source of water and as a lower pool.

(2) *Article 37:* The operation of the Conowingo Project shall be such as not to affect injuriously the operation of Project No. 2355, Muddy Run.

(3) *Article 38:* The Licensee shall, after notice and opportunity for hearing coordinate the operation of the project, electrically and hydraulically, with such other power systems and in such manner as the Commission may direct in the interest of power and other beneficial public uses of water resources, and on such conditions concerning the equitable sharing of benefits by the Licensee as the Commission may order.

(4) *Article 39:* On the application of any person, association, corporation, Federal agency, State or municipality, the Licensee shall, after notice and opportunity for hearing, permit such reasonable use of its reservoirs or other project works or parts thereof as may be ordered by the Commission in the interest of comprehensive development of the waterway or waterways involved and the conservation and utilization of water resources of the region for water supply, for steam-electric, irrigation, industrial, municipal or similar purposes, consistent with the primary objective of the project. The Licensee shall receive such reasonable compensation as may be appropriate for use of its reservoirs or other project works or parts thereof for such purposes, any such compensation to be fixed either by Commission approval of an agreement between the Licensee and the party or parties benefiting or by the Commission, in the event the parties are unable to agree. Applications shall contain information in sufficient detail to afford a full understanding of the proposed use, including satisfactory evidence that the applicant possesses necessary water rights pursuant to applicable State law, or a showing of cause why such evidence cannot be submitted, and a statement as to the relationship of the proposed use to any State or municipal plans or orders which may have been adopted with respect to the use of such waters.

(B) The application for approval of the aforesaid agreement between Conowingo and Muddy Run be and is hereby denied.

(C) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license amendment. In acknowledgment of the acceptance of this license amendment, it shall be signed for the Licensees and returned to the Commission within 60 days from the date of issuance of this order.

(D) This amendment in the manner set out above shall not operate to alter or amend the license in any other respect, and shall not in any way constitute a waiver of any other part, provision or condition of the license.

Before Commissioners: L. J. O'Connor, Jr., Acting Chairman; Charles R. Ross and Carl E. Bagge.

EL PASO NATURAL GAS COMPANY, DOCKET NO. CP65-408

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued August 17, 1965)

On June 18, 1965, El Paso Natural Gas Company (Applicant) filed in Docket No. CP65-408 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of approximately 4.9 miles of 12¾-inch pipeline and modification of existing facilities in its Newman Power Plant Meter Station, so as to provide for the continued direct sale and delivery of natural gas by Applicant to El Paso Electric Company (Electric Company) for electric power generation in its Newman Power Plant at a delivery pressure of not more than 100 psig without the necessity for reduction from main line pressure of 800 psig in its California Mainline System, all as more fully set forth in the application.

Applicant proposes to construct and operate approximately 4.9 miles of 12¾-inch pipeline and necessary appurtenances adjacent to and parallel with its California Mainline System, extending from a point of connection with its El Paso Mainline System to a point of connection with its 10¾-inch lateral extending from the California Mainline System to the Newman Power Plant of El Paso Electric Company; and to make modifications in its existing Newman Power Plant Meter Station. The proposed facilities will assertedly enable Applicant to effect savings in fuel requirements of its El Paso Compressor Station, provide the means for periodically shutting-down its No. 3 Compressor Station, and continue the delivery of natural gas to El Paso Electric Company's New Plant.

The estimated cost of the proposed construction is $184,000, which will be defrayed from currently available working funds.

After due notice no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on August 12, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, El Paso Natural Gas Company, a Delaware corporation having its principal place of business in El Paso, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of October 29, 1942, in Docket Nos. G-242 and G-257 (3 FPC 851).

(2) The proposed construction and operation of facilities, as hereinbefore described, and as more fully described in the application and exhibits in this proceeding are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed construction and operation of facilities is required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon El Paso's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to the Applicant, El Paso Natural Gas Company, in this proceeding authorizing the construction and operation of facilities, all as more fully described in the application and exhibits herein, subject to the jurisdiction of the Commission, upon the terms and conditions of this order.

(B) The certificates issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(C) The facilities authorized to be constructed and operated by Applicant shall be completed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the aforesaid Regulations within six months of the date on which this order issues.

(D) The certificate issued by paragraph (A) above shall not be construed as authorization for an increase in maximum deliveries.

Before Commissioners: L. J. O'Connor, Jr., Acting Chairman; Charles R. Ross and Carl E. Bagge.

EQUITABLE GAS COMPANY, DOCKET NO. CP62-186

ORDER FURTHER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued August 17, 1965)

On June 8, 1965, Equitable Gas Company (Petitioner) filed in Docket No. CP62-186 a petition, as supplemented on June 9, 1965, for a further extension of time in which to complete construction and place in operation certain natural gas transportation facilities authorized in said docket by order issued June 29, 1962, 27 FPC 1381, all as more fully set forth in the petition as supplemented.

By the order of June 29, 1962, the Commission issued to Petitioner a certificate of public convenience and necessity authorizing the construction and operation of certain facilities for the operation of the proposed Mobley Storage Field in Wetzel County, West Virginia. As part of the proposed project Petitioner was authorized to construct and operate 9 miles of 12-inch pipeline extending

from its Logansport Storage Pool to its then-existing transmission system. All facilities were required to be constructed and placed in actual operation within two years. By order issued June 26, 1964, 31 FPC 1589, that time was extended for one year so that Petitioner could complete collection of geological data with respect to the Mobley Storage Field.

Operation of the storage field and study of available data has indicated to Petitioner that the capacity of the storage reservoir may be greater than was anticipated prior to commencement of operations. Accordingly, Petitioner considers it advisable to gather additional geological data and delay construction of the pipeline pending a more positive determination of the capacity of the pool since such a determination could have an effect upon the size and location of the line. Petitioner requests a further extension of time until June 29, 1967, in which to complete construction and place the line in actual operation.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the order issuing a certificate of public convenience and necessity to Petitioner should be further amended by extending the time in which to complete construction and place in actual operation facilities authorized by said order.

The Commission orders:

The order issuing a certificate of public convenience and necessity to Petitioner is further amended by extending the time in which to complete construction and place in actual operation facilities authorized therein to and including June 29, 1967, and all other respects said order shall remain in full force and effect.

Before Commissioners: L. J. O'Connor, Jr., Acting Chairman; Charles R. Ross and Carl E. Bagge.

MONONGAHELA POWER COMPANY, PROJECT NO. 2477

ORDER ISSUING PRELIMINARY PERMIT

(Issued August 17, 1965)

Application was filed on June 22, 1964, by Monongahela Power Company (Applicant) of Fairmont, West Virginia, for a preliminary permit under Section 4(f) of the Federal Power Act (Act) for proposed Project No. 2477, a pumped storage hydroelectric plant, to be known as the Rowlesburg Pumped Storage Hydroelectric Project, to be located on Cheat River, in Preston County, West Virginia, near the Town of Rowlesburg.

As described in the application, the proposed project will consist of: a high level off-stream "Upper Reservoir", at elevation 2,307 feet, with capacity of 6,000 acre feet (located approximately two miles west of the Rowlesburg Reservoir proposed for construction by the U.S. Corps of Engineers) created by constructing dams or dykes across Buckhorn Run and a saddle dam about one mile to the east; intake structure at elevation 1,425 feet about 2,000 feet upstream from the dam on the left bank of the proposed Rowlesburg Reservoir which would serve as the lower pool; power tunnel about 2,500 feet long to a pump-generator station; power tunnel about 8,000 feet long from pump-generator station to Upper Reservoir; tailrace from pump-generator station to point on Cheat River, approximately 2 miles downstream from the Rowlesburg Dam switchyard; access roads; and other necessary appurtenances. Power generated

by the project will be used for peaking purposes in Applicant's existing transmission and distribution system.

In support of its application, Applicant has outlined the work and studies and the estimated cost of same to be undertaken under the permit, if issued. Economic and engineering studies, estimated to cost $38,000, would be made to determine the feasibility of enlargement of the power installation, location of the power station, necessity for and/or desirability of a reregulating reservoir, location of upper reservoir and alternative methods of constructing waterways, together with miscellaneous studies. In addition, Applicant advises that geological exploration undertaken to date by the U.S. Corps of Engineers for its dam on Cheat River does not furnish information to determine the feasibility of a pumped-storage reservoir and that geological exploration, including test pits, core drilling, boring and laboratory tests to determine foundation conditions of the upper dam and reservoir and properties of construction materials would be made by Applicant at an estimated additional cost of $100,000. Applicant proposes to make legal studies, at an estimated cost of $25,000, relating to contractual relations between Applicant and the Corps in connection with Applicant's use of a Government dam. Development of recreation plans is estimated by Applicant to cost $2,500. Finally, Applicant advises that if the studies outlined above show the project to be economically feasible, Applicant estimates that preparation of design drawings required to prepare and file an application for license would cost an estimated $20,000 and that preparation of plans for the acquisition of necessary lands and property rights would cost an estimated $8,000. Based upon the above information, it appears necessary that Applicant must make further economic and engineering studies under a permit, if issued, and the preparation of an application for license at a total cost estimated by Applicant to be $193,500 before an application for license can be filed. This includes an estimated expenditure of $165,500 for studies and investigations above and beyond those made by the Corps in its review study on the Rowlesburg Reservoir.

The Department of the Army and the Chief of Engineers have advised that the results of the Corps' Cheat River review study, which includes the Rowlesburg Reservoir, will be included in a report to be submitted to the Congress, and that the latter report, which will be submitted to Federal and State agencies for comment, will present a comprehensive plan for the development of the water resources of the Cheat River including the multiple purpose Rowlesburg Reservoir, and the report will consider the feasibility of hydroelectric power development, and conventional and pumped storage at the Rowlesburg site. The Corps recommended that any preliminary permit for Project No. 2477 should provide that Applicant coordinate its studies with those of the District Engineer in the interest of a comprehensive development at the Rowlesburg site.

The Department of the Interior, in commenting on the application, referred to the U.S. Corps of Engineers' pending Cheat River report to the Congress and requested that we dismiss, or defer Commission action on, the application for preliminary permit for Project No. 2477 until the Congress has had an opportunity to consider and act upon the Corps' recommendations. While the Department stated that Project No. 2477 is not expected to affect adversely the development of fishery resources in the proposed Rowlesburg Reservoir and wildlife resources are not expected to be affected significantly, the Department recommended the inclusion in any preliminary permit for the project a special condition for the purpose of planning and designing adequate conservation methods: (1) to prevent the loss or damage to existing fish and wildlife resources: (2) to mitigate and compensate for the loss of or damage to such resources; and (3) to develop and improve such resources where practicable, all as provided for in Article 10 herein.

The Department of Health, Education, and Welfare has advised, among other things, that judgment of water quality aspects of the pumped storage project cannot be made at this time due to lack of information on the project and lack of technical data related to similar projects. The Department states that a detailed study of these factors should be made prior to issuance of a license for the project.

Applicant requests a preliminary permit for a period of 36 months. It appears appropriate, however, that the initial period of the permit should be 24 months as hereinafter provided.

No construction is authorized under a preliminary permit. Such a permit gives the permittee, during the period of the permit, the right of priority of application for license over other non-federal applicants while the permittee undertakes the necessary studies and examinations required by Section 9 of the Federal Power Act in order to determine the economic feasibility of the proposed project, the means of securing the necessary financial arrangements for construction, the market for power, and all other information necessary for inclusion in an application for license, should one be applied for under the permit. A license would authorize construction of a project.

The issuance of a preliminary permit for Project No. 2477 as hereinafter provided shall not in any way be construed as precluding the exercise of Commission action contemplated under the provisions of Section 7(b) of the Federal Power Act.

The Commission finds:

(1) Applicant is a corporation organized under the laws of the State of West Virginia.

(2) Public notice of the filing of the application has been given as required by the Act. No protests have been filed. No conflicting application is before the Commission.

(3) The proposed project will affect a Government dam.

The Commission orders:

(A) This preliminary permit is hereby issued to Monongahela Power Company (Permittee) for a period of 24 months, effective as of August 1, 1965, subject to the terms and conditions of the Act, which is incorporated by reference as a part of this license, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act, for the sole purpose of maintaining priority of application for license for Project No. 2477, to be located on the Cheat River in Preston County, West Virginia, and which will affect the Rowlesburg Reservoir proposed for construction by U.S. Corps of Engineers.

(B) This permit is also subject to the terms and conditions set forth in Form P–1, entitled, "Terms and Conditions of Preliminary Permit" (16 FPC 1303–1305), which terms and conditions, designated as Articles 1 through 8, are attached hereto and made a part hereof; and further subject to the following special conditions set forth herein as additional articles:

Article 9. The Permittee shall submit at the close of each six-month period from the effective date of this permit to the Regional Engineer, Federal Power Commission, New York, New York, having supervision over the project, or to such other officer as the Commission may designate, accurate statements of the work accomplished during the period and of the work contemplated under this permit for the ensuing period.

Article 10. The Permittee shall, during the period of project planning, cooperate with the U.S. Fish and Wildlife Service, the West Virginia Department of Natural Resources, and the U.S. Army Corps of Engineers for the purpose of planning and designing adequate conservation measures: (1) to prevent the loss

or damage to existing fish and wildlife resources; (2) to mitigate and compensate for the loss of or damage to these resources; and (3) to develop and improve these resources where practicable.

Article 11. The Permittee shall, during the early period of project planning, consult with Federal, State, and local agencies having an interest in outdoor recreation on project lands and waters, in the preparation of an "Exhibit R" required for the filing of an application for license pursuant to Section 4.41 of the Commission's Regulations under the Federal Power Act.

Article 12. The Permittee shall, for the purpose of assuring the cooperation required by the terms of the permit, designate a liaison officer to act for the Permittee in keeping the several agencies specified in this permit currently informed, and such liaison officer shall communicate with such agencies within 60 days from the date of issuance of this permit.

Article 13. The Permittee shall, during the period of project planning under the permit, coordinate its studies with those of the District Engineer, U.S. Army Engineer District, Pittsburgh, Pennsylvania, in order that construction and operating methods may be developed so that the Permittee's proposed project will not interfere with the comprehensive development of the Rowlesburg Reservoir site.

(C) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this preliminary permit. In acknowledgment of the acceptance of this preliminary permit, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: L. J. O'Connor, Jr., Acting Chairman; Charles R. Ross and Carl E. Bagge.

NATURAL GAS PIPELINE COMPANY OF AMERICA, DOCKET NO. CP65-409

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued August 17, 1965)

On June 21, 1965, Natural Gas Pipeline Company of America filed in Docket No. CP65-409 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of seven injection-withdrawal wells and approximately 2.25 miles of 12-inch and 16-inch pipeline and appurtenances to be installed at its existing Herscher Storage Area, all as more fully set forth in the application.

The proposed facilities to be used in the operation of Applicant's Herscher Mt. Simon Reservoir will improve the operating efficiency of the reservoir at present levels of authorized peak day withdrawal.

The estimated cost of the proposed facilities is $835,000, which will be defrayed from funds on hand.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on August 12, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorization, and upon consideration of the record,

The Commission finds:

(1) Applicant, Natural Gas Pipeline Company of America, a Delaware corporation having its principal place of business in Chicago, Illinois, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of November 7, 1958, in Docket No. G–9966 (20 FPC 694).

(2) The proposed construction and operation of facilities, by Applicant as hereinbefore described, and as more fully described in the application and exhibits in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed construction and operation of facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act, and requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to the Applicant in this proceeding authorizing the construction and operation of facilities as more fully described in the application and exhibits in this proceeding, subject to the jurisdiction of the Commission, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities authorized shall be completed and in actual operation, as provided by paragraph (b) of Section 157.20 of the aforesaid Regulations within 12 months of the date on which this order issues.

Before Commissioners: L. J. O'Connor, Jr., Acting Chairman; Charles R. Ross and Carl E. Bagge.

TEXAS GAS TRANSMISSION CORPORATION, DOCKET NO. CP65–185 AND LAWRENCEBURG GAS TRANSMISSION CORPORATION, DOCKET NO. CP65–186

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND PERMITTING AND APPROVING ABANDONMENT

(Issued August 17, 1965)

On December 22, 1964, Lawrenceburg Gas Transmission Corporation (Transmission) filed in Docket No. CP65–186 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction, acquisition and operation of certain natural gas

facilities and the sale and delivery of natural gas, on a firm basis, to Lawrenceburg Gas Company (Lawrenceburg Gas) for resale and, on an interruptible basis, to Cincinnati Gas & Electric Company (Cincinnati)[1] for resale, all as more fully set forth in the application in Docket No. CP65–186.

Specifically, Transmission proposes (1) to acquire from Lawrenceburg Gas and operate the regulating facilities located at one of the two existing taps on Texas Gas Transmission Corporation's (Texas Gas) 26-inch transmission line in Dearborn County, Indiana, through which Texas Gas now serves Lawrenceburg Gas at wholesale, the regulating facilities at the second such tap already being the property of Transmission; (2) to construct and operate automatic flow control facilities at the taps described above for the control of deliveries by Transmission to Lawrenceburg Gas and Cincinnati, and, (3) to construct and operate approximately two miles of 8-inch transmission line from Transmission's existing facilities in Dearborn County, Indiana, extending eastwardly to a point in Hamilton County, Ohio, and a measuring and regulating station at the end of such line, for the purpose of making the proposed interruptible deliveries to Cincinnati. Transmission will operate such facilities, together with its other existing facilities, to sell and deliver natural gas to Lawrenceburg Gas at a contract demand of 10,500 Mcf per day until November 1, 1965, and at a contract demand of 11,000 Mcf per day thereafter, and to sell and deliver natural gas, on an interruptible basis, to Cincinnati. Transmission estimates deliveries to Cincinnati to be 1,600,000 Mcf annually.

Transmission presently transports gas within the State of Indiana for Lawrenceburg Gas which gas the latter purchases from Texas Gas under Texas Gas' FPC Gas Rate Schedule G–4. Lawrenceburg Gas distributes such gas in the Cities of Lawrenceburg and Greendale, Indiana, and environs, and also sells gas to Transmission for resale to the city of Aurora, Indiana. The contract demand of Texas Gas for Lawrenceburg Gas is presently 10,500 Mcf; such contract demand increases to 11,000 Mcf beginning November 1, 1965.[2] Under the subject proposal, Transmission, in effect, will be substituted for Lawrenceburg Gas as purchaser from Texas Gas and will enter into a new service agreement under Texas Gas' FPC Gas Rate Schedule CD–4 and will purchase the same contract demand volumes to which Lawrenceburg Gas is presently entitled. The interruptible volumes proposed to be sold to Cincinnati will be a portion of the gas supply presently available to, but not fully utilized by, Lawrenceburg Gas; only gas in excess of the requirements of Lawrenceburg Gas will be made available to Cincinnati. In addition to continuing service to Greendale and Lawrenceburg, Lawrenceburg Gas will provide the service which Transmission is presently rendering to Aurora.

The application indicates that the proposal will result in savings to Lawrenceburg Gas and Transmission since, as a result of the interruptible sale to Cincinnati, average daily purchases from Texas Gas will be increased from approximately 50 percent of contract demand to approximately 100 percent of contract demand thereby reducing the average unit cost of gas. Further, the connection of the facilities of Transmission with those of Cincinnati will provide another source of supply for Cincinnati in the western part of its service area, at a point, Transmission states, where Cincinnati needs additional supplies of gas.

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[1] Cincinnati is the parent company of both Transmission and Lawrenceburg Gas.

[2] These contract demand volumes were authorized by Commission order issued May 26, 1964, in Docket No. CP64–107 (31 FPC 1292).

Transmission, Lawrenceburg Gas, Texas Gas and Cincinnati have entered into an agreement, dated December 10, 1964, providing for the subject proposals.

The application indicates that the facilities to be acquired will be transferred from Lawrenceburg Gas to Transmission at original cost less depreciation. The estimated cost of the facilities to be constructed is $79,550, which cost will be financed with cash on hand.

On December 22, 1964, Texas Gas filed in Docket No. CP65–185 an application pursuant to Sections 7(b) and 7(c) of the Natural Gas Act for authority to abandon the sale of natural gas to Lawrenceburg Gas and for a certificate of public convenience and necessity authorizing the sale and delivery of natural gas to Transmission all as hereinabove described and as more fully set forth in the application in Docket No. CP65–185.

Texas Gas states that no increase in maximum daily delivery obligation above that already authorized for Lawrenceburg Gas is involved and that no new facilities are required by Texas Gas under the subject proposal. Further, no new rates or changes in the rates of Texas Gas are proposed.

On February 8, 1965, Kentucky Gas Transmission Corporation and The Ohio Fuel Gas Company filed a joint petition to intervene in Docket No. CP65–186; however, on May 18, 1965, said joint petition was withdrawn.

After due notice, no other petition to intervene, notice of intervention or protest to the granting of the applications has been filed.

At a hearing held on August 12, 1965, the Commission on its own motion received and made a part of the record in these proceedings all evidence, including the applications and exhibits submitted in support of the authorizations sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Texas Gas Transmission Corporation, a Delaware corporation having its principal place of business in Owensboro, Kentucky, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of March 30, 1949, in Docket No. G–859 (8 FPC 190).

(2) Applicant, Lawrenceburg Gas Transmission Corporation, an Indiana corporation having its principal place of business in Lawrenceburg, Indiana, upon completion of the construction and acquisition of the facilities and the commencement of operation thereof for which authorization is requested in Docket No. CP65–186, will be engaged in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and will be, therefore, a "natural-gas company" within the meaning of the Natural Gas Act.

(3) The facilities hereinbefore described, as more fully described in the application in Docket No. CP65–186, are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction, acquisition and operation thereof and the proposed transportation and sales of natural gas by Transmission are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(4) The proposed sale of natural gas hereinbefore described, as more fully described in the application in Docket No. CP65–185, will be in interstate commerce, subject to the jurisdiction of the Commission, and such sale by Texas Gas is subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(5) The proposed construction, acquisition and operation of the subject facilities by Transmission and the proposed transportation and sales of natural gas by

Transmission and Texas Gas are required by the public convenience and necessity and certificates therefor should be issued as hereinafter ordered and conditioned.

(6) The sale of natural gas to be abandoned by Texas Gas, as hereinbefore described, is subject to the jurisdiction of the Commission and the abandonment of such sale is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(7)) Such abandonment by Texas Gas, as hereinbefore described, is permitted by the public convenience and necessity and an order authorizing and approving same should be issued as hereinafter ordered.

(8) Applicants are able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(9) Public convenience and necessity require that the certificates issued hereinafter and the rights granted thereunder be conditioned upon Applicants' compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4), (d)(2), (d)(3) and (e) with respect to Transmission and in paragraphs (a), (b), (c)(3) and (e) with respect to Texas Gas, of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is issued authorizing Applicant, Texas Gas Transmission Corporation, to sell and deliver natural gas, as hereinbefore described, all as more fully described in the application in Docket No. CP65–185, upon the terms and conditions of this order.

(B) A certificate of public convenience and necessity is issued authorizing Applicant, Lawrenceburg Gas Transmission Corporation, to construct, acquire and operate the subject facilities and to sell and deliver natural gas, as hereinbefore described, all as more fully described in the application in Docket No. CP65–186, upon the terms and conditions of this order.

(C) The certificates issued by paragraphs (A) and (B) above and the rights granted thereunder are conditioned upon Applicants' compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4), (d)(2), (d)(3) and (e) with respect to Transmission and in paragraphs (a), (b), (c)(3) and (e) with respect to Texas Gas, of Section 157.20 of such Regulations.

(D) The facilities authorized to be acquired, constructed and operated by Transmission shall be acquired, constructed and placed in actual operation and the proposed sales and delivery of natural gas authorized in paragraphs (A) and (B) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act within 6 months from the date on which this order issues.

(E) The certificate issued by paragraph (B) above is granted on the express condition that the interruptible service authorized thereby shall be curtailed or interrupted to the extent required to meet existing or future contracted maximum delivery obligations of Transmission for firm service to its customers.

(F) The certificate issued by paragraph (B) is granted on the express condition that Transmission file a tariff that is acceptable to the Commission.

(G) Permission for and approval of the abandonment by Texas Gas of the sale of natural gas hereinbefore described, all as more fully described in the application in Docket No. CP65–185, is granted.

(H) Texas Gas shall advise the Commission of the date of said abandonment within 10 days of the date thereof.

Before Commissioners: L. J. O'Connor, Jr., Acting Chairman; Charles R. Ross and Carl E. Bagge.

UNITED GAS PIPE LINE COMPANY, DOCKET NO CP65-413

FINDINGS AND ORDER AFTER STATUTORY HEARING PERMITTING AND APPROVING ABANDONMENT

(Issued August 17, 1965)

On June 23, 1965, United Gas Pipe Line Company (Applicant) filed in Docket No. CP65-413 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon certain natural gas facilities, all as more fully set forth in the application.

Applicant proposes to abandon the following described facilities which were used to serve the customers indicated: (1) Scurlock Oil Company Bean (Fowler) Pump Station consisting of a positive meter and regulator station located in Claiborne Parish, Louisiana, (2) Pittsburgh Plate Glass Company Chemical Division consisting of approximately 0.3 mile of 2-inch line and positive meter and regulator station located in Santa Rosa County, Florida, (3) Service Pipe Line Company Willis Smith Pump Station consisting of a positive meter station located in Gregg County, Texas, and, (4) Bluff Creek Industries consisting of a positive meter, regulator and 25 feet of 2-inch pipe located in Jackson County, Mississippi.

Applicant states that the respective service agreements with its customers have been cancelled by mutual agreement and the facilities are no longer required. Applicant states that service to its remaining customers will not be affected.

After due notice, no petition to intervene, notice of intervention, or protest to the granting of the application has been filed.

At a hearing held on August 12, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought, and upon consideration of the record,

The Commission finds:

(1) Applicant, United Gas Pipe Line Company, a Delaware corporation having its principal place of business in Shreveport, Louisiana is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in the order issued November 10, 1942, in Docket No. G-232 (3 FPC 863).

(2) The facilities proposed to be abandoned, as hereinbefore described and as more fully described in the application herein, are used in the transportation of natural gas in interstate commerce subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(3) The proposed abandonment of the aforesaid facilities is permitted by the public convenience and necessity and approval thereof should be granted as hereinafter ordered.

The Commission orders:

(A) Permission for and approval of the abandonment of the facilities hereinbefore described, as more fully described in the application in this proceeding, are granted to Applicant, United Gas Pipe Line Company.

(B) Applicant shall advise the Commission of the date of abandonment of the facilities as authorized in paragraph (A) above within 10 days of such abandonment.

Before Commissioners: L. J. O'Connor, Jr., Acting Chairman; Charles R. Ross and Carl E. Bagge.

DELTA NATURAL GAS COMPANY, INC. AND TENNESSEE GAS TRANSMISSION COMPANY, DOCKET NO. CP65-390

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued August 18, 1965)

On June 7, 1965, Delta Natural Gas Company, Inc. (Applicant), filed in Docket No. CP65-390 an application together with a supplement thereto on June 28, 1965, pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Tennessee Gas Transmission Company (Respondent) to establish physical connection of its natural gas transmission facilities with the facilities proposed to be constructed by Applicant, and to sell and deliver natural gas to Applicant for resale and distribution in the unincorporated town of Jeffersonville, Montgomery County, Kentucky, and environs, all as more fully set forth in the application.

Applicant proposes to construct and operate a distribution system in Jeffersonville, Kentucky, and environs thereof. The requested point of interconnection with the system of the Respondent is within the limits of Applicant's service area, and no transmission facilities are necessary. Applicant's natural gas requirements for the requested service are estimated as follows:

	First year	Second year	Third year
Annual (Mcf)	15,770	17,330	19,020
Peak day (Mcf)	184	203	223

The total cost of Applicant's proposed construction is estimated at $35,887, and will be defrayed from Applicant's current operations. The supplementary data filed on June 28, 1965, together with the data reflected in the application indicate the proposals with reference to Jeffersonville are economically feasible.

On June 21, 1965, Respondent filed an answer to the application in the proceeding stating it does not oppose the granting of the application and can render the requested service without impairment of existing service to its current customers.

The Kentucky Public Service Commission has approved the pending application proposals of the Applicant made in the instant application.

Due notice of the filing of the subject application and opportunity for hearing thereon have been given by publication in the Federal Register on June 17, 1965 (30 F.R. 7849). No protest, petition to intervene, notice of intervention or request for hearing has been filed in this proceeding.

The Commission finds:

(1) Tennessee Gas Transmission Company, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order issued July 15, 1965, in Docket No. G-910 (6 FPC 777).

(2) Applicant, Delta Natural Gas Company, Inc., having its principal place of business in Winchester, Kentucky, is legally authorized to engage in the local distribution of natural gas to the public within the meaning of Section 7(a) of the Natural Gas Act.

(3) It is necessary and desirable in the public interest to direct Respondent to establish physical connection of its transmission facilities with the facilities proposed to be constructed and operated by Applicant, and to sell and deliver to Applicant under a service agreement to be executed by Applicant with Respondent in accordance with the Commission's Regulations, up to 223 Mcf per day of natural gas for distribution and resale as hereinbefore described and as more fully described in the application in this proceeding.

(4) Applicant should be prepared to receive natural gas from Respondent for distribution in Jeffersonville, Kentucky and environs, within one year from the date of the issuance of this order.

(5) The requirement that Respondent serve Applicant, as requested, will not place an undue burden upon it nor impair its ability to render adequate service to its existing customers.

The Commission orders:

(A) Tennessee Gas Transmission Company, Respondent, is directed to establish physical connection of its facilities with the facilities proposed to be constructed and operated by Applicant, as herein described, and to sell and deliver up to 223 Mcf of natural gas daily to Applicant under a service agreement to be executed by Applicant with Respondent in accordance with the Commission's Regulations, for distribution and resale as hereinbefore described and as more fully described in the application in this proceeding. Such service shall be rendered pursuant to Tennessee's presently filed appropriate rate schedule.

(B) Respondent shall report to the Commission in writing the date of commencement of service to Applicant within 10 days thereof.

(C) Applicant shall be prepared to receive service as directed herein within one year from the date of issuance of this order.

Before Commissioners: L. J. O'Connor, Jr., Acting Chairman; Charles R. Ross and Carl E. Bagge.

FIRST TRANSPORTATION GAS CORPORATION, INC., DOCKET NO. CI61-985

ORDER DENYING MOTION REQUESTING IMMEDIATE HEARING AND ISSUANCE OF A PERMANENT CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued August 18, 1965)

The First Transportation Gas Corporation, Inc. (First Transportation) on June 24, 1965, filed a motion requesting immediate hearing and issuance of a permanent certificate of public convenience and necessity in Docket No. CI61-985 authorizing the sale of natural gas to Transwestern Pipeline Company (Transwestern) from certain leases in Lipscomb and Ochiltree Counties, Texas and Beaver, Harper, Ellis and Woodward Counties, Oklahoma. By letter dated February 2, 1961, the Commission granted a conditioned temporary authorization to First Transportation, which was accepted, to make the requested sale at an initial price of 17.0 cents per Mcf at 14.65 psia. On July 2, 1965, Transwestern filed an answer in opposition to the motion of First Transportation.

Most of the Transwestern facilities which receive and transport the First Transportation gas are pending permanent certification in the consolidated proceedings in Transwestern Pipeline Company, *et al.*, Docket No. G-20464, *et al.* As we pointed out in our previous order issued November 24, 1964, 32 FPC 1362, in this docket denying First Transportation's motion for permanent certificate, to

grant the producers permanent certificates before the pipeline facilities are themselves permanently certificated would be prejudging the proceedings in Docket No. G–20464, *et al.* First Transportation contends that the examiner in his decision in Docket No. G–20464, *et al.*, *infra*, p. 668, found that the facilities of Transwestern which receives First Transportation's gas (as well as gas from certain other producers) are "used and required" exclusive of Transwestern's proposed sale to Cities Service Gas Company in the consolidated proceedings. First Transportation therefore maintains that these facilities are separable and should not await the determination of the competitive aspects but should be certificated immediately. However, even though the facilities in question may be used and required exclusive of the sales to Cities Service, it is contended in the consolidation proceedings that they will also be used in conjunction with the proposed sale to Cities Service. Obviously, these facilities may directly affect Transwestern's operations with or without the proposed sale to Cities Service and should be considered in relation thereto. In addition, since the proceedings in Docket No. G–20464, *et al.* involve competitive proposals, we believe any action with respect to any individual dockets therein should await our final decision in the consolidated proceedings which are presently pending before the Commission. First Transportation can continue to make the sale as temporarily authorized but any action on its permanent certificate must await the outcome in the consolidated proceedings in Docket No. G–20464, *et al.*

The Commission orders:

For the foregoing reason the motion of First Transportation for immediate hearing and issuance of a permanent certificate of public convenience and necessity in Docket No. CI61–985 is hereby denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

VILLAGE OF GRESHAM, WISCONSIN, PROJECT NO. 2464

ORDER DENYING APPLICATION FOR REHEARING

(Issued August 18, 1965)

On August 3, 1965, Intervenors, Jack Brown, Harry Schmidt and Charles Brown, filed an application for rehearing with respect to our Opinion No. 466, issued July 13, 1965, 34 FPC 33, in which we granted the application of the Village of Gresham, Wisconsin, for license to construct Project No. 2464, consisting of the Weed Dam, and powerhouse on the Red River in Wisconsin approximately a mile downstream from the Village.

The application for rehearing states that further temperature tests and tests of sewage affluent are now available, and also urges reconsideration of the effects the proposed project will have on fluctuation of flows in the Red River below the dam.

These issues, as well as other material issues referred to in the application for rehearing, have been thoroughly considered in our decision of July 13, 1965, and the new evidence which has become available since the hearing record was closed does not appear to be substantially different from that considered in the record. After careful reconsideration of the matters raised, we adhere to our decision issued July 13, 1965. The application for rehearing will be denied.

The Commission orders:

The application for rehearing of Opinion No. 466 is denied.

Chairman Swidler and Commissioner Ross *dissenting.*

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., David S. Black and Carl E. Bagge.

CENTRAL MAINE POWER COMPANY, PROJECT NO. 2519

ORDER DENYING PETITION FOR DECLARATORY ORDER, AND GRANTING MOTION TO VACATE THE FILING OF LICENSE APPLICATION

(Issued August 19, 1965)

Petitioner Central Maine Power Company of Augusta, Maine, on April 19, 1965, filed with the Commission a petition for declaratory order declaring that the Commission is without licensing jurisdiction over Petitioner's constructed North Gorham project located in the Presumpscot River in the Towns of Gorham and Windham, Maine. Appended to this petition was an application for license for the North Gorham hydroelectric development. The petition and the application were received and filed as an application for license and designated Project No. 2519. Public notice of the application was given on May 10, 1965.

Petitioner, by motion filed May 20, 1965, requests that the Commission "vacate the Notice of Application issued May 10, 1965, in the above-designated proceeding and * * * vacate any other actions taken by the Commission that reflect a filing of an application in the above-designated proceeding * * *." In support of its motion, Petitioner declares that it did not intend that the license application be filed unless and until the Commission, in acting upon the petition for declaratory order, decided that the Presumpscot River was subject to the Commission's licensing jurisdiction and this finding had been upheld on judicial review. Since the Petitioner did not submit the application for filing prior to a declaratory order, petitioner moves that such filing be vacated. We are of the opinion that this motion should be granted.

Petitioner also asks that the Commission "act upon Central Maine's Petition for a Declaratory Order Concerning the Presumpscot River, dated April 15, 1965, and filed with the Commission on or about April 19, 1965." Petitioner states that its request for a declaratory order was filed pursuant to Section 1.7(c) of the Commission's Rules of Practice and Procedure. Subsection 1.7(c) provides *inter alia* that such petitions "* * * shall include a complete statement of the facts and grounds prompting the petition." Petitioner's filing has failed to satisfy this requirement.

The objective of Section 1.7(c) of the Rules of Practice and Procedure is to eliminate the necessity for a further factual investigation and a hearing. The spirit and objective are defeated by a negative or an insubstantial factual statement in a petition for a declaratory order concerning the questions presented.

The petition for declaratory order in this case contains only an insubstantial statement of jurisdictional facts with regard to the status of the project. The issuance of declaratory orders is controlled by the exercise of sound discretion (Administrative Procedure Act, Subsection 5(d)), and this Commission will decline to issue such orders unless Petitioner supplies a statement of facts upon which a reasoned decision may be based. The requirement that the petitioner furnish a full and complete statement of relevant facts is eminently reasonable where, as here, petitioner and its direct predecessors in interest have been situated on the stream since before the turn of the century and, as a result, are in a position to ascertain the jurisdictional facts, including those relating to the navigability of the stream.

The Commission finds:

It is appropriate and in the public interest to grant Central Maine Power Company's motion to vacate the filing of the application for the North Gorham project and to deny Central Maine Power Company's petition for a declaratory order.

The Commission orders:

(A) Central Maine Power Company's motion, filed May 20, 1965, to vacate the filing of the license application for Project No. 2519 is hereby granted.

(B) Central Maine Power Company's petition, filed April 19, 1965, for a declaratory order concerning the Commission's licensing jurisdiction with respect to the North Gorham project, is hereby denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

NATURAL GAS COMPANIES—EMERGENCY PLANNING—ANNUAL REPORTS OF SYSTEM FLOW DIAGRAMS, DOCKET NO. R-257

ORDER NO. 303

AMENDING PART 260 OF REGULATIONS UNDER THE NATURAL GAS ACT

(Issued August 19, 1965)*

This proceeding was initiated by a notice of proposed rulemaking issued February 12, 1964, published in the Federal Register (29 F.R. 2512, February 15, 1964), and sent to all natural gas companies and other parties, including federal and state agencies who might be interested. The Commission on January 7, 1965, issued an amended notice published in the Federal Register (30 F.R. 447, January 13, 1965), to make clear that the information called for by the new reporting requirements would be used by the Federal Power Commission for general regulatory purposes as well as for defense emergency planning purposes.

The material required to be filed will fill an existing gap in the information needed concerning recent actual operations of the large pipeline companies on peak days and on average days. The flow diagrams filed with certificate applications for major expansions show the actual operations as of a date just prior to filing the application, and an estimate of future operations if the application is granted. These applications, however, are filed intermittently, not on a regular annual basis; the estimates may be and frequently are amended before the facilities are installed. Thus, the certificate application flow diagrams in the Commission's files are not up-to-date and presumably are not entirely accurate as related to the systems actually constructed.

The proposed diagrams will assist the Commission in securing accurate data on cost and means of transporting gas because the distance of haul as well as peak day and average day volumes carried will be available on a year-to-year basis, to supplement estimates filed in new certificate applications.

The Commission received comments from fifteen pipeline companies representing 24 corporate systems and the Independent Natural Gas Association of America in response to its notice and amended notice.

The Commission, in accordance with section 4(b) of the Administrative Procedure Act, has taken into consideration the views of the various persons who responded and has modified its original proposal to accommodate many of those views.

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*Published in the Federal Register on August 27, 1965 (30 F.R. 11101). See order issued October 14, 1965 granting reconsideration, etc., 34 FPC 1158. Order No. 303-A, issued May 10, 1966 prescribes a revised § 260.8(b) effective for the reporting year 1965, 35 FPC 712.

The principal objections to the proposed regulation were that (1) no useful purpose would be served by furnishing the information; (2) certain items duplicate information now on file with the Commission; (3) the regulations have technical infirmities and (4) the reporting period should be a calendar year.

We do not accept the argument that no useful purpose would be served by the furnishing of the information. The Commission believes that this information is necessary for regulatory purposes. We realize that information of this type is submitted with certificate filings, but such information is necessarily incomplete in that it is filed intermittently, often for less than the entire pipeline system, and consists of estimated flow, not actual recorded flow.

We have revised all of the subparagraphs in the proposed § 260.8(a) except (1), (5), and (8) (now (9)), in response to comments by companies in order to remove ambiguities and make the requested information more meaningful. The reporting period has been changed from a fiscal year to a calendar year as suggested by several companies. This will allow the companies to more closely correlate the information with other information normally supplied to the Commission in Forms 2 and 11.

Other revisions made in response to company suggestions include (1) the requirement that only Class A companies with a system delivery capacity in excess of 100,000 Mcf per day (at 14.73 psia and 60° F.) shall be required to file as opposed to all Class A and B companies as was originally proposed; (2) companies which do not use the American Standards Association standards may use in their report their own standards of maximum permissible operating pressure provided that the company supplies an explanation of the standard used; and (3) deliveries of less than 100 Mcf per day may be grouped for reporting purposes in an appropriate manner rather than separate reporting for each delivery take-off point.

One item of information which the present regulations provide for in a different form than that originally noticed is the data on system input. As originally proposed the regulations asked for the maximum daily volume receivable at each intake point. We have concluded that such data is too indefinite in that it requires an assumption of pressure conditions. As a substitute, subparagraphs (13) and (14) require reporting of the average daily volume received at each intake point to the transmission pipeline system as well as the volume received at such points on the day of maximum coincidental delivery. Information is furnished in Form 2 regarding annual purchases (which is convertible to average daily volume) but is not related to points of input to the transmission system. To interpret the information, for cost as well as flow purposes, a diagram giving the requested information is necessary. To the extent that the information now required is also information furnished for the different purposes of Form 2, it should not be burdensome to the reporting company.

The Commission finds:

(1) The amendments herein adopted are necessary and appropriate for the administration of the Natural Gas Act.

The Commission, acting pursuant to the provisions of the Natural Gas Act, as amended, particularly sections 4, 5, 7 and 16 thereof (52 Stat. 823–825, 830 (1938); 15 U.S.C. 717c, 717d, 717f, 717o), and in furtherance of Executive Order 11095, *orders:*

(A) Part 260, Statements and Reports, Suchapter G, Chapter I, Title 18 of the Code of Federal Regulations, is amended by adding a new § 260.8 to read as follows:

§ 260.8 System flow diagrams.

(a) Each Class A natural gas pipeline company, having a system delivery

capacity in excess of 100,000 Mcf per day (measured at 14.73 psia and 60° F.), shall file with the Commission by June 1 of each year twelve (12) copies of a diagram or diagrams reflecting operating conditions on its main transmission system during the previous twelve months ended December 31. For purposes of system peak deliveries, the heating season overlapping the year's end shall be used. Facilities shall be those installed and in operation on December 31 of the reporting year. All volumes shall be reported on a uniform stated pressure and temperature base.

(b) The diagram or diagrams shall include the following items of information:

(1) Nominal diameter (inches) of each pipeline.

(2) Length (miles to nearest 0.1 mile) of each pipeline between points of intake, delivery, river crossings, storage fields, cross-overs, compressor stations and interconnections with other pipeline companies.

(3) Direction of flow in the pipelines. If direction of flow can be reversed at compressor stations, so indicate.

(4) Maximum permissible operating pressure for each pipeline at discharge side of each compressor station, or other critical point, determined by the provisions set forth in the American Standards Association publication B 31.8 "Gas Transmission and Distribution Piping Systems." or by the company's own standard, provided that the company supplies an explanation of the standard used. Where company standard governs, so designate by appropriate symbol or legend.

(5) Size (horsepower), type (reciprocal, centrifugal turbine, electric motor, gas) and number of installed compressor units at each compressor station.

(6) Designed suction pressure for each compressor station, psig.

(7) Designed discharge pressure for each station, psig.

(8) Maximum volume, Mcf per day that can be compressed at each compressor station under conditions of suction and discharge set forth in (6) and (7) above. If direction of flow affects these factors, provide the information for each direction of flow.

(9) The fuel requirement at each compressor station under conditions described in (8).

(10) Normal average line pressure at points of interconnection with other pipeline companies and volumes, that can be delivered or received at such points under normal operating conditions. Give the name of the interconnecting company.

(11) For each storage field connected to the system and operated by the respondent pipeline company, the maximum daily and seasonal withdrawal volumes available under normal conditions of operation.

(12) The average and maximum (coincidental and noncoincidental) daily volumes delivered at each take-off point during the reporting year. Small deliveries (less than 100 Mcf per day) which have little or no effect upon the operation of the pipeline may be grouped in an appropriate manner, *i.e.*, between compressor stations or the last mainline compressor station and the end of the pipeline. If an estimate is used for a delivery, so indicate.

(13) The average daily volume received at each intake point to the transmission pipeline system.

(14) The volume received into the transmission pipeline system at each intake point on the day of maximum coincidental delivery.

The information required by subparagraphs (12), (13), and (14) may be furnished in tabular form providing that it is suitably keyed to the diagram(s) by appropriate identifying symbol or number.

(c) Flow diagrams depicting 1964 operations shall be filed by November 15, 1965.

* * * * * * *

[Secs. 4, 5, 7, 16; 52 Stat. 823, 824, 825, 830; 15 U.S.C. 717c, 717d, 717f, 717o.]

(B) This amendment shall become effective on October 1, 1965.

(C) The Secretary shall cause prompt publication of this order to be made in the Federal Register.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

ROCKY MOUNTAIN POWER COMPANY, PROJECT NO. 2289

ORDER FIXING HEARING

(Issued August 19, 1965)

By application originally filed on January 5, 1961, and supplemented on April 19, 1961, the Applicant, Rocky Mountain Power Company, proposed a project consisting of two conventional hydroelectric developments, called the Sweetwater and Dotsero power plants, having a combined installed capacity of 150,000 kilowatts, and located in Garfield, Eagle and Rio Blanco counties, Colorado. Public notice of this application was issued on June 1, 1961.

On May 4, 1962, the application was supplemented by a brief filing which proposed a substantially different alternative project. This was to be a mixed conventional and pumped storage project with an initial installed capacity of 165,000 kilowatts and an ultimate installed capacity of 705,000 kilowatts. By the Secretary's letter of May 31, 1962, the Applicant was asked to file its new proposal as a formal amendment of its application with fully developed accompanying exhibits.

Applicant filed this amendment on March 22, 1963. In this filing it proposed the project for construction in three stages. At the initial stage, the Sweetwater power plant was to have an installed capacity of 165,000 kilowatts; at the second stage, this was to be increased to 330,000 kilowatts; at the final stage, it was to be raised to 495,000 kilowatts, and the Dotsero power plant was to be installed with 210,000 kilowatts, for a combined ultimate development of 705,000 kilowatts, between four and five times the installed capacity of the project as originally proposed.

Because the extensive amending of the original application had caused uncertainty as to the details of the proposal as it then stood, the Applicant was requested by the Secretary's letter of July 29, 1963, "to assemble in a unified and revised application for a license, all the data and information on the proposed alternative project which have been filed with the Commission on various dates as exhibits or supplemental data." Applicant filed its revised application for the first and second stages of its proposed development on December 23, 1963, and November 30, 1964, and for the third stage on December 31, 1964. Public notice of the application, as revised and amended, was given on May 11, 1965. However, the application is still deficient as to information regarding the financing of the project, and as to information on availability of markets for electric power, and the Applicant has been requested to remedy these deficiencies. Petitions to intervene have been filed by the Colorado Public Utility Commission, Humble Oil & Refining Company, Public Service Company of Colorado, Western Colorado Power Company and Utah Power & Light Company, and numerous informal protests regarding the possible effect of the project on the Flat Tops Primitive Area have been received.

In view of the importance and complexity of the issues raised by Rocky Mountain Power Company's application and the petitions to intervene, a public hearing would be desirable.

The Commission finds:

It is appropriate and in the public interest to hold a public hearing, as hereinafter provided.

The Commission orders:

(A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by the Federal Power Act, particularly Sections 4(e), 10(a) and 308 thereof, and the Commission's Rules of Practice and Procedure, a public hearing shall be held on May 23, 1966, at 10:00 a.m. in a hearing room of the Federal Power Commission, 441 G Street, N.W., Washington, D.C. respecting the matters involved and the issues presented in this proceeding.

(B) The following procedure is prescribed for this proceeding:

1. The Applicant shall file by March 1, 1966, with the Secretary of the Commission an original and ten copies of all testimony, including qualifications of the witnesses, and exhibits to be presented in Applicant's direct case.

2. The Applicant's filing shall include a full and complete statement of a definite plan for the financing of the project, and a full and complete statement of definite plans for the marketing of the electric power to be produced by the project. Failure to comply with this directive will constitute a basis for a motion to dismiss the application for a license for lack of completeness.

3. All other parties, including the Commission staff, shall file by April 29, 1966, with the Secretary, an original and ten copies of all direct testimony and exhibits including qualifications of witnesses.

4. All motions to strike shall be filed with the Presiding Examiner by May 9, 1966, with replies to such motions to be filed by May 16, 1966.

5. All of the testimony, except exhibits, shall be in question and answer form.

6. No exhibits, except those of which official notice may properly be taken, shall contain narrative material other than brief explanatory notes.

7. Any party submitting more than one exhibit shall enclose a cover sheet listing the title of each exhibit in the sequence they are to be marked for identification.

8. The Presiding Examiner will specify the order of cross-examination and time to be permitted for preparation of rebuttal evidence.

(C) The Commission's Rules of Practice and Procedure shall apply in this proceeding except to the extent that they are modified or supplemented herein.

Commissioner Ross *dissenting.*

Before Commissioners: L. J. O'Connor, Jr., Acting Chairman; Charles R. Ross and Carl E. Bagge.

VERMONT MARBLE COMPANY, PROJECT NO. 2445

ORDER ISSUING LICENSE (MINOR)

(Issued August 19, 1965)

Application was filed on February 17, 1964, by Vermont Marble Company (Applicant) of Proctor, Vermont, for a license under Section 4(e) of the Federal Power Act for constructed minor Project No. 2445, known as the Center Rutland

Project, located on Otter Creek in the Town of Rutland, Rutland County, Vermont. The project does not affect lands of the United States.

The project commenced operation in 1898 and has remained essentially the same since that date.

Available historical evidence shows that Otter Creek, from its source in Lake Champlain to a point upstream at least 35 miles above the Center Rutland Project was used extensively for water transportation by the early settlers of the region.

The Chief of Engineers and the Secretary of the Army have advised that the plans of the project structures affecting navigation are satisfactory.

The Department of the Interior has advised that wildlife resources are not affected significantly by the project and the project does not adversely affect fish resources, and no fishway or other specific measures are necessary for inclusion in any license for the project.

The Department of Health, Education, and Welfare has advised that the project does not have any adverse effects on water quality.

In our order on rehearing issued February 17, 1965, in *Wisconsin Power & Light Company, Project No. 2347, et al.*, 33 FPC 275, we stated that we would have no objection to the issuance of licenses for minor projects without waiving Sections 14 and 15 of the Federal Power Act and the other provisions of the Act necessary to the effectuation of those sections, provided the minor project applications are timely supplemented pursuant to Section 4.50 of our Regulations under the Act (18 CFR § 4.50), which relates to applications for major projects. In the event the Applicant herein wishes a license in which those provisions of the Act are not waived it should so advise us within 30 days from the date of issuance of this order and file its supplemental application within 30 additional days thereafter.

For the reasons set forth in our April 25, 1962, Opinion No. 357 (27 FPC 830), the license herein granted shall have an effective date of April 1, 1962, and a termination date of December 31, 1993.

The Commission finds:

(1) Otter Creek from its mouth in Lake Champlain to a point upstream at least 35 miles above the Center Rutland Project constitutes navigable waters of the United States.

(2) The Center Rutland Project affects navigable waters of the United States.

(3) Applicant is a corporation organized under the laws of the State of Vermont, and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effectuate the purposes of a license for the project.

(4) Public notice of the filing of the application has been given. No protests or petitions to intervene have been received. No conflicting application is before the Commission.

(5) The project does not affect a Government dam, nor will the issuance of a license therefor, as hereinafter provided, affect the development of any water resources for public purposes which should be undertaken by the United States.

(6) Subject to the terms and conditions hereinafter imposed, the project will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, and for other beneficial public uses, including recreational purposes.

(7) The installed horsepower capacity of the project hereinafter authorized for the purpose of computing the capacity component of the administrative annual charge is 367 horsepower, and the amount of annual charges, based on

such capacity, to be paid under the license for the project, for the costs of administration of Part I of the Act is reasonable as hereinafter fixed and specified.

(8) It will be in the public interest to waive pursuant to Section 10(i) of the Act the terms and conditions contained in the following sections of Part I of the Act:

Sections 4(b), except the second sentence thereof; 4(e), insofar as it relates to approval of plans by the Chief of Engineers and the Secretary of the Army and to public notice; 6, insofar as it relates to public notice and to the acceptance and expression in the license of terms and conditions of the Act which are hereinafter waived; 10(c), insofar as it relates to depreciation reserves; 10(d); 10(f); 11; 12; 14, except insofar as the power of condemnation is reserved; 15; 18, except insofar as it relates to fishways; 19; 20; 22; and 23(a), insofar as it relates to the determination of fair value.

The Commission orders:

(A) This license is hereby issued to Vermont Marble Company (Licensee) of Proctor, Vermont, under Sections 4(e) and 10(i) of the Federal Power Act (Act) for a period effective as of April 1, 1962, and terminating December 31, 1993, for the continued operation and maintenance of Project No. 2445, located on Otter Creek, a navigable water of the United States, in Rutland, Rutland County, Vermont, subject to the terms and conditions of the Act insofar as not expressly waived herein, which Act is incorporated herein by reference as a part of this license, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) Center Rutland Project No. 2445 consists of:

(i) all lands constituting the project area and enclosed by the project boundary or the limits of which are otherwise defined; and

(ii) a stone masonry and concrete dam of an average height of 12 feet with, normally, 1 foot 6 inches of wood flashboards; a small pond behind the dam; a forebay approximately 30 feet wide and 80 feet long; a 6-foot diameter steel penstock about 75 feet long; a one-story marble masonry powerhouse about 33 feet by 40 feet; one horizontal shaft generating unit, the generator of which is rated at 275 kw; and all other structures, fixtures, equipment or facilities used or useful in the maintenance and operation of the project and located on the project area, and all rights, and interests the possession of which is necessary or appropriate in the maintenance and operation of the project.

(C) This license is also subject to the terms and conditions set forth in Form L–9 (July 1, 1964) entitled, "Terms and Conditions of License for Constructed Minor Project Affecting Navigable Waters of the United States" (32 FPC 577), which terms and conditions, designated as Articles 1 through 11, are attached hereto and made a part hereof; and subject to the following special conditions set forth herein as additional articles:

Article 12. The Licensee shall pay to the United States the following annual charge, effective as of April 1, 1962:

(i) For the purpose of reimbursing the United States for the costs of administration of Part I of the Act, $18.00.

Article 13. On the application of any person, association, corporation, Federal agency, State or municipality, the Licensee shall, after notice and opportunity for hearing, permit such reasonable use of its reservoirs or other project works or parts thereof as may be ordered by the Commission in the interest of comprehensive development of the waterway or waterways involved and the conservation and utilization of water resources of the region for water supply for steam-electric, irrigation, industrial, municipal or similar purposes consistent with the primary objective of the project. The Licensee shall receive such rea-

sonable compensation as may be appropriate for use of its reservoirs or other project works or parts thereof for such purposes, any such compensation to be fixed either by Commission approval of an agreement between the Licensee and the party or parties benefiting or by the Commission in the event the parties are unable to agree. Applications shall contain information in sufficient detail to afford a full understanding of the proposed use, including satisfactory evidence that the Applicant possesses necessary water rights pursuant to applicable State law, or a showing of cause why such evidence cannot be submitted, and a statement as to the relationship of the proposed use to any State or municipal plans or orders which may have been adopted with respect to the use of such waters.

(D) The terms and conditions of the Act, which it has been found above to be in the public interest to waive, are hereby excluded from this license.

(E) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgment of the acceptance of this license, it shall be signed for the Licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: L. J. O'Connor, Jr., Acting Chairman; Charles R. Ross and Carl E. Bagge.

BROWN-NEW HAMPSHIRE, INC., PROJECT NO. 2423

ORDER ISSUING LICENSE (MAJOR)

(Issued August 20, 1965)

Application was filed on November 1, 1963 by Brown Company, of Berlin, New Hampshire, for a license under Section 4(e) of the Federal Power Act (Act) for constructed hydroelectric Project No. 2423, known as the Riverside Project, located on the Androscoggin River, navigable waters of the United States, in the City of Berlin, Coos County, New Hampshire. No lands of the United States are affected by the project.

In its order issued April 22, 1965, in Docket No. E-7212, 33 FPC 843, the Commission authorized the sale of certain electric facilities, including all hydroelectric plants, from Brown Company to Brown-New Hampshire, Inc., and such acquisition was consummated on April 30, 1965. As a consequence, Brown-New Hampshire, Inc., at its request, has been substituted as the Applicant for Project No. 2423.

The original dam and powerhouse, constructed in 1920–1921, included three 5,000 horsepower vertical turbines directly connected to three 3,800 kilowatt generators. There have been no substantial alterations to the project since 1921.

For the reasons set forth in our April 25, 1962, Opinion No. 357 (27 FPC 830), the license herein granted shall have an effective date of July 1, 1958, and a terminating date of December 31, 1993.

The Chief of Engineers and the Secretary of the Army have advised that the plans of the project structures affecting navigation have been approved insofar as the interests of navigation are concerned.

The Secretary of the Interior, in reporting on the application, recommended for inclusion in any license for the project certain conditions in the interests

of fish and wildlife and recreational resources usually included in licenses for such projects.

The Department of Health, Education, and Welfare, has recommended that any license for the project include a provision for review and possible revision of flow requirements when the effects of possible future installation of adequate treatment of water in the Androscoggin River can be determined. This provision is included herein as Article 33.

The State Planning Project, State of New Hampshire, has advised that, due to water pollution, the project is not suitable for any recreational development, but that at some future date, depending upon the abatement of such pollution, there may be some limited recreational development. No conditions were recommended for inclusion in any license for the project. By Article 31 herein we are requiring Applicant to cooperate with State and local agencies in the interest of recreation in connection with the use of project lands and waters by the public and to keep us advised at stated intervals with respect to the results of such cooperation.

The only transmission facility considered by Applicant as part of the project works is a 2.3 kv to 22 kv stepup substation facility. In Article 32 herein we are reserving the Commission's right to determine at a later date what additional transmission facilities, if any, shall be included in this license.

The Commission finds:

(1) The project is located upon navigable waters of the United States.

(2) Applicant is a corporation organized under the laws of the State of New Hampshire, and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effectuate the purposes of a license for the project.

(3) Public notice of the filing of the application has been given. No protests or petitions to intervene have been received. No conflicting application is before the Commission.

(4) The project does not affect a Government dam, nor will the issuance of a license therefor, as hereinafter provided, affect the development of any water resources for public purposes which should be undertaken by the United States.

(5) Subject to the terms and conditions hereinafter imposed, the project will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, and for other beneficial public uses, including recreational purposes.

(6) The installed horsepower capacity of the project hereinafter authorized for the purpose of computing the capacity component of the administrative annual charge is 15,200 horsepower, and the amount of annual charges, based on such capacity, to be paid under the license for the project, for the costs of administration of Part I of the Act is reasonable.

(7) The exhibits designated and described in paragraph (B) below, including Exhibit J which contains information usually shown on Exhibit K, conform to the Commission's rules and regulations and should be approved as part of this license.

The Commission orders:

(A) This license is hereby issued to Brown-New Hampshire, Inc., (Licensee) of Berlin, New Hampshire, under Section 4(e) of the Federal Power Act (Act), for a period effective as of July 1, 1958, and terminating December 31, 1993, for the continued operation and maintenance of Riverside Project No. 2423, located on the Androscoggin River, a navigable water of the United States in

the State of New Hampshire, subject to the terms and conditions of the Act which is incorporated herein by reference as a part of this license, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) Riverside Project No. 2423 consists of:

(i) All lands constituting the project area and enclosed by the project boundary or the limits of which are otherwise defined, and/or interest in such lands necessary or appropriate for the purposes of the project, whether such lands or interest therein are owned or held by the Licensee or by the United States; such project area and project boundary being more specifically shown and described by a certain exhibit which formed part of the application for license and which is designated and described as follows:

Exhibit J: Sheet 1 of 2 (FPC No. 2423–1) Plan View of Project Area.

(ii) Project works consisting of:

(1) A dam approximately 802 feet long, including a rock filled timber crib section about 329 feet long extending about 131 feet diagonally downstream from the left bank (including a sluiceway about 14 feet wide) and about 198 feet generally downstream, a concrete ogee section about 235 feet long and a timber crib section (topped with flashboards about 2 feet high) about 200 feet long extending further downstream to a sluice gate section (2 gates, each 6 feet wide) adjacent to the gatehouse; (2) a gatehouse, adjacent to the right bank; (3) three wood stave penstocks 13 feet in diameter and approximately 1,250 feet long; (4) a powerhouse on the right bank containing three 5,000 hp turbines direct connected to three 3,800 kw generators; (5) a substation; and (6) appurtenant facilities; the location, nature and character of which are more specifically shown and described by the exhibit hereinbefore cited and by certain other exhibits which also formed part of the application for license and which are designated and described as follows:

Exhibit L	FPC No.	Showing Riverside hydroelectric development
Sheet 1	2423-3	Plan view of gatehouse and dam.
Sheet 2	2423-4	Plan view of penstocks and station.
Sheet 3	2423-5	Elevations of gatehouse.
Sheet 4	2423-6	Elevations of station.
Sheet 5	2423-7	Section of gatehouse.
Sheet 6	2423-8	Sections of station.
Sheet 7	2423-9	Plan view, operating floor, gatehouse.
Sheet 8	2423-10	Plan view of operating floor, station.

Exhibit M: Thirteen typewritten pages, "General Description of Mechanical, Electrical, and Transmission Equipment", filed in the Commission November 1, 1963.

(iii) All of the structures, fixtures, equipment or facilities used or useful in the maintenance and operation of the project and located on the project area, including such portable property as may be used or useful in connection with the project or any part thereof, whether located on or off the project area, if and to the extent that the inclusion of such property as part of the project is approved or acquiesced in by the Commission; also, all riparian or other rights, the use or possession of which is necessary or appropriate in the maintenance or operation of the project.

(C) This license is also subject to the terms and conditions set forth in Form L–3 (Revised August 1, 1964) entitled "Terms and Conditions of License for Constructed Project Affecting Navigable Waters of the United States" (32 FPC 1114) which terms and conditions, designated as Articles 1 through 29, are

attached hereto and made a part hereof, except Article 25 thereof, and subject to the following special conditions set forth herein as additional articles:

Article 30. The Licensee shall pay to the United States the following annual charge, effective July 1, 1958:

For the purpose of reimbursing the United States for the costs of administration of Part I of the Act, a reasonable annual charge as determined by the Commission in accordance with the provisions of its regulations, in effect from time to time. The authorized installed capacity for such purposes is 15,200 horsepower.

Article 31. Licensee shall cooperate with State and local agencies in the development and maintenance of access areas and roads and such other facilities necessary for full recreational utilization by the public of project lands and waters, consistent with the terms of the license and the operation of the project. At the end of three (3) years from the date of issuance of this license and every fifth year, thereafter, Licensee shall advise the Commission of the results of cooperation with State and local agencies and of further recreation development at the project.

Article 32. The Commission reserves the right to determine at a later date what additional transmission facilities, if any, shall be included in this license.

Article 33. The Licensee shall cooperate with the appropriate Federal and State agencies in any necessary and/or desirable review and revision of flow requirements in connection with the pollution of the Androscoggin River by municipal and industrial wastes.

Article 34. On the application of any person, association, corporation, Federal agency, State or municipality, the Licensee shall, after notice and opportunity for hearing, permit such reasonable use of its reservoirs or other project works or parts thereof as may be ordered by the Commission in the interest of comprehensive development of the waterway or waterways involved and the conservation and utilization of water resources of the region for water supply for steam electric, irrigation, industrial, municipal or similar purposes, consistent with the primary objective of the project. The Licensee shall receive such reasonable compensation as may be appropriate for use of its reservoirs or other project works or parts thereof for such purposes, any such compensation to be fixed either by Commission approval of an agreement between the Licensee and the party or parties benefiting or by the Commission in the event the parties are unable to agree. Applications shall contain information in sufficient detail to afford a full understanding of the proposed use, including satisfactory evidence that the applicant possesses necessary water rights pursuant to applicable State law, or a showing of cause why such evidence cannot be submitted, and a statement as to the relationship of the proposed use to any State or municipal plans or orders which may have been adopted with respect to the use of such waters.

(D) The exhibits designated and described in paragraph (B) above are hereby approved as part of this license.

(E) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgment of the acceptance of this license, it shall be signed for the Licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: L. J. O'Connor, Jr., Acting Chairman; Charles R. Ross and Carl E. Bagge.

CAROLINA PIPELINE COMPANY, COMPLAINANT v. SOUTHERN NATURAL GAS COMPANY, DEFENDANT, DOCKET NO. RP63–4

ORDER CONDITIONALLY APPROVING SETTLEMENT AGREEMENT PRESCRIBING TARIFF CHANGES AND TERMINATING PROCEEDING

(Issued August 20, 1965)

On June 9, 1965, the parties participating in the hearing in this remanded proceeding submitted on the record a proposal for the settlement of the matters in issue (Tr. 836–838). That proposal, certified to the Commission by the Presiding Examiner on June 9, 1965, is now before us for consideration and action.

This proceeding relates to a formal complaint filed by Carolina Pipeline Company (Carolina) against Southern Natural Gas Company (Southern) alleging discriminations in allocations of overrun gas and improper classification as a customer under Southern's CDL–AOL rate schedules. The Commission's dismissal of the complaint by Opinion No. 423, issued March 30, 1964, 31 FPC 705, was appealed by Carolina to the United States Court of Appeals for the District of Columbia. Thereafter, the case was remanded to the Commission, at its request, for further consideration.

The terms of the proposed settlement as set out in the record of the reopened proceeding are as follows:

The parties hereto, after informal conferences on April 27 and June 8, 1965, have agreed that this proceeding shall be terminated upon the following terms:

1. Southern shall make the following changes in its FPC Gas Tariff to be effective as soon as is feasible after the giving of appropriate notice.

A. The availability sections of the OCDL Rate Schedules shall be changed to read:

1. Availability: This rate schedule is available to an interstate natural gas pipeline company (whether or not it is also a distributor) (hereinafter called Purchaser) which obtains natural gas from one or more other sources, for the purchase, for resale, from Southern Natural Gas Company (hereinafter called Company) of natural gas at such delivery points, located in the above named rate zone, as may be agreed to from time to time, and set out in the contract between Company and Purchaser.

B. Section 9 of the General Terms and Conditions shall be changed by changing the period at the end of the next to last sentence to a semicolon and adding:

provided, that excess gas so available to resale customers shall, during the periods October 15 to April 1, be divided among such customers (to the extent that the Company's pipeline system is capable of delivering such quantities) in proportion to their respective Contract Demands or Maximum Delivery Obligations, each such customer desiring additional excess being eligible to receive pro rata the unused portion of the share of another. For the purpose of such division of excess gas among resale customers, the total of the Contract Demands for delivery points which have been grouped in an Exhibit A to an executed Service Agreement, shall be considered as a single Contract Demand separate from the Contract Demands for other groups.

C. A new rate schedule, available in each of Southern's zones providing for overrun service to OCD customers, shall be filed. The rates for such service shall be the same rates as are now being charged for such service. At such

time as Southern makes a general change in its rates, it will give serious consideration to establishing overrun rates which would be higher than the rates now being charged for overrun service.

2. Upon request by the Commission's staff, Southern will furnish to the Staff such data concerning deliveries of excess and interruptible gas as the Staff shall specify.

3. Upon approval by the Commission of this Stipulation and the becoming effective of the above-tariff changes, Carolina Pipeline Company and Southern will execute a new Exhibit A to their service agreement which will provide for service under Rate Schedule OCD–3.

4. This stipulation is submitted as a package, and the agreement of all parties hereto, who note their agreement, is contingent upon the approval by the Commission of all portions of the stipulation. Upon the granting of such approval this proceeding shall be terminated.

Following issuance of notice of the proposed agreement and publication thereof in the Federal Register (30 F.R. 8866), six parties filed comments thereon.

Alabama Gas Corporation, Mississippi Valley Gas Company and South Georgia Natural Gas Company in their separate comments object only to the sentence in paragraph (C) of the proposal which states, "At such time as Southern makes a general change in its rates, it will give serious consideration to establishing overrun rates which would be higher than the rates now being charged for overrun service." South Carolina Natural Gas Company states that it does not object to the proposed settlement provided it is conditioned to require Southern to make monthly reports to the Commission showing the minimum daily delivery pressures at Aiken, South Carolina. Carolina Pipeline Company supports the settlement and states that any present concern regarding increased overrun rates is premature and irrelevant to the settlement. Southern supports the proposal and has advised that it has no objection to the condition proposed by South Carolina.

The aforementioned objections to the last sentence of paragraph (C) of the settlement are premature. Any rate increase filing contemplated thereby is conjectural and remote and we are not now determining the reasonableness of such filing or that the present method of charging for overrun service is inappropriate.

It is our view that the proposed settlement is a reasonable resolution of the issues in this proceeding and should be approved as hereinafter provided.

The Commission finds:

(1) The settlement of this proceeding upon the basis of the proposal set out above and in the record is reasonable, proper and in the public interest and should be approved and be made effective subject to the terms and conditions hereinafter prescribed.

(2) Good cause exists for terminating these proceedings, subject to the terms and conditions hereinafter ordered.

The Commission orders:

(A) Within thirty (30) days from the date of issuance of this order, Southern shall file the revised tariff sheets necessary to effectuate the changes in its FPC Gas Tariff prescribed in the settlement, subject to the Commission's approval.

(B) Upon acceptance thereof, evidenced by letter from the Secretary of the Commission addressed to Southern, such tariff sheets shall become effective as of the date requested by Southern, but not later than October 15, 1965.

(C) Carolina and Southern shall execute and file on or before October 15, 1965, a new Exhibit A to their service agreement which will provide for service to Carolina under Rate Schedule OCD–3 beginning on the date said new tariff sheets become effective.

(D) Beginning with the effective date of tariff sheets to be filed hereunder, and thereafter until notified by letter from the Secretary to discontinue, Southern shall file a monthly report of the minimum delivery pressure maintained at its Aiken delivery point on each day and shall make such reports available for inspection by interested parties.

(E) The proceedings in Docket No. RP63–4 are terminated subject to the terms and conditions contained in the aforesaid settlement and the terms and conditions of this order.

(F) This order and the termination of these proceedings as hereinbefore provided are without prejudice to any findings or orders which have been or may hereafter be made by the Commission, and is without prejudice to any claims or contentions which may be made by the Commission, Southern, or any other party hereto in any other proceeding or proceedings now pending or hereafter instituted by or against Southern or any other person.

Before Commissioners: L. J. O'Connor, Jr., Acting Chairman; Charles R. Ross and Carl E. Bagge.

COASTAL STATES GAS PRODUCING COMPANY, ET AL., DOCKET NO. G–19653

ORDER ACCEPTING OFFER OF SETTLEMENT, REQUIRING FILING OF NOTICE OF CHANGE, REQUIRING REFUNDS AND TERMINATING PROCEEDING

(Issued August 20, 1965)

On July 19, 1965, Coastal States Gas Producing Company (Coastal) submitted an offer of settlement, pursuant to Section 1.18(e) of the Commission's Rules of Practice and Procedure, involving sales of natural gas to Tennessee Gas Transmission Company (TGT) under Coastal's FPC Gas Rate Schedule No. 26 in Victoria County, Texas (Texas R.R. Com. District #2). Under the terms of the offer, Coastal proposes to eliminate the favored-nation, price redetermination and periodic price escalation provisions from the rate schedule, and to establish a 15.0¢ per Mcf rate for the subject sale.[1] With its offer, Coastal filed an executed amendatory agreement effectuating the terms of its proposal.[2] No protests or objections have been filed to the offer.

Under the proposed settlement, Coastal's annual revenues would be decreased $2,650 and refunds would approximate $4,950, exclusive of interest.

The proposed settlement is consistent with the provisions of the Second Amendment to the Commission's Statement of General Policy No. 61–1, issued December 20, 1960, 24 FPC 1107, as amended by Order No. 264, issued March 27, 1963, 29 FPC 589, and its acceptance would serve the public interest.

However, we desire to make it clear that acceptance of Coastal's offer of settlement shall not be construed as approval of any future increased rate filed in accordance with its reservation of the right to file tax increases under the subject

[1] The settlement rate includes a 0.21931¢ per Mcf dehydration deduction for the delivery of non-dehydrated gas.

[2] The amendatory agreement is designated herein as Supplement No. 11 to Coastal's FPC Gas Rate Schedule No. 26.

rate schedule, and without prejudice to any findings or order of the Commission in any future proceedings including area rate or other similar proceedings, involving Coastal's rates and rate schedules.

The Commission finds:

The proposed settlement of the above-designated proceeding on the basis described herein, as more fully set forth in the offer of settlement filed with the Commission by Coastal on July 19, 1965, is in the public interest and appropriate to carry out the provisions of the Natural Gas Act and should be approved and made effective as hereinafter ordered.

The Commission orders:

(A) The offer of settlement filed with the Commission by Coastal on July 19, 1965, is hereby approved in accordance with the provisions of this order.

(B) Supplement No. 11 to Rate Schedule No. 26, filed by Coastal with the offer of settlement herein on July 19, 1965, is accepted for filing, and the settlement rate and charge of 15.0¢ per Mcf at 14.65 psia, subject to the 0.21931¢ per Mcf dehydration deduction, shall be effective as of the date of issuance of this order, and within 30 days from the issuance of this order Coastal shall file a notice of change to reflect such settlement rate.

(C) Coastal shall compute the difference between the rate collected subject to refund and the settlement rate of 15.0¢ per Mcf at 14.65 psia, subject to the applicable dehydration deduction, with applicable interest, to the date of this order, and shall within 30 days from the date of this order submit a report to the Commission, and serve a copy on TGT setting out the amount of refund related to the subject rate schedule (showing separately the principal and applicable interest). Within 10 days thereafter, Coastal shall file TGT's written concurrence in the refund amounts computed in compliance with the above, and shall within 10 days of such filing make refund to TGT of such amounts of monies.

(D) The proceeding in Docket No. G–19653 is severed from the Texas Gulf Coast Area proceeding, Docket No. AR64–2, and is terminated.

(E) The acceptance by the Commission of Coastal's offer of settlement and the termination of Docket No. G–19653 are without prejudice to any findings or determinations that may be made in any proceeding now pending, or hereafter instituted by or against Coastal, including area rate or other similar proceedings.

Before Commissioners: L. J. O'Connor, Jr., Acting Chairman; Charles R. Ross and Carl E. Bagge.

GEORGE H. COATES, ET AL., DOCKET NOS. G–19824 AND RI61–369

ORDER CONDITIONALLY ACCEPTING OFFER OF SETTLEMENT REQUIRING FILING OF NOTICE OF CHANGE AND CONTRACT AMENDMENT, REQUIRING REFUNDS AND TERMINATING PROCEEDINGS

(Issued August 20, 1965)

On July 8, 1965, George H. Coates, *et al.* (Coates) filed an offer of settlement in these proceedings pursuant to Section 1.18(e) of the Commission's Rules of Practice and Procedure, involving the sale of natural gas to Tennessee Gas Transmission Company (TGT) in the San Salvador Field, Hidalgo County, Texas Railroad Commission District No. 4 under its FPC Gas Rate Schedule No. 2. The settlement involves proposed rate increases which were filed by Coates, the first in Docket No. G–19824 from 12.12268¢ to 15.0952¢ per Mcf of natural

gas at 14.65 psia which was suspended by the Commission for the statutory period and made effective by Coates by appropriate motion, and the second to 17.24347¢ per Mcf, which was likewise suspended and made effective, subject to refund.

Under the terms of the settlement offer, Coates proposes to reduce its rate for the subject sale from the 17.24347¢ rate now in effect, subject to refund, to 15.0¢ per Mcf at 14.65 psia, and to delete the price escalation provisions from the subject rate schedule. Additionally, Coates proposes to refund the monies it has collected subject to refund to June 1, 1965, which date it states it will make the settlement rate effective. However, we find no good cause to depart from the established policy of making the settlement rate effective as of the date of the order approving the same, and requiring refunds to such date. Therefore, we shall condition our acceptance of Coates' proposal to require it to file a notice of change of rate and to make refunds, with applicable interest, to the date of issuance of this order. As so conditioned, Coates rates will be reduced approximately $7,086.00 below the currently effective rate, and it will refund to TGT approximately $32,416.00, with applicable interest.

We desire to make it clear that acceptance of Coates' offer of settlement shall not be construed as approval of any future increased rate filed in accordance with its reservation of the right to file increases to cover future tax increases as provided in its offer of settlement, and is without prejudice to any findings or order of the Commission in any future proceedings, including area rate or other similar proceedings, involving Coates' rates and rate schedules.

The Commission finds:

The proposed settlement of the above-designated proceedings, on the basis described herein, as more fully set forth in the offer of settlement filed with the Commission by Coates' on July 8, 1965, as herein conditioned, is consistent with the Statement of General Policy No. 61–1, as amended, 18 CFR 2.56, and approval thereof as made effective and hereinafter ordered is in the public interest and is appropriate to carry out the provisions of the Natural Gas Act.

The Commission orders:

(A) The offer of settlement filed with the Commission by Coates on July 8, 1965, as herein conditioned, is approved in accordance with the provisions of this order.

(B) Coates shall file, within 30 days of the issuance of this order, a notice of change in rate providing for the settlement rate of 15.0¢ per Mcf under its Rate Schedule No. 2

(C) Coates shall file within 30 days from the issuance of this order a contract amendment to its Rate Schedule No. 2 eliminating all price escalation provisions therefrom except for future changes in tax reimbursement.

(D) Coates shall compute the difference between the rates collected subject to refund and the settlement rate of 15.0¢ per Mcf for sales to TGT in Docket Nos. G–19824 and RI61–369, with applicable interest to the date of this order, and shall within 45 days from the date of issuance of this order submit a report to the Commission, with a copy to TGT, setting out the amount of refunds (showing separately the principal and applicable interest) the bases used for such determination, the periods covered, and ten days thereafter file a letter from TGT agreeing to the correctness of such amounts, and shall ten days from such filing refund such monies to TGT.

(E) Upon notification by the Secretary of the Commission that Coates has complied with the terms and conditions of this order, the rate and charge of 15.0¢ per Mcf of natural gas under its Rate Schedule No. 2, specified in its offer of settlement, as herein conditioned, shall be effective as of the date

of this order and Docket Nos. G–19824 and RI61–369 shall be deemed severed from the Texas Gulf Coast proceedings, Docket No. AR64–2, and shall be deemed terminated, all without further order of the Commission.

(F) The acceptance by the Commission of Coates' offer of settlement, as conditioned herein, is without prejudice to any findings or determinations that may be made in any proceeding now pending, or hereafter instituted by or against Coates' and is without prejudice to claims or contentions which may be made by Coates, the Commission staff, or any affected party hereto, in any proceeding, including area rate or similar proceedings.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., David S. Black and Carl E. Bagge.

PACIFIC POWER & LIGHT COMPANY, PROJECT NO. 2082

ORDER DENYING PETITION FOR REHEARING

(Issued August 20, 1965)

On July 22, 1965, the California Department of Fish and Game (the Department) filed a petition "for rehearing or for any other appropriate form of relief" with respect to various Commission decisions and orders concerning fish facilities at Project No. 2082, owned by Pacific Power & Light Company (Pacific).[1] The prior proceedings with respect to the order on which rehearing is requested may be narrated briefly as follows:

On August 21, 1961, the State of California, acting by and through its Department of Fish and Game, filed a petition requesting that the Commission require the licensee to construct, operate and maintain a fish hatchery and appurtenant facilities, pursuant to Article 49 of the license for Project No. 2082 (25 FPC 579, 581). An answer to the petition was filed by the licensee on September 13, 1961. By order issued January 30, 1962, the Commission set the matter for hearing.

This Commission, in Opinion No. 381[2] and Opinion No. 381–A[3] required the licensee for Project No. 2082, Pacific Power & Light Company to construct a fish hatchery and certain fish-trapping and egg-taking facilities which were included in Article 50 of the license as it appeared at the time of the hearing (25 FPC 579, 581). The Commission also required the licensee to reimburse the California Department of Fish and Game for 80 percent of the expenses incurred in the operation and maintenance of such facilities.

On appeal to the Court of Appeals for the Ninth Circuit, the Court upheld the requirement that the licensee construct the fish hatchery and the fish trapping and egg-taking facilities, and the requirement that Pacific reimburse the Department of Fish and Game for 80 percent of the cost of operation and maintenance of the hatchery, but reversed the Commission's directive that Pacific reimburse the Department for 80 percent of the operation and maintenance costs of the fish-trapping and egg-taking facilities.[4] The Court's ground for reversal on the latter issue was a 1959 agreement between Pacific and the Department which,

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[1] The licensee, Pacific Power & Light Company, filed on August 2, 1965 a motion to strike certain portions of the Department's petition for rehearing. However, since we here deny the Department's petition, we find it unnecessary to rule on Pacific's motion.

[2] 29 FPC 478, March 14, 1963.

[3] 30 FPC 499, August 19, 1963.

[4] *Pacific Power & Light Company* v. *F.P.C.*, 333 F. 2d 689 (9th Cir., 1964); Cert. denied 379 U.S. 969, January 18, 1965.

the Court held, contemplated operation and maintenance of the fish-trapping and egg-taking facilities by the Department, but did not reserve to the Department the right to demand payment by Pacific for operation and maintenance costs of such facilities.

In remanding the case to the Commission on the questions relating to the fish-trapping and egg-taking facilities, the Court also suggested [5] that the Commission might desire to clarify its requirement that the licensee pay 80 percent of the operation and maintenance costs of the fish hatchery. On June 23, 1965, 33 FPC 1282, the Commission issued an order clarifying the license for Project No. 2082 in this respect and this is the order on which rehearing is requested by the California Department of Fish and Game.

In its petition for rehearing the Department appears primarily to contend:

> (1) that Pacific Power should be required by the Commission to pay the entire cost of operation and maintenance of the fish hatchery and that the Commission erred in limiting Pacific's liability to only 80 percent of such costs; and
>
> (2) that the prior agreement between the Department and Pacific cannot and does not have the effect of absolving Pacific from liability to pay for any part of the fish-trapping and egg-taking facilities.

We are of the opinion that the Department's petition must be denied.

With respect to liability to pay the operation and maintenance costs of the fish hatchery, the Department shows us no good reason why we should depart from our past decisions and orders. The Department argues that this Commission's determination that Pacific should pay only 80 percent of the hatchery operation and maintenance costs is without foundation in substantial evidence. However, this question was disposed of by the Court of Appeals when, after a review of the law and the evidence supporting the Commission's determination, it held that the conclusion reached by the Commission was reasonable and should not be disturbed.[6]

The Commission, subsequent to the Court's decision, clarified the license provision with respect to the percentage of fish hatchery costs Pacific would be required to pay. The Department now contends that the license provision as clarified forces it, a state agency, to pay for 20 percent of the costs, and that such a requirement is unlawful. The Department made this same contention in the Ninth Circuit and that Court considered and disposed of this question also:

> There remains the Department's contention that the Commission could not require that it pay 20 percent of the cost of maintenance and operation of the hatchery. The Commission did not so order. It merely ordered that Pacific pay 80 percent.[7]

The situation remains the same. The Commission did not in its original determination require that the state pay any part of the operation and maintenance costs of the fish hatchery, and the order clarifying the license issued June 23, 1965 did not change this in any respect.

The Department's contention with respect to the costs of the fish-trapping and egg-taking facilities are equally insubstantial. The Court held that the 1959 agreement between Pacific and the Department excused Pacific from liability to pay for any part of the operation and maintenance costs of the fish-trapping and egg-taking facilities. The Department in its petition for rehearing concedes that the Ninth Circuit so held, but alleges that the Court erred. The Department then requests that the Commission somehow correct this alleged error. In effect, this is a request that the Commission review and modify the decision

[5] 333 F. 2d 689, 697.
[6] 333 F. 2d 689, 697.
[7] 333 F. 2d 689, 697.

of the Court which reviewed the Commission's decision pursuant to Section 313(b) of the Federal Power Act. This is an undertaking to which we could not aspire even if we were so disposed.

Although the Ninth Circuit remanded the case to the Commission for further proceedings relating to the operation and maintenance costs of the fish-trapping and egg-taking facilities there is in actuality nothing more for the Commission to do. The Court had held that the Commission could not disregard the agreement between Pacific and the Department which the Court interpreted as freeing Pacific from any obligation to pay the operation and maintenance costs of these facilities.

The Commission finds:

The petition for rehearing filed July 22, 1965, by the State of California Department of Fish and Game presents no question of fact or legal principle which has not been considered before, or which now having been considered would warrant any change or modification of our Opinions No. 381 and 381–A and our clarifying order issued June 23, 1965.

The Commission orders:

The petition for rehearing in the matter of Project No. 2082 filed by the State of California, Department of Fish and Game on July 22, 1965, is hereby denied.

Before Commissioners: L. J. O'Connor, Jr., Acting Chairman; Charles R. Ross and Carl E. Bagge.

UNITED GAS PIPE LINE COMPANY, CP65–373; MARSHALL R. YOUNG DRILLING COMPANY, G–12245; THE TARPON OIL CORPORATION, CI60–582; THE TARPON OIL CORPORATION, CI65–1290; THE TARPON OIL CORPORATION, RI62–264; MARSHALL R. YOUNG DRILLING COMPANY AND J. C. TRAHAN, DRILLING CONTRACTOR, INC., RI64–722

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY, PERMITTING AND APPROVING ABANDONMENT OF SERVICE, AMENDING ORDER ISSUING CERTIFICATE, TERMINATING CERTIFICATE, TERMINATING PROCEEDING, AMENDING ORDER PROVIDING FOR HEARING ON AND SUSPENSION OF PROPOSED CHANGE IN RATE, AND ACCEPTING SUPPLEMENTS TO FPC GAS RATE SCHEDULES FOR FILING

(Issued August 20, 1965)

On May 25, 1965, United Gas Pipe Line Company (United) filed in Docket No. CP65–373 an application, as supplemented on June 1, 1965, pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the acquisition, construction and operation of facilities and the sale of natural gas, all as more fully set forth in the application as supplemented.

United proposes (1) to acquire and operate approximately 16.6 miles of pipeline presently owned by The Tarpon Oil Corporation (Tarpon) in Hancock County, Mississippi; (2) to relocate its gas purchase meter station on said line; and (3) to construct and operate a sales meter station and to sell natural gas on a firm basis to United Gas Corporation for resale in a new community located near the National Aeronautics and Space Administration facility in Hancock County, Mississippi.

On June 7, 1965, Tarpon filed in Docket No. CI65–1290 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval of the Commission to abandon the sale of natural gas to United from the Ansley Field, Hancock County, Mississippi, due to depletion, and to abandon the transportation

service, together with related facilities, rendered to Marshall R. Young Drilling Company (Young) in said field, all as more fully set forth in the application.

The sale of natural gas and the transportation service by Tarpon were authorized in Docket No. CI60–582 and made pursuant to Tarpon's FPC Gas Rate Schedule Nos. 1 and 2, respectively. Tarpon has filed notices of cancellation of said rate schedules.

On June 7, 1965, Young filed in Docket No. G–12245 an application pursuant to Section 7(c) of the Natural Gas Act to amend the order issuing a certificate in said docket by changing the location of the delivery point for gas sold to United in Hancock County, Mississippi, all as more fully set forth in the application.

Young was authorized in Docket No. G–12245 to sell gas to United from the Ansley Field. This field is adjacent to the NASA community in Hancock County, Mississippi. In order to make its sale to United, Young built approximately 16.6 miles of 5½-inch and 6⅝-inch pipeline from the field to United's Lirette-Mobile transmission line, and United constructed a gas purchase meter station at the interconnection of these pipelines. Young sold gas to United at a rate of 21.0 cents per Mcf at 15.025 psia. Pursuant to authorization received in Docket No. CI60–582 Tarpon acquired the pipeline between the Ansley Field and United's pipeline. Young continued to sell gas to United and paid Tarpon a transportation charge of 1.5 cents per Mcf. No change was made in the 21.0-cent rate charged United. This 21.0-cent rate is in effect subject to the refund in Docket No. RI64–722. Inasmuch as United will acquire and operate the line from the Ansley Field, Young has filed a notice of change in rate to reduce the amount charged United by 1.5 cents per Mcf, an amount equal to the transportation charge heretofore paid to Tarpon.

Tarpon was also authorized in Docket No. CI60–582 to sell gas to United from the Ansley Field which sale it now proposes to abandon due to depletion. Tarpon filed a notice of change in rate for said sale which was suspended in Docket No. RI62–264 and has not been made effective. Accordingly, the rate proceeding will be terminated as moot.

In order to deliver gas to United Gas Corporation for resale and to continue its purchase obligations to Young, United will acquire the line presently owned by Tarpon and will relocate the gas purchase meter from the interconnection with the Lirette-Mobile pipeline to a point near the Ansley Field. United will also construct and operate a meter station for sales to United Gas Corporation at a point near the Ansley Field.

United Gas Corporation's estimated third year peak day and annual natural gas requirements for the new community are 920 Mcf and 80,123 Mcf at 14.9 psia, respectively. United will sell this gas to United Gas Corporation at 29.12 cents per Mcf pursuant to Rate Schedule G–J. United Gas Corporation has received a certificate of public convenience and necessity from the Public Service Commission of the State of Mississippi for the proposed distribution service and will invest approximately $154,326 in facilities therefor.

The proposed acquisition and construction by United is estimated at $110,971, which will be financed with funds on hand. United's estimated third year net income from the project is $494. At the end of nine years of operation the acquired facilities will be completely depreciated and the net income will be more substantial. In addition Applicant estimates that in the third year of operation of the proposed project it will save $5,764 which will not have to be paid to Young as a transportation charge by Tarpon. Hence it appears that the project is economically feasible.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the applications has been received.

At a hearing held on August 12, 1965, the Commission on its own motion

received and made a part of the record in this proceeding all evidence, including the applications, as supplemented, and exhibits thereto, submitted in support of the authorizations sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, United Gas Pipe Line Company, a Delaware corporation having its principal place of business in Shreveport, Louisiana, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of November 10, 1942, in Docket No. G–232 (3 FPC 863).

(2) The facilities hereinbefore described, as more fully described in the application in Docket No. CP65–373, will be used in the transportation and sale of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the acquisition, construction and operation of said facilities and the sale of natural gas by United Gas Pipe Line Company are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) United Gas Pipe Line Company is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The acquisition, construction and operation of facilities and the sale of natural gas by United Gas Pipe Line Company are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder should be conditioned upon United Gas Pipe Line Company's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), (d) and (e) of Section 157.20 of said Regulations.

(6) Applicant, The Tarpon Oil Corporation, is engaged in the sale and transportation of natural gas in interstate commerce and is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission.

(7) The sale and transportation of natural gas, together with the facilities subject to the jurisdiction necessary therefor, proposed to be abandoned by The Tarpon Oil Corporation as hereinbefore described, as more fully described in the application in Docket No. CI65–1290, are subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(8) The abandonment proposed by The Tarpon Oil Corporation in Docket No. CI65–1290 is permitted by the public convenience and necessity and should be approved as hereinafter ordered.

(9) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that the certificate of public convenience and necessity heretofore issued to The Tarpon Oil Corporation in Docket No. CI60–582 for the sale and transportation of natural gas proposed to be abandoned in Docket No. CI65–1290 should be terminated.

(10) The proceeding pending in Docket No. RI62–264 is moot and should be terminated.

(11) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the order issuing a certificate of public convenience and necessity to Marshall R. Young Drilling Company in Docket No. G–12245 should be amended by changing the delivery point for gas sold to United Gas Pipe Line Company.

(12) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that the order providing for a hearing on and suspension of a

proposed change in rate in Docket No. RI64–722 should be amended by reducing by 1.5 cents per Mcf the proposed rate after increase.

(13) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that the supplements to FPC gas rate schedules submitted by The Tarpon Oil Corporation and Marshall R. Young Drilling Company should be designated and accepted for filing as hereinafter ordered.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to United Gas Pipe Line Company authorizing the acquisition, construction and operation of facilities and the sale of natural gas on a firm basis, as hereinbefore described and as more fully described in the application in Docket No. CP65–373, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon United Gas Pipe Line Company's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), (d) and (e) of Section 157.20 of said Regulations.

(C) The acquisition and construction of facilities authorized in paragraph (A) above shall be completed, said facilities shall be placed in actual operation, and the sale of natural gas to United Gas Corporation shall commence, as provided by paragraph (b) of Section 157.20 of the Regulations under the Natural Gas Act, within one year from the date of this order.

(D) Permission for and approval of the abandonment of the sale and transportation of natural gas, together with facilities subject to the jurisdiction of the Commission necessary therefor, by The Tarpon Oil Corporation, as hereinbefore described and as more fully described in the application in Docket No. CI65–1290, are granted.

(E) The certificate of public convenience and necessity heretofore issued to The Tarpon Oil Corporation in Docket No. CI60–582 is terminated.

(F) The proceeding pending in Docket No. RI62–264 is terminated.

(G) The order issuing a certificate of public convenience and necessity to Marshall R. Young Drilling Company in Docket No. G–12245 is amended by authorizing a change in the delivery point for gas sold to United Gas Pipe Line Company, and in all other respects said order shall remain in full force and effect.

(H) The order providing for a hearing on and suspension of a proposed change in rate in Docket No. RI64–722 is amended by reducing by 1.5 cents per Mcf the proposed rate after increase, and in all other respects said order shall remain in full force and effect.

(I) The supplements to FPC gas rate schedules submitted by The Tarpon Oil Corporation and Marshall R. Young Drilling Company are accepted for filing effective the date of this order and are designated as follows:

Docket No.	Applicant or respondent	Description and date of instrument	Designation	
			Rate schedule	Supplement
CI65-1290	The Tarpon Oil Corp.	Notice of Cancellation,[1] June 7, 1965	1	2
CI65-1290	do	Notice of Cancellation,[2] June 7, 1965	2	3
G-12245	Marshall R. Young Drilling Co.	Amendment [3] (undated)	1	4
RI64-722	do	Notice of Change,[4] June 4, 1965	1	5

[1] Cancels the Tarpon Oil Corporation FPC Gas Rate Schedule No. 1.
[2] Cancels the Tarpon Oil Corporation FPC Gas Rate Schedule No. 2.
[3] Deletes seller's dehydration obligation, changes delivery and gas measurement points, and reduces remaining periodic increased rates each by 1.5 cents per Mcf.
[4] Filed June 7, 1965, to reflect a decrease in rate from 21.0 to 19.5 cents per Mcf at 15.025 psia which will result in a total annual decrease of $5,625.

Before Commissioners: L. J. O'Connor, Jr., Acting Chairman; Charles R. Ross and Carl E. Bagge.

WISCONSIN PUBLIC SERVICE CORPORATION, PROJECT NO. 2433

ORDER ISSUING LICENSE (MAJOR)

(Issued August 20, 1965)

Application was filed on December 19, 1963, and supplemented on October 26, 1964, by Wisconsin Public Service Corporation (Applicant) of Milwaukee, Wisconsin, for a license under Section 4(e) of the Federal Power Act (Act) for constructed Project No. 2433, known as Grand Rapids Hydro Project, located on the Menominee River, in Marinette County, Wisconsin, and Menominee County, Michigan, between Ingalls and Wallace, Michigan. No lands of the United States are affected by the project.

Construction of the project was commenced in 1908 and completed in 1910 with 2 units in service by July of that year. Applicant acquired the project in 1922. Three additional units were installed, the last of which was placed in operation in 1923. There have been no major changes in the project since the latter date.

Applicant requests that any license issued for the project be for a period of 50 years, effective as of the date of its issuance, in view of the Commission's action of June 23, 1922, in DI-32 (Second Annual Report of the Federal Power Commission, p. 151), in which it declined to take jurisdiction over the Grand Rapids dam and powerhouse. In a proceeding on a declaration of intention filed on April 27, 1940 under Section 23(b) of the Federal Power Act, the Commission found and determined in its Opinion No. 94, dated July 27, 1943, that the Menominee River and its tributary the Michigamme River, are navigable waters of the United States (3 FPC 449). The 1943 decision reversed the 1922 decision with respect to the navigability of the Menominee River involved. The subject application was filed as a result of our April 25, 1962 decision concerning the Androscoggin River in Maine in which we invited the owners of all unlicensed projects to file voluntary applications for licenses (27 FPC 830). The application involves the same site and the same project as was proposed in the afore-mentioned DI-32, which was rejected by the Commission for want of jurisdiction. In the circumstances of this case, we are making the effective date of this license current with its issuance, but we deem it appropriate to fix the termination date as of December 31, 1993.

The Secretary of the Army and the Chief of Engineers have reported that the plans of the project structures affecting navigation are satisfactory insofar as the interests of navigation are concerned.

The Department of the Interior, in reporting on the application, recommended for inclusion in any license for the project certain conditions in the interests of fish and wildlife and recreation, including provision for minimum discharge of water into the Menominee River at the dam in the interest of fish life.

The Department of Health, Education, and Welfare has advised that it had consulted with the Michigan Water Resources Commission and the Wisconsin Committee on Water Pollution and both agencies indicated there is no water pollution problem existing near the Grand Rapids Dam. The Department made no recommendations to include conditions in any license for the project.

The Department of Conservation of the State of Michigan has advised that Applicant has been mindful of public recreational needs and has demonstrated its cooperation by providing for access to the reservoir. The Department requested that any license for the project include conditions pertaining to water

flow similar to those recommended by the Department of the Interior. However, in a subsequent report, the Department of Conservation suggested that we defer including at this time in any license for the project the Department's originally recommended condition in regard to low flow rates, in the interest of fish life below the project dam pending the results of agreement to test runs of water flow rates which will be studied jointly by fishery biologists of the Michigan and Wisconsin Department of Conservation. The Department also advised that arrangements for public access to the project reservoir and the river below the powerhouse have been made with Applicant.

The Wisconsin Department of Conservation recommended for inclusion in any license for the project a condition that a minimum flow through the dam gates be established to prevent the stranding of fish. This condition was recommended by the Department of the Interior and is included herein as Article 31.

Applicant filed a revised Exhibit R, designated Exhibit R–2 (FPC No. 2433–7), which identifies and locates three improved fishing and canoeing points, a canoe portage, four shoreline public fishing sites, a Boy Scouts Club cabin, and project lands open to hunting. Applicant is cooperating in providing for recreational needs with the States of Wisconsin and Michigan and with local agencies. The project lands designated on Exhibit R, as revised, for public hunting can be utilized in the future for additional reservoir and tailwater access sites and for other recreational needs that may arise. We are herein approving Exhibit R, as revised, as a part of this license.

With the exception of a substation, the application did not include any transmission facilities. In Article 32 herein we are reserving the right to the Commission to determine at a later date what additional transmission facilities, if any, should be included in this license as a part of the project works.

The Commission finds:

(1) The project affects navigable waters of the United States.

(2) Applicant is a corporation organized under the laws of the State of Wisconsin, and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effectuate the purposes of a license for the project.

(3) Public notice of the filing of the application has been given. No protests or petitions to intervene have been received. No conflicting application is before the Commission.

(4) The project does not affect a Government dam, nor will the issuance of a license therefor, as hereinafter provided, affect the development of any water resources for public purposes which should be undertaken by the United States.

(5) Subject to the terms and conditions hereinafter imposed, the project will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, and for other beneficial public uses, including recreational purposes.

(6) The installed horsepower capacity of the project hereinafter authorized for the purpose of computing the capacity component of the administrative annual charge is 9,360 horsepower, and the amount of annual charges, based on such capacity, to be paid under the license for the project, for the costs of administration of Part I of the Act is reasonable.

(7) The exhibits designated and described in paragraph (B) below conform to the Commission's rules and regulations and should be approved as part of this license.

(8) The afore-mentioned Exhibit R–2 (FPC No. 2433–7) entitled "Recreational Utilization-Grand Rapids Hydro Electric Development", conforms to the

Commission's rules and regulations and should be approved as part of this license.

The Commission orders:

(A) This license is hereby issued to Wisconsin Public Service Corporation (Licensee) of Milwaukee, Wisconsin, under Section 4(e) of the Federal Power Act (Act) for a period effective as of August 1, 1965 and terminating December 31, 1993, for the continued operation and maintenance of Project No. 2433, located on the Menominee River, a navigable water of the United States, in Marinette County, Wisconsin, and Menominee County, Michigan, subject to the terms and conditions of the Act, which is incorporated herein by reference as a part of this license, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) Grand Rapids Hydro Project No. 2433 consists of:

(i) all lands constituting the project area and enclosed by the project boundary or the limits of which are otherwise defined, and/or interest in such lands necessary or appropriate for the purposes of the project, whether such lands or interest therein are owned or held by the licensee or by the United States; such project area and project boundary being more specifically shown and described by certain exhibits which formed part of the application for license and which are designated and described as follows:

Exhibit J & K: (FPC No. 2433-1) showing—General Map and Details of Project Boundary and Property Rights.

Exhibit K: (FPC No. 2433-2) showing—Detail Map of Project Works—Grand Rapids Hydro Electric Development.

Exhibit K: (FPC No. 2433-3) showing—Detail Map of Pond Areas Outside of Natural River Banks.

(ii) a dam with a 920 feet long earth fill section, a 208 feet long spillway section and a 160 feet long tainter gate section having 8 tainter gates 12 by 12½ feet; and a section of 122 feet including seven 14 by 14½-foot tainter gates; a reservoir with normal elevation of 126 feet and an area of 300 acres; a 165½ feet wide and 3,300 feet long canal; a reinforced concrete powerhouse 121 by 35 feet and 33½ feet high (with a 50½ feet by 16 feet extension on the south side and a 32 feet by 40 feet boiler room workshop extension on the east side) containing three 1,700 horsepower, one 2,240 horsepower and one 2,400 horsepower turbines connected to 5 generators with a total capacity of 7,020 kilowatts; a substation containing three 1,250 and four 1,333 kva transformers; and appurtenant electrical and mechanical facilities; the location, nature and character of which are more specifically shown and described by the exhibits hereinbefore cited and by certain other exhibits which also formed a part of the application for license and which are designated and described as follows:

Exhibit L: General Design Drawings of Grand Rapids Hydro Electric Development:

FPC No.	Sheet No.	Description
2433-4	1	Dam and canal bridge.
2433-5	2	Plan and elevation of power plant.
2433-6	3	Plan drawing of substation.

Exhibit M: Four typewritten pages, "General Description and General Specifications of Equipment", filed in the Commission December 19, 1963, as revised October 22, 1964.

(iii) all other structures, fixtures, equipment or facilities used or useful in the maintenance and operation of the project and located on the project area, including such portable property as may be used or useful in connection with the project

or any part thereof, whether located on or off the project area, if and to the extent that the inclusion of such property as part of the project is approved or acquiesced in by the Commission; also, all riparian or other rights, the use or possession of which is necessary or appropriate in the maintenance or operation of the project.

(C) This license is also subject to the terms and conditions set forth in Form L–3 (Revised August 1, 1964), entitled "Terms and Conditions of License for Constructed Project Affecting Navigable Waters of the United States" (32 FPC 1114), which terms and conditions, designated as Articles 1 through 29, are attached hereto and made a part hereof, except for Article 25 thereof; and subject to the following special conditions set forth herein as additional articles:

Article 30. The Licensee shall pay to the United States the following annual charge; effective as of August 1, 1965:

For the purpose of reimbursing the United States for the costs of administration of Part I of the Act, a reasonable annual charge as determined by the Commission in accordance with the provisions of its regulations, in effect from time to time. The authorized installed capacity for such purpose is 9360 horsepower.

Article 31. The Licensee shall continue to discharge a minimum flow of 900 cfs (or the natural inflow to the reservoir, whichever is less) at all times from the reservoir to the Menominee River, provided that such flows may be adjusted by further order of the Commission, upon further studies and recommendations by the Wisconsin Department of Conservation and Michigan Department of Conservation, after notice and opportunity for hearing.

Article 32. The Commission reserves the right to determine at a later date what additional transmission facilities, if any, should be included in the license as part of the project works.

Article 33. On the application of any person, association, corporation, Federal agency, State or municipality, the Licensee shall, after notice and opportunity for hearing, permit such reasonable use of its reservoirs or other project works or parts thereof as may be ordered by the Commission in the interest of comprehensive development of the waterway or waterways involved and the conservation and utilization of water resources of the region for water supply for steam-electric, irrigation, industrial, municipal or similar purposes consistent with the primary objective of the project. The Licensee shall receive such reasonable compensation as may be appropriate for use of its reservoirs or other project works or parts thereof for such purposes, any such compensation to be fixed either by Commission approval of an agreement between the Licensee and the party or parties benefiting or by the Commission in the event the parties are unable to agree. Applications shall contain information in sufficient detail to afford a full understanding of the proposed use, including satisfactory evidence that the applicant possesses necessary water rights pursuant to applicable State law, or a showing of cause why such evidence cannot be submitted, and a statement as to the relationship of the proposed use to any State or municipal plans or orders which may have been adopted with respect to the use of such waters.

(D) The exhibits designated and described in paragraph (B) above are hereby approved as part of this license.

(E) The Exhibit R–2 described in finding (8) above is hereby approved as part of this license.

(F) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgment of the acceptance of this license, it shall be signed for the Licensee and returned to the Commission within 60 days from the date of issuance of this order.

312–270—69——39

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., David S. Black and Carl E. Bagge.

AREA RATE PROCEEDING, ET AL. (SOUTHERN LOUISIANA AREA), DOCKET NO. AR61-2, ET AL.

ORDER DENYING MOTION FOR RECONSIDERATION

(Issued August 23, 1965)

On July 30, 1965, The Jupiter Corporation (Jupiter) filed a motion for reconsideration [1] of the order issued July 2, 1965, 34 FPC 3, which denied the petition to intervene filed by Jupiter on May 5, 1965, in the above-designated proceedings.

In support of its motion, Jupiter refers again to the status of the above-designated proceedings, and seeks to explain its lack of timeliness in filing its petition. However, Jupiter has failed to make any persuasive showing of how it will be aggrieved by our denial of its petition. Moreover, whatever alleged benefit might accrue to Jupiter by its participation at this late stage in the proceedings (and Jupiter nowhere spells this out) is outweighed by the public interest which requires that the record be closed at the earliest possible date, and the case submitted for decision.

The motion seeks to explain in some detail Jupiter's reasons for not filing its petition in a timely fashion. In point of fact Jupiter knew as early as December 1963, that the staff was recommending that it be treated as a transporter. Jupiter has failed to make a showing of any extraordinary circumstances which prevented it from making an application which is more timely than the one here under consideration. Furthermore, Jupiter's general allegations that it has a substantial interest in these proceedings with respect to the applicability of an area rate to it are not adequately supported. Its allegations add nothing which would warrant reversal of our order denying intervention.

The Commission finds:

Jupiter has presented no facts or principles of law in its motion filed July 30, 1965, which were not considered by the Commission in its order issued July 2, 1965, or which having now been considered warrant any modification of that order.

The Commission orders:

The motion for reconsideration filed by Jupiter on July 30, 1965, is denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., David S. Black and Carl E. Bagge.

TRANSCONTINENTAL GAS PIPE LINE CORPORATION, DOCKET NOS. CP64-270 AND CP65-181

ORDER DENYING APPLICATION FOR REHEARING

(Issued August 23, 1965)

On July 26, 1965 Atlantic Seaboard Corporation (Seaboard) filed an application for rehearing with regard to temporary authorization issued in these dockets to

[1] The document is styled "Application for Rehearing". As Section 1.30(e) of the Commission's Rules of Practice and Procedure prohibits the entertaining by the Commission of an application for rehearing until a final decision is reached, this filing has been accepted as a motion for reconsideration.

Transcontinental Gas Pipe Line Corporation (Transco) on June 25, 1965. Seaboard requests rehearing so that the temporary authorization to Transco can be either modified or clarified insofar as Transco was authorized to construct facilities allegedly required for the increased service to Consolidated Edison Company of New York, Inc. (Con Ed), which service was denied in the same temporary authorization.

The temporary authorization was issued because of our finding, based upon allegations by Transco, that an emergency exists within the meaning of Section 7 of the Natural Gas Act. Transco, by the authorization in question, was permitted to construct and operate pipeline loops, additional horsepower at existing compressor stations and miscellaneous extensions and meter and regulator stations in order to enable it to meet the expanding requirements of its existing customers during the 1965–66 winter season. In our grant of temporary authority we denied Transco's request to substitute 55,000 Mcf per day of firm CD–3 service for a previously authorized 55,000 Mcf of GSS storage service to Con Ed. While it is true that, because of our denial of permission to make a portion of the increased sales requested, excess pipeline capacity will be available from the facilities authorized,[1] this was allowed in order to permit a logical increment of expansion by Transco. Transco alleged in its supplement to its application for temporary certificate that additional storage capacity would have to be developed for the 1965–66 winter if the Con Ed CD–3 service were not to be permitted and that additional storage capacity woud be needed in succeeding winters. Transco pointed out, however, that such storage capacity would not be needed if the substitution of firm CD–3 service were ultimately to be approved. Furthermore, Transco pointed out that the additional pipeline facilities involved in this temporary authorization are main line facilities "which will be used and useful in the immediate future whether or not the Con Edison substitute service is ultimately approved * * *." We agree with Transco that the creation of excess capacity incidental to the expansion permitted is preferable to "the alternative of developing prematurely and unnecessarily this year additional storage capacity to eliminate the aforementioned storage deficiencies * * *."

Seaboard's complaint appears to be that since the excess capacity authorized by the temporary granted to Transco could be utilized in connection with Transco's application in Docket No. CP65–181 to serve Commonwealth Natural Gas Corporation (Commonwealth) and Washington Gas Light Company (Washington), which is competitive with Seaboard's application in Docket No. CP65–122 to increase sales to these distributors, the construction might prejudice the comparative proceeding now underway.[2] However, since these facilities will in any event be usable by Transco to serve the increased needs of its other customers commencing with the winter of 1966–67, there is no basis for any such fear. Nor do we believe that the possibility that such facilities might be available to Transco in seeking temporary authority to serve Commonwealth and Washington during the 1965–66 winter heating season militates against the grant. For whether Transco or Seaboard or both are authorized to make temporary sales to these customers pending the final decision in the comparative proceeding, such authorization will not be permitted to affect that decision.

The Commission orders:

The application for rehearing filed by Atlantic Seaboard Corporation on July 26, 1965 is denied.

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[1] In a condition not material to this discussion, we denied permission to construct and operate a 16-inch lateral extending from Transco's mainline to Tryon, North Carolina.

[2] Columbia Gulf Transmission Co., *et al.*, Docket No. CP65–102, *et al.*

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., David S. Black and Carl E. Bagge.

COLORADO INTERSTATE GAS COMPANY, DOCKET NO. CP65-377

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND ACCEPTING TARIFF SHEETS FOR FILING

(Issued August 24, 1965)

On May 27, 1965, Colorado Interstate Gas Company (Applicant) filed in Docket No. CP65-377 an application, as supplemented on July 1, 1965, pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of a meter station and the sale of natural gas, on an interruptible basis, to Michigan Wisconsin Pipe Line Company (Michigan), all as more fully set forth in the application, as supplemented, in this proceeding.

Applicant proposes to install a meter station at a point in Beaver County, Oklahoma, where its Mocane-Hooker 22-inch line intersects Michigan's 24-inch line which originates at the latter's Hill Compressor Station. Applicant will sell and deliver to Michigan such daily volumes of gas as Applicant may have available from time to time and which Michigan may wish to purchase at a flat rate of 17.5 cents per Mcf. The application indicates that Michigan may require approximately 4,000,000 Mcf during the remaining portion of 1965. The term of the proposed sale is for a period of one year from the date of initial delivery.

Applicant states that it has available a gas supply temporarily in excess of its system requirements and that the proposed sale will assist both Applicant and Michigan in meeting their respective supply and requirement obligations.

The estimated cost of the proposed facilities is $26,950, which cost will be financed from current working funds on hand.

Concurrently with the filing of the subject application, Applicant tendered for filing Original Sheet Nos. 118 through 124 to its FPC Gas Tariff, Second Revised Volume No. 2, covering the proposed sale to Michigan.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on August 19, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, supplement and exhibits submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Colorado Interstate Gas Company, a Delaware corporation having its principal place of business in Colorado Springs, Colorado, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of June 5, 1945, in Docket No. G-294 (4 FPC 936).

(2) The facilities hereinbefore described, as more fully described in the application, as supplemented, in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the proposed transportation and sale of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the proposed transportation and sale of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(6) Applicant's tariff filings, hereinabove described, should be accepted for filing to become effective on the date this order issues.

The Commission orders:

(A) A certificate of public convenience and necessity is issued authorizing Applicant, Colorado Interstate Gas Company, to construct and operate the proposed facilities and to sell and deliver natural gas, on an interruptible basis, to Michigan for a period of one year from the date of initial delivery, all as more fully described in the application, as supplemented, in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities authorized shall be constructed and placed in actual operation and the sale of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act within 2 months from the date on which this order issues.

(D) The certificate issued is granted on the express condition that the interruptible service authorized herein shall be curtailed or interrupted to the extent required to meet existing or future contracted maximum delivery obligations of Applicant for firm service to its customers.

(E) Applicant's Original Sheet Nos. 118 through 124 to its FPC Gas Tariff, Second Revised Volume No. 2 are accepted for filing to become effective on the date this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., David S. Black, and Carl E. Bagge.

COLORADO INTERSTATE GAS COMPANY, DOCKET NO. CP65-407

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued August 24, 1965)

On June 18, 1965, Colorado Interstate Gas Company (Applicant) filed in Docket No. CP65-407 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of a meter station and the sale of natural gas, on an interruptible basis, to Reserve Pipeline, Inc. (Reserve) for resale, all as more fully set forth in the application in this proceeding.

Applicant will install a meter station on its Kansas Hugoton Field gathering system in Finney County, Kansas, and sell up to 3,500 Mcf per day, on an inter-

ruptible basis, to Reserve for resale in Kansas to farmers for irrigation purposes and to Century Refining Company for use as fuel. The application indicates that Applicant has available a gas supply temporarily in excess of its system requirements and that Reserve is willing to purchase a portion of such excess since its present source of supply is from various wells in the Hugoton Field, most of which are in a state of overproduction.

The proposed sale, pursuant to an agreement, dated May 26, 1965, will be for a term of three years from the date of initial delivery and will be at a rate of 15 cents per Mcf.

The total estimated cost of the proposed facilities is $4,180, which cost will be financed from current working funds on hand.

By letter, dated July 9, 1965, Applicant was issued a temporary certificate authorizing the construction and operation of the proposed facilities and the proposed sale of natural gas.

The State Corporation Commission of the State of Kansas filed a notice of intervention herein in support of the application.

After due notice, no petition to intervene, other notice of intervention or protest to the granting of the application has been filed.

At a hearing held on August 19, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Colorado Interstate Gas Company, a Delaware corporation having its principal place of business in Colorado Springs, Colorado, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of June 5, 1945, in Docket No. G–294 (4 FPC 936).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the proposed transportation and sale of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the proposed transportation and sale of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (c) (4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is issued authorizing Applicant, Colorado Interstate Gas Company, to construct and operate the proposed facilities and to sell and deliver up to 3,500 Mcf of natural gas per day to Reserve Pipeline, Inc., all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The certificate issued is granted on the express condition that the interruptible service authorized herein shall be curtailed or interrupted to the extent required to meet existing or future contracted maximum delivery obligations of Applicant for firm service to its customers.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., David S. Black and Carl E. Bagge.

FLORIDA GAS TRANSMISSION COMPANY, DOCKET NO. CP66-18

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued August 24, 1965)

On July 19, 1965, Florida Gas Transmission Company (Applicant) filed in Docket No. CP66-18 an application for a certificate of public convenience and necessity pursuant to Section 7(c) of the Natural Gas Act authorizing the construction and operation of certain facilities and the sale of natural gas to Central Florida Gas Corporation (Central) for distribution and resale in the City of St. Cloud, Florida, all as more fully set forth in the application.

Applicant proposes to construct and operate 0.34 miles of 4-inch lateral pipeline extending from its 20-inch transmission pipeline at a point approximately one mile south of the City of St. Cloud, together with a metering station and related facilities, for the sale and delivery of natural gas to Central. Central proposes to distribute and sell natural gas to domestic and commercial consumers, as well as to the City of St. Cloud on an interruptible basis for use in its electric generating plant. Service will be rendered pursuant to Applicant's FPC Gas Tariff Rate Schedules "G" and "I."

The estimated total market requirements of Central for the City of St. Cloud are stated to be:

	First year	Second year	Third year
Annual (M2Btu)	213,000	304,050	353,100
Peak day (M2Btu)	900	1,001	1,122

The estimated cost of the facilities proposed by the Applicant is $29,000 and will be defrayed from current cash on hand.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on August 19, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization, and upon consideration of the record,

The Commission finds:

(1) Applicant, Florida Gas Transmission Company, a Delaware corporation having its principal place of business in Winter Park, Florida, is a "natural-

gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order issued July 3, 1963, in Docket No. CP63-277 (30 FPC 27).

(2) The proposed construction and operation of facilities and sale of natural gas, as hereinbefore described and as more fully described in the application and exhibits in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed construction and operation of facilities and sale of natural gas are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Applicant, Florida Gas Transmission Company, authorizing the construction and operation of facilities and the sale of natural gas as more fully described in the application in this proceeding, subject to the jurisdiction of the Commission, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities authorized shall be completed and placed in actual operation and the transportation of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 12 months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., David S. Black and Carl E. Bagge.

NATURAL GAS PIPELINE COMPANY OF AMERICA, DOCKET NO. CP65-404

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued August 24, 1965)

On June 16, 1965, Natural Gas Pipeline Company of America (Applicant) filed in Docket No. CP65-404 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of facilities and the transportation and sale of natural gas, all as more fully set forth in the application.

Applicant proposes to construct and operate a total of 114.7 miles of 30-inch loop pipeline at various points on its Gulf Coast line, an additional 23,200 horsepower at existing compressor stations on the Gulf Coast line, and 34.6 miles of 24-inch loop pipeline on its Amarillo line, near Volo, Illinois.

The proposed facilities will increase Applicant's pipeline design capacity by 104,650 Mcf per day.[1] Precedent agreements for daily volumes of gas totaling 74,479 Mcf have been executed by Applicant and four existing customers, namely Central Illinois Gas & Electric Company, Northern Illinois Gas Company, Iowa Electric Light & Power Company and Iowa-Illinois Gas & Electric Company. The remaining 30,171 Mcf per day of unallocated capacity represents 1.3 percent of Applicant's total 2,276,560 Mcf of pipeline capacity as now proposed, and will be used to meet Applicant's future market requirements.

The incremental rate of return applicable to the proposed facilities is estimated to be 8.4 percent in the third year of operation, and the project thus appears feasible.

Total estimated cost of Applicant's proposed construction is $21,644,000, and will be financed by means of interim borrowings from banks and from The Peoples Gas Light and Coke Company, parent company of Applicant. Permanent financing will be accomplished through the sale of stock and first mortgage bonds.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on August 19, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits thereto, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Natural Gas Pipeline Company of America, a Delaware corporation having its principal place of business in Chicago, Illinois, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission.

(2) The proposed construction and operation of facilities and transportation and sales of natural gas by Applicant are subject to the requirements of Subsection (c) of Section 7 of the Natural Gas Act.

(3) The aforesaid construction and operation of facilities and transportation and sales of natural gas are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Applicant, Natural Gas Pipeline Company of America, authorizing the construction and operation of facilities and transportation and sales of natural gas hereinbefore described, as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities authorized shall be constructed and placed in actual operation, and the transportation and sales of natural gas shall be undertaken, as provided by paragraph (b) of Section 157.20 of the aforesaid Regulations, within one year from the date on which this order issues.

[1] All volumes are 1,000 Btu per Mcf @ 14.65 psia.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., David S. Black and Carl E. Bagge.

NORTHERN NATURAL GAS COMPANY, DOCKET NO. CP65-399

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued August 24, 1965)

On June 14, 1965, Northern Natural Gas Company (Applicant) filed in Docket No. CP65-399 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing (1) the construction and operation of 3.8 miles of 3-inch pipeline, a 2,000 Hp compressor unit at its Beaver Compressor Station, and a measuring station; and (2) the transportation of 2,200 Mcf of natural gas daily on a firm basis through its Peoples Division to Cominco Products, Inc. (Cominco) nitrogen fertilizer plant under construction near Beatrice, Nebraska, all as more fully set forth in the application.

Applicant's Peoples Division and Cominco under contract dated May 17, 1965, provided for the delivery of 2,200 Mcf of natural gas daily on a firm basis by Applicant to Cominco, at a contract price of 31.5 cents per Mcf, adjustable upward or downward as the 100% load factor rate in Zone 1 changes. The contract provides for additional deliveries above the 2,200 Mcf daily contract demand on an interruptible basis at 24.14 cents per Mcf. The minimum annual volume is 274 times the contract demand quantity. The primary term of the contract is for 10 years.

The total estimated cost of facilities proposed by Applicant is $675,500 (including branchline cost of $52,500) which will be defrayed out of cash on hand.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on August 19, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorization, and upon consideration of the record,

The Commission finds:

(1) Applicant, Northern Natural Gas Company, a Delaware corporation having its principal place of business in Omaha, Nebraska, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of April 6, 1943, in Docket No. G-280 (3 FPC 967).

(2) The proposed construction and operation of facilities and transportation and delivery of up to 2,200 Mcf daily of natural gas by Applicant to Cominco Products, Inc. as hereinbefore described, and as more fully described in the application and exhibits in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed construction and operation of facilities and transportation and delivery of natural gas are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's

compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to the Applicant in this proceeding, authorizing the proposed construction and operation of facilities and transportation and delivery of up to 2,200 Mcf daily on a firm basis of natural gas to Cominco Products, Inc., as more fully described in the application and exhibits in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The certificate issued hereby shall not entitle the industrial customer to whom firm deliveries are authorized herein to any priorities or rights to additional gas for meeting any future increases in its requirements at the expense of firm resale customers desiring to acquire additional gas to meet any future increases in its requirements.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., David S. Black and Carl E. Bagge.

PACIFIC GAS & ELECTRIC COMPANY, DOCKET NO. E-7240

ORDER APPROVING HEADWATER BENEFITS SETTLEMENT

(Issued August 24, 1965)

On March 28, 1964, the Pacific Gas & Electric Company (Pacific) requested that the Commission approve an agreement with the East Bay Municipal Utilities District (District) insofar as the agreement related to settlement of headwater benefits in the Mokelumne River Basin, California. The agreement was filed pursuant to Section 13.1 of the Commission's Regulations which provide for such settlements in lieu of a headwater benefits determination under Section 10(f) of the Federal Power Act (16 U.S.C. 803(f)).

In the Mokelumne River Basin the District owns and operates the unlicensed Pardee project which is benefited by the operation of two upstream reservoirs owned and operated by Pacific. Pacific also owns and operates five hydroelectric power plants located upstream from the Pardee plant. Pacific's reservoir system and hydroelectric plants are operated under and licensed as Project No. 137. No Federal projects are involved.

The District has for a number of years contracted with Pacific or its predecessor Great Western Power Company for the sale of electric energy generated at the District's Pardee plant. The first such power purchase agreement was made November 13, 1929 between District and Great Western. It was then assigned to Pacific on September 13, 1933. Later power purchase agreements were made between District and Pacific on November 3, 1933, and October 1, 1945. The latter contract extended through September 30, 1955 when the contract of that date was made. Thus, with the "Revised Contract" of December 18, 1963, the entire period from 1931, the year Pacific's first power plants became operable, to the present is covered by agreements or contracts relative to the purchase of

power produced at the District's Pardee plant. At the request of the Commission Pacific has filed all of the above-mentioned agreements.

Pacific states that all contracts prior to the "Revised Contract" of December 18, 1963 were negotiated to prescribe "single package" payments considering all factors including any headwater benefits which either party might receive from the other, although such benefits were not specifically mentioned. The "Revised Contract" clarifies this by expressly providing that the negotiations have taken into account all benefits provided by either party and that neither party is entitled to any further consideration with respect to such benefits.

The Commission finds:

The aforesaid agreements constitute an effective and reasonable method for compensating Pacific and its predecessors for headwater benefits received by the District's Pardee project in the Mokelumne River Basin in California.

The Commission orders:

The aforesaid agreements are approved with respect to settlement of headwater benefits under Section 13.1 of the Regulations under the Federal Power Act in lieu of headwater benefits determinations under Section 10(f) of the Federal Power Act until a further order of the Commission is required due to changes in conditions.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., David S. Black and Carl E. Bagge.

TEXAS EASTERN TRANSMISSION CORPORATION, DOCKET NO. CP64-5; ALGONQUIN GAS TRANSMISSION COMPANY, DOCKET NO. CP65-340

FINDINGS AND ORDER AFTER STATUTORY HEARING AMENDING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued August 24, 1965)

On April 22, 1965, Texas Eastern Transmission Corporation (Texas Eastern) filed in Docket No. CP64-5 a petition, as supplemented July 1, 1965, to amend the order of the Commission issued in Docket No. CP64-5, *et al.*, on December 19, 1963, 30 FPC 1559, as amended by orders issued October 28, 1964, 32 FPC 1229, and April 5, 1965, 33 FPC 699. The above orders authorized Texas Eastern to undertake a four-year (1964–1967) system-wide expansion program in order to increase its peak day capacity by 408,010 Mcf. By the instant filing, Texas Eastern seeks authorization for the construction and operation of additional facilities and for authorization to accelerate its expansion by constructing during 1966 certain of the facilities previously authorized for construction during 1967. It seeks further authorization for the sale of additional volumes of natural gas to existing customers.

Texas Eastern proposes to construct and operate, in addition to facilities previously authorized, 156.11 miles of 30 and 36-inch pipeline loops on various portions of its system; a 36-inch crossing of the Muskingum River in Ohio; 32,500 horsepower of compression at three existing compressor stations; and 13 new wells and 6.5 miles of field lines in the Accident Storage Field, Garrett County, Maryland. It also requests authorization for the accelerated construction of 11 miles of 30 and 36-inch pipeline loops, and impeller changes in centrifugal compressors at various existing stations.

The proposed modification of facilities will provide an additional 155,116 Mcf of peak day capacity, for a total four-year increase of 563,126 Mcf per day in lieu

of the 408,010 previously authorized. By virtue of these facilities and increased capacity, Texas Eastern proposes to make, and seeks authorization for, the additional sales of 153,974 Mcf of natural gas per day to existing customers. Each of the customers scheduled to receive additional volumes has executed a precedent contract with Texas Eastern for the respective volumes involved.

The expanded facilities proposed herein will provide unallocated peak day capacity of approximately 87,000 Mcf after November, 1967. This represents approximately 2 percent of total system capacity of 3,691,000 Mcf, and will be utilized by Texas Eastern in meeting its future market requirements.

Texas Eastern's capacity to provide the proposed increased service authorized by this order will come, in part, through additional development and increased withdrawals from the Accident Storage Field. Texas Eastern has scheduled an increase in peak day withdrawals of 57,000 Mcf, which will require 13 additional wells and an increase in storage inventory of 3,407,000 Mcf from the presently authorized maximum of 48,401,000 Mcf.

For the first several years of operation of the enlarged facilities and service proposed, incremental return ranges from approximately 5.65 percent in 1966 to 5.90 percent in 1969. Texas Eastern's system-wide return for this same period ranges from 6.01 percent in 1966 to 6.03 percent in 1969. This is slightly less than the 6¼ percent rate of return allowed the company in recent rate settlements. However, in view of the minor difference between authorized and estimated return and since the facilities and service proposed are for meeting the increased requirements of existing customers, the project nevertheless appears feasible.

Total estimated additional cost of Texas Eastern's proposed facilities is $40,962,000, which will be financed through the sale of first mortgage pipeline bonds, debentures and preferred stock. Interim financing of up to $100,000,000 is also available until May 1, 1966, under a revolving credit agreement with various New York financial institutions.

On the same date that the above petition to amend was filed by Texas Eastern, April 22, 1965, Algonquin Gas Transmission Company (Algonquin) filed in Docket No. CP65–340 an application, as supplemented June 28, 1965, pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of facilities and the sale of natural gas, all as more fully set forth in the application.

Algonquin proposes to undertake a four-year system-wide expansion designed to increase its capacity by 153,000 Mcf per day. From this additional capacity, Algonquin proposes increased sales of natural gas over the four-year period (1966–1969) to 18 existing customers, commencing with the 1966–67 winter season, with such sales ultimately totaling 51,640 Mcf per day of F–1 (firm service) gas and 99,198 Mcf per day of WS (winter service) gas. Each of the customers has signed a precedent contract for the respective volumes involved.

Algonquin's four-year construction program is scheduled as follows: To effect the additional service proposed to commence November, 1966, Algonquin will construct and operate 72.3 miles of 10, 16, 24 and 30-inch loop and lateral pipeline on various portions of its system in Connecticut, Massachusetts and New Jersey; to effect proposed 1967 deliveries, it will construct and operate 22.3 miles of 20 and 30-inch loop pipeline on portions of its system in Massachusetts and New Jersey; to effect proposed 1968 deliveries, it will construct and operate 18.3 miles of 16, 20 and 30-inch loop pipeline in Connecticut and Massachusetts; and to effect proposed 1969 deliveries, it will construct and operate 5.6 miles of 30-inch loop pipeline in Connecticut and New Jersey. Pipeline construction totals 118.5 miles, and is estimated to cost a total of $25,913,000. Construction

costs will be financed with retained earnings, short-term bank loans and by the sale of securities to be issued during the summers of 1966 and 1967.

The additional volumes of gas required by Algonquin for its increased sales proposed through the 1967–68 winter season will be provided by Texas Eastern Transmission Corporation, pursuant to the authorizations granted by this order in its related proposal in Docket No. CP64–5. Texas Eastern therein proposes the sale of additional volumes to Algonquin. For the remaining two years of Algonquin's proposed expansion of facilities and service, Texas Eastern's proposal in Docket No. CP64–5 will supply only 20,029 Mcf of the 58,070 Mcf per day additional gas to be delivered by Algonquin during that period. The remaining 38,000 Mcf per day is to be supplied from a new storage service of Texas Eastern. Algonquin has entered into a precedent contract for such "SS" volumes, on the basis of an informal tender of such service by Texas Eastern to all its customers, and has included such purchases in its economic studies. Since Texas Eastern has not received Commission authorization for the proposed new storage service, it will be necessary herein to condition Algonquin's proposal to provide for that portion of its gas supply not yet committed. By letter filed June 28, 1965, Algonquin agreed to accept a certificate so conditioned.

On an incremental basis, the rate of return on the proposed facilities ranges from 4.48 percent in 1967 to 6.91 percent in 1969, and the project thus appears feasible.

After due notice, the Pennsylvania Public Utility Commission (Pennsylvania) on May 7, 1965 filed a notice of intervention; on May 26, 1965 Pennsylvania filed an amendment stating it did not seek formal hearing. No other protest to the granting of the petition or application has been filed.

At a hearing held on August 19, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the petition and application and exhibits and supplements thereto, submitted in support of the authorizations sought herein, and upon consideration of the record,

The Commission finds:

(1) Texas Eastern Transmission Corporation and Algonquin Gas Transmission Company are "natural-gas companies" within the meaning of the Natural Gas Act, as heretofore found by the Commission.

(2) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the certificate of public convenience and necessity issued to Texas Eastern in Docket No. CP64–5 on December 19, 1963 be further amended as hereinafter ordered and conditioned.

(3) The proposed construction and operation of facilities and sales of natural gas by Algonquin are subject to the requirements of Subsection (c) of Section 7 of the Natural Gas Act.

(4) The aforesaid construction and operation of facilities and sales of natural gas by Algonquin are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Texas Eastern and Algonquin are able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

The Commission orders:

(A) The certificate of public convenience and necessity issued to Texas Eastern Transmission Corporation on December 19, 1963, in Docket No. CP64–5, as amended, is further amended by authorizing the expanded and accelerated construction and operation of facilities and additional sales of natural gas

hereinbefore described, as more fully described in Texas Eastern's petition to amend.

(B) The maximum reservoir inventory of the Accident Storage Field shall not exceed 51,807,000 Mcf of natural gas (@ 15.025 psia) without approval of the Commission.

(C) In all other respects the order issued in Docket No. CP64–5, *et al.*, on December 19, 1963, as amended, shall remain in full force and effect.

(D) A certificate of public convenience and necessity is issued to Algonquin Gas Transmission Company, authorizing the construction and operation of facilities and sales of natural gas hereinbefore described, as more fully described in the application in Docket No. CP65–340, upon the terms and conditions of this order.

(E) The certificate issued by paragraph (D) above and the rights granted thereunder are conditioned upon Algonquin's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c) and (e) of Section 157.20 of such Regulations.

(F) The time within which the facilities to be constructed by Algonquin and authorized in paragraph (D) above shall be constructed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the aforesaid Regulations, is fixed at four years.

(G) Algonquin's facilities required for the additional service authorized herein commencing in November, 1968, and November, 1969, shall be installed only if Texas Eastern Transmission Corporation has received Commission authorization to provide to Algonquin the "SS" service relied upon at rates that will support the cost of such gas, as shown by Algonquin in Exhibit N to its application in Docket No. CP65–340.

(H) The costs of construction and right-of-way for the facilities proposed to render the additional service commencing November, 1968, and November, 1969, shall not be included in Algonquin's rate base prior to the year in which they are used to provide the additional service authorized by this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., David S. Black and Carl E. Bagge.

TEXAS GAS PIPE LINE CORPORATION, DOCKET NOS. G–20073 AND G–20315

ORDER ACCEPTING REVISED TARIFF SHEETS FOR FILING, APPROVING REFUNDS, AND EXTENDING THE SETTLEMENT AGREEMENT

(Issued August 24, 1965)

Texas Gas Pipe Line Corporation (Pipe Line) on July 9, 1965, tendered for filing a revised tariff sheet[1] to its FPC Gas Tariff, Original Volume No. 1. The proposed change would make effective as of July 1, 1965, a reduction in Pipe Line's Rate Schedule DGS–1 of 0.36 cents per Mcf, amounting to $68,194, based upon sales for the twelve-month period ended April 30, 1965, to Pipe Line's sole jurisdictional customer, Transcontinental Gas Pipe Line Corporation.

The proposed filing reflects a net reduction in Pipe's Line's purchase gas cost incorporating a rate decrease by Sun Oil Company, effective September 1, 1964, and contingent rate increases by Pan American Petroleum Corporation, effective

[1] Fifth Revised Sheet No. 4.

February 24, 1965, and Shell Oil Company, effective July 1, 1965.[2] Pipe Line will also make refunds to Transcontinental Gas Pipe Line Corporation for the period from September 1, 1964 to February 24, 1965, based on a unit reduction of 0.53 cents per Mcf (16.55 cents to 16.02 cents), and from February 24, 1965 to July 1, 1965, based on a unit reduction of 0.39 cents per Mcf (16.55 cents to 16.16 cents). Additionally, Pipe Line proposes to add the proceedings involved in Pan American (Docket No. RI65–178) and Shell Oil Company (Docket No. RI65–477) to the list of producer proceedings shown on Appendix A of the settlement agreement in these dockets and to reflect subsequent changes or settlements in those proceedings under the same terms and conditions as are applicable to all of the proceedings listed in that Appendix A.

On August 2, 1965, Philadelphia Electric Company filed its objection to Pipe Line's net reduction filing and Long Island Lighting Company filed a letter concurring in those objections. Those parties contend that the settlement agreement in these dockets does not provide for offsetting reductions in purchased gas costs with other supplier rate increases, and therefore Pipe Line should be required to reduce its rate by the 0.53 cents per Mcf reduction it received from Sun Oil. They further assert that if after such reduction, Pipe Line determines that it requires a rate increase to recover increased purchased gas costs, it can exercise its right to file under Section 4(e) of the Natural Gas Act.

Section 3 of the settlement agreement states that Pipe Line will reduce its jurisdictional rate if the rate filings of its suppliers result in reduction in its cost of gas equivalent to at least one-tenth (1/10th) of one cent per Mcf of sales to Transcontinental. It is our view that that provision does not preclude Pipe Line from offsetting supplier rate decreases with supplier rate increases.

We are not here determining that Pipe Line would in fact be required to file for an increase in rates under Section 4 of the Act if it were to reflect the reduction from Sun Oil without offset. However, contrary to the suggestion of the objecting parties, it is not in the public interest that Pipe Line be placed in the possible position of reducing its rate and immediately thereafter filing for a rate increase.

On basis of the foregoing, we deem the objections of Philadelphia Electric and Long Island Lighting to be without merit and find that Pipe Line's proposed rate reduction and flow through of refunds should be accepted as hereinafter provided.

The Commission finds:

The rate reduction and refund proposed by Texas Gas Pipe Line Corporation in its filing of July 9, 1965, and the revised tariff sheet submitted therewith are proper and in the public interest in carrying out the provisions of the Natural Gas Act, and such tariff sheet should be accepted for filing to be effective as hereinafter provided and ordered.

The Commission orders:

(A) The proposed Fifth Revised Tariff Sheet No. 4 is accepted for filing to be effective as of July 1, 1965.

(B) Texas Gas Pipe Line Corporation shall make refunds to Trancontinental Gas Pipe Line Corporation in accordance with directions contained herein.

(C) The refund and rate reduction obligations of the Settlement Agreement approved by our order issued July 24, 1963, 30 FPC 405, shall be extended to include the pending proceedings involving the rate increases of Pan American and Shell Oil (Docket Nos. RI65–178 and RI65–477).

[2] The Sun Oil rate decreases are under Docket No. G–19907, FPC Rate Schedule No. 41, and Docket Nos. RI61–39 and G–19944, FPC Rate Schedule No. 42. The rate increases were put into effect subject to refund regarding Pan American, in Docket No. RI65–178,and regarding Shell Oil Company, in Docket No. RI65–447.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., David S. Black and Carl E. Bagge.

UNITED NATURAL GAS COMPANY, DOCKET NO. CP65-422

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued August 24, 1965)

On June 28, 1965, United Natural Gas Company (Applicant) filed in Docket No. CP65-422 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities, all as more fully set forth in the application.

Applicant proposes to replace two segments of 3-inch pipe totaling approximately 2.6 miles located in Williamsfield and Andover Townships, Ashtabula County, Ohio with equal segments of 6-inch pipe, and to use such pipe and approximately 2.2 miles of existing 4-inch pipe joining the new segments for the transportation of natural gas to Applicant's retail market in the Andover, Ohio area. The proposed replacement of facilities will result in the delivery of gas to Applicant's Andover distribution plant at an increased pressure which is required to render adequate, uninterrupted service to its present customers during the winter season.

Total estimated cost of Applicant's proposed construction is $81,762, and will be financed with funds on hand.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on August 19, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits thereto, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, United Natural Gas Company, a Pennsylvania corporation having its principal place of business in Oil City, Pennsylvania is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of March 30, 1943, in Docket No. G-328 (3 FPC 959).

(2) The proposed construction and operation of facilities by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid construction and operation of facilities by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Applicant, United Natural Gas Company, authorizing construction and operation of the facilities hereinbefore described, as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the gen-

eral terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities authorized shall be constructed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the aforesaid Regulations, within six months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., David S. Black and Carl E. Bagge.

CITIES SERVICE GAS COMPANY, DOCKET NO. CP66-14

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND PERMITTING AND APPROVING ABANDONMENT

(Issued August 25, 1965)

On July 16, 1965, Cities Service Gas Company (Applicant) filed in Docket No. CP66-14 an application pursuant to Sections 7(b) and 7(c) of the Natural Gas Act for permission and approval to abandon certain facilities and for a certificate of public convenience and necessity authorizing the construction and operation of transmission facilities, all as more fully set forth in the application.

Applicant proposes to abandon and reclaim the existing metering and regulating facilities and approximately 1,794 feet of 2-inch pipeline presently serving the town of Tonganoxie, Leavenworth County, Kansas; and to construct approximately 3,360 feet of 4-inch pipeline from a point on its newly constructed Ottawa-Tonganoxie 26-inch pipeline to the town of Tonganoxie, together with new meter and regulating facilities to enable it to continue service to that community. Deterioration and excessive pressure drop in the present 2-inch service pipeline makes the new line necessary. No service will be terminated by the proposed abandonment of facilities.

The total estimated cost of the proposed facilities is $13,870, and will be defrayed from cash on hand.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application, has been filed.

At a hearing held on August 19, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought, and upon consideration of the record,

The Commission finds:

(1) Applicant, Cities Service Gas Company, a Delaware corporation having its principal place of business in Oklahoma City, Oklahoma, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of December 28, 1943, in Docket No. G-298 (4 FPC 471).

(2) The facilities proposed to be abandoned by Applicant, as hereinbefore described and as more fully described in the application filed in this proceeding, are used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and such abandonment is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(3) The proposed abandonment of the aforesaid facilities is permitted by the public convenience and necessity and permission and approval therefor should be granted as hereinafter ordered.

(4) The proposed construction and operation of facilities as hereinbefore described and as more fully described in the application filed in this proceeding,

are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(5) The aforesaid proposed construction and operation of facilities are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(6) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(7) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) Permission for and approval of the abandonment by Applicant, Cities Service Gas Company, of the facilities hereinbefore described, as more fully described in the application and exhibits filed in this proceeding, are granted.

(B) A certificate of public convenience and necessity is issued to Applicant, Cities Service Gas Company, authorizing the construction and operation of facilities, all as more fully described in the application, upon the terms and conditions of this order.

(C) The certificate issued by paragraph (B) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(D) Applicant shall advise the Commission of the date of abandonment of the facilities as authorized in paragraph (A) above within ten days of such abandonment.

(E) The facilities hereby authorized shall be constructed and placed in actual operation, and the transportation of gas authorized in paragraph (B) above shall commence as provided in paragraph (b) of Section 157.20 of the aforesaid regulations within six months of the date on which this order issues.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., and Carl E. Bagge.

EL PASO NATURAL GAS COMPANY, CP64-211, CP62-176; SOCONY MOBIL OIL COMPANY, INC., CI62-825; PHILLIPS PETROLEUM COMPANY, CI64-719; THE PURE OIL COMPANY, CI64-1085; THE ATLANTIC REFINING COMPANY, CI64-1130; GULF OIL CORPORATION, CI64-1153; SKELLY OIL COMPANY, CI64-1225; MIDWEST OIL CORPORATION, CI64-1429; DALCO OIL COMPANY, CI64-1442; W. WATSON LAFORCE, CI65-61; GEORGE T. ABELL, CI65-878; M. B. RUDMAN, ET AL., CI65-930

ORDER DENYING MOTION TO ALLOW THE ADDUCING OF SUPPLEMENTARY EVIDENCE OR, IN THE ALTERNATIVE, FOR A CONTINUANCE OF THE HEARING

(Issued August 25, 1965)

On August 4, 1965, Union Oil Company of California (Union Oil), successor in interest to The Pure Oil Company, filed a motion[1] for a "protective order"

[1] The following companies joined in the motion: Skelly Oil Company, August 4, 1965, Phillips Petroleum Company, August 9, 1965, Gulf Oil Corporation, August 10, 1965, and Socony Mobil Oil Company, Inc., August 6, 1965.

insuring the right to adduce supplementary evidence in light of the Permian Basin Area Rate Decision or, in the alternative, for a continuance of the hearing as well as a continuance of the date for service of prepared evidence[2] until 30 days after the issuance of the Commission's decision in the Area Rate proceeding, Docket No. AR61–1.

Union Oil (which filed its motion just prior to the issuance of the Permian Basin Decision) indicates that it is willing to take the first step of preparing "some evidence" before it makes a study of the Permian Decision, but only upon the condition that it be given an opportunity to adduce supplementary evidence thereafter. Therefore, it wishes an "explicit reservation" of the right to adduce supplementary evidence within a reasonable time after the issuance of the Commission's order at Docket No. AR61–1. Presumably, Union Oil wants an explicit direction by the Commission to the examiner to allow the submission of such evidence in light of the Permian Basin Decision.

Socony Mobil, which filed its motion subsequent to the decision in the Permian Basin proceeding, points out that although the Commission's decision in Docket No. AR61–1 has been issued, the respondents will not have had sufficient time to analyze such decision and to prepare evidence by August 12, 1965.[3]

As Union Oil contends, our issuance of Opinion No. 468 renders moot the "hold the line" technique we have previously adopted in producer certificate proceedings in the Permian Basin, for it is clear that the just and reasonable price for new gas in the Permian Basin has now been fixed. However, the parties should be offered an opportunity to present evidence designed to show cause why Opinion No. 468 should not apply to their proposed sales, and also the effect of the quality provisions in Opinion No. 468 upon the price proposed herein. The scope of this evidence, as well as the dates for the submission of any such evidence and further procedure in this case, are matters properly within the initial discretion of the examiner. These properly can and should be resolved at the prehearing conference.

There appears to be no valid reason why the prehearing conference should not proceed on August 26, 1965, in order to determine further proceedings in accordance with this order, including the date for commencement of cross-examination.

The Commission orders:

The motions filed by Union Oil and the other Applicants who have joined in its motion are hereby denied for the reasons indicated above.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., David S. Black and Carl E. Bagge.

NATURAL GAS PIPELINE COMPANY OF AMERICA, DOCKET NO. CP65–371

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND PERMITTING AND APPROVING ABANDONMENT OF FACILITIES

(Issued August 25, 1965)

On May 24, 1965, Natural Gas Pipeline Company of America (Applicant) filed in Docket No. CP65–371 an application pursuant to Sections 7(b) and

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[2] On July 21, 1965, the Commission issued an order herein prescribing August 12, 1965, as the date for service of evidence by Applicants and August 26, 1965, as the date for convening of a pre-hearing conference before a presiding examiner. On August 5, 1965, the Commission issued its decision in the Permian Basin Area Rate Proceeding. *Area Rate Proceeding, et al.*, Docket No. AR61–1, *et al.*, 34 FPC 159, Opinion No. 468.

[3] The following producers have already filed prepared evidence: Socony Mobil Oil Co., Inc., Gulf Oil Corp., The Pure Oil Company, Skelly and Phillips Petroleum Company.

7(c) of the Natural Gas Act for permission and approval to abandon an existing meter station in Duval County, Texas, used to receive gas purchased from Humble Oil & Refining Company (Humble) and for a certificate of public convenience and necessity authorizing the construction, acquisition and operation of certain facilities to receive gas purchased from Humble at a new delivery point, all in Duval County, Texas, all as more fully set forth in the application in this proceeding.

The application indicates that Humble desires to process at its Northeast Loma Novia processing plant the gas sold to Applicant under the gas sales contract, dated April 10, 1963. The proposed change in delivery point will require Applicant to abandon its existing meter station in the South Lundell Field, Duval County, and to construct and operate a meter station at the tail gate of the Loma Novia plant and a 6-inch tap on Applicant's Hagist Ranch lateral line. Humble will construct and then convey at no cost to Applicant approximately 6 miles of 6-inch lateral line connecting the proposed new tap and meter station. The line to be conveyed to and acquired by Applicant is in consideration of Applicant's agreeing to the change in delivery point. Applicant and Humble have entered into an amendatory agreement, dated April 1, 1965, providing for the change in delivery point.

The estimated cost of Applicant's proposed facilities is $17,700. Salvage value of the facilities to be abandoned and reused is approximately $7,600. Accordingly, Applicant will incur a net cost for the proposed construction of $10,100, which will be financed from funds on hand.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on August 19, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Natural Gas Pipeline Company of America, a Delaware corporation having its principal place of business in Chicago, Illinois, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of October 13, 1942, in Docket No. G-235 (3 FPC 830).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction, acquisition and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The proposed construction, acquisition and operation of the subject facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) The facilities to be abandoned, as hereinbefore described are subject to the jurisdiction of the Commission and the abandonment of such facilities is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(5) Such abandonment by Applicant, as hereinbefore described, is permitted by the public convenience and necessity and an order authorizing and approving same should be issued as hereinafter ordered.

(6) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(7) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), (d)(2) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is issued authorizing Applicant, Natural Gas Pipeline Company of America, to construct, acquire and operate the subject facilities, as hereinbefore described, all as more fully described in the application herein, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), (d)(2) and (e) of Section 157.20 of such Regulations.

(C) The facilities authorized to be acquired, constructed and operated shall be acquired, constructed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 4 months from the date on which this order issues.

(D) Permission for and approval of the abandonment by Applicant of the facilities hereinbefore described, all as more fully described in the application in this proceeding, are granted.

(E) Applicant shall advise the Commission of the date of said abandonment within 10 days of the date thereof.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., David S. Black and Carl E. Bagge.

NORTH STAR NATURAL GAS COMPANY AND MIDWESTERN GAS TRANSMISSION COMPANY, DOCKET NO. CP65-159

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued August 25, 1965)

On December 1, 1964, North Star Natural Gas Company (Applicant) filed in Docket No. CP65-159 an application pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Midwestern Gas Transmission Company (Respondent) to establish physical connection of its transmission facilities with the proposed facilities of and to sell natural gas to Applicant for resale and distribution in The City of Thief River Falls, Minnesota, and environs, all as more fully set forth in the application in this proceeding.

Applicant proposes to construct and operate approximately 28 miles of 4½-inch lateral pipeline connecting Respondent's main transmission line in Polk County, Minnesota, with the distribution system Applicant proposes to construct and operate in Thief River Falls.

The application shows Thief River Falls' estimated third year peak day and annual natural gas requirements to be 2,421 Mcf and 383,210 Mcf, respectively. 2,032 Mcf of the peak day requirements will be purchased from Respondent and the remaining 389 Mcf will be supplied by peak shaving.

The total estimated cost of the facilities is $1,444,190, which cost will be financed from the issuance and sale of first mortgage bonds and equity securities. Exhibit N of the application indicates that in the third year of service a 7.8 percent return will be realized on the project.

On December 11, 1964, Respondent filed an answer to the instant application. Respondent states that it will have adequate gas supply to render the requested service provided it receives the authorization requested by it in Docket No. CP64–308, *et al.*, to increase its maximum daily volumes of imports from Trans-Canada Pipe Line Ltd. On August 10, 1965, *supra*, p. 457, the Commission issued its Opinion and order in Docket No. CP64–308, *et al.*, authorizing, among other things, the increased importation of volumes of natural gas by Respondent.

Due notice of the filing of the application and opportunity for hearing thereon has been given by publication in the Federal Register on December 16, 1964 (29 F.R. 17857). No protest or petition to intervene has been filed in this proceeding.

The Commission finds:

(1) Respondent, Midwestern Gas Transmission Company, a Delaware corporation having its principal place of business in Chicago, Illinois, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order issued May 12, 1959, in Docket No. G–16841 (21 FPC 653).

(2) Applicant, North Star Natural Gas Company, is a corporation duly organized and existing under the laws of the State of Minnesota and is authorized to engage in the business of distributing and selling natural gas within said State.

(3) It is necessary and desirable in the public interest that Respondent be directed to establish physical connection of its natural gas transmission system with the proposed facilities of Applicant and to sell and deliver up to 2,032 Mcf of natural gas per day to Applicant, as set forth in the application and as hereinafter ordered and conditioned.

(4) Applicant should be prepared to receive natural gas from Respondent within one year from the date of issuance of this order.

(5) The requirement that Respondent serve Applicant, as proposed, will not place any undue burden upon Respondent nor impair its ability to render adequate service to its existing customers.

The Commission orders:

(A) Midwestern Gas Transmission Company is directed to establish physical connection of its natural gas transmission system with the proposed facilities of Applicant and to sell and deliver up to 2,032 Mcf of natural gas per day to Applicant, all as hereinbefore described and as more fully set forth in the application.

(B) Applicant shall be prepared to receive natural gas from Respondent within one year from the date of issuance of this order.

(C) Respondent shall report to the Commission in writing the date of commencement of service to Applicant within ten days thereof.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., David S. Black and Carl E. Bagge.

TRANSCONTINENTAL GAS PIPE LINE CORPORATION, DOCKET NO. CP65-369; NORTH CENTRAL OIL CORPORATION (OPERATOR), ET AL., DOCKET NO. CI65-815

FINDINGS AND ORDER AFTER STATUTORY HEARING PERMITTING AND APPROVING THE ABANDONMENT OF THE SALE AND TRANSPORTATION OF NATURAL GAS

(Issued August 25, 1965)

On May 20, 1965, Transcontinental Gas Pipe Line Corporation (Transco) filed in Docket No. CP65-369 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon certain natural gas transportation service, all as more fully set forth in the application.

On February 18, 1965, North Central Oil Corporation (Operator), *et al.* (North Central), filed in Docket No. CI65-815 an application, as supplemented July 30, 1965, pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon the sale of natural gas to Trunkline Gas Company (Trunkline), all as more fully set forth in the application.

North Central sells natural gas to Trunkline from its production in the Sabine Pass Area, Jefferson County, Texas. Transco's lateral traverses North Central's production in this area, and enables Transco to transport gas for North Central to Trunkline a distance of approximately 86 miles through its lateral and mainline facilities to an interconnection with Trunkline's facilities in Beauregard Parish, Louisiana. Transco was authorized in Docket No. CP61-300 to provide the transportation and delivery of up to 3,000 Mcf of natural gas per day to Trunkline through its existing facilities. Transco herein seeks abandonment of the transportation service involved due to the proposed termination of the sale by North Central to Trunkline.

North Central requests permission and approval to abandon the sale of natural gas to Trunkline,[1] pursuant to an agreement between the parties dated June 16, 1964, and executed February 8, 1965, since Trunkline has refused to increase its take from the field or contract for the undedicated acreage of the field. Moreover, North Central states it has contacted all other interstate pipelines in the area and cannot procure an interstate market. The only market available to North Central for the undedicated acreage is a proposed intrastate purchaser who insists upon the further commitment of the reserves presently dedicated to Trunkline, estimated to be 20,000,000 Mcf as of January 1, 1965.

North Central estimates that, including the undedicated acreage, it can deliver approximately 10,000 Mcf per day from the field, as compared to the 2,000 Mcf per day it now sells to Trunkline.

North Central has requested that any order permitting and approving the abandonment of its sale to Trunkline be made effective 60 days after issuance by the Commission, in order to enable it to continue production from the wells involved pending commencement of deliveries to the proposed local market. By letter dated June 14, 1965, Transco states it has no objection to the effective date requested by North Central.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the applications has been filed.

At a hearing held on August 19, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, includ-

[1] Authorized by Commission order issued September 8, 1961, in Docket No. CI61-1605, 26 FPC 475.

ing the applications and exhibits and supplements thereto, submitted in support of the authorizations sought herein, and upon consideration of the record,

The Commission finds:

(1) Transco and North Central are "natural-gas companies" within the meaning of the Natural Gas Act, as heretofore found by the Commission.

(2) The natural gas transportation service proposed to be abandoned by Transco and the sale for resale of natural gas in interstate commerce proposed to be abandoned by North Central are within the jurisdiction of this Commission, and the abandonment thereof is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(3) The aforesaid abandonments by Transco and North Central are permitted by the public convenience and necessity, and approval therefor should be granted as hereinafter ordered.

The Commission orders:

(A) Permission for and approval of the abandonment by Transco and North Central of the natural gas transportation service and sale of natural gas hereinbefore described, as more fully described in the applications in this proceeding, are granted.

(B) The abandonments permitted and approved by this order shall be effective 60 days after issuance of this order.

(C) North Central shall advise the Commission of the date of the abandonment of its sale to Trunkline within 10 days thereof.

(D) The Notice of Cancellation dated February 12, 1965, is accepted for filing effective 60 days after the date of issuance of this order and is designated as Supplement No. 2 to North Central's FPC Gas Rate Schedule No. 6.

(E) The certificate issued in Docket No. CI61–1605 is terminated, effective 60 days after issuance of this order.

(F) The certificate issued in Docket No. CP61–300 is terminated, effective 60 days after issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., David S. Black and Carl E. Bagge.

UNITED FUEL GAS COMPANY, DOCKET NO. CP65–329

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND PERMITTING AND APPROVING ABANDONMENT OF FACILITIES

(Issued August 25, 1965)

On April 15, 1965, United Fuel Gas Company (Applicant) filed in Docket No. CP65–329 an application pursuant to Sections 7(b) and 7(c) of the Natural Gas Act for permission and approval to abandon certain natural gas facilities, and for a certificate of public convenience and necessity authorizing the construction and operation of certain other facilities, all as more fully set forth in the application.

Applicant seeks authorization for four separate and unrelated projects, as follows: (1) the modernization of 21.8 miles of 10, 12 and 20-inch pipeline west of Applicant's Cobb Compressor Station in Kanawha County, West Virginia. 17 miles of pipe will be replaced with various lengths of 2, 3, 4, 10 and 12-inch pipe; three miles of pipe will be retained; and 1.8 miles of pipe will be abandoned in place; (2) the abandonment of approximately 27.6 miles of 14-inch pipeline

extending westward from Lewis Junction through Roane and Kanawha Counties, West Virginia; (3) the retirement of eight 500 horsepower compressor units at Applicant's Hubball Compressor Station in Lincoln County, West Virginia, and replacement thereof with two 1,320 horsepower two-stage compressor units; and (4) the abandonment by sale to Applicant's affiliate, Columbia Gas of Kentucky, Inc., of approximately 9.9 miles of 4, 8, 10 and 12-inch pipeline located in Greenup and Boyd Counties, Kentucky.

The facilities to be replaced are old, of obsolete design, and require excessive maintenance for their continued operation. The facilities to be abandoned are no longer required in Applicant's operations.

No change in Applicant's delivery points, sales volumes, or existing natural gas service will result from the above projects.

Total estimated cost of Applicant's construction is $1,498,500, and will be financed through the issuance and sale of promissory notes and common stock to The Columbia Gas System, Inc., parent company of Applicant.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on August 19, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits thereto, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, United Fuel Gas Company, a West Virginia corporation having its principal place of business in Charleston, West Virginia, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of March 1, 1944, in Docket No. G-341 (4 FPC 534).

(2) The proposed construction and operation of facilities by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid construction and operation of facilities by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) The proposed abandonment of facilities by Applicant is subject to the provisions of Subsection (b) of Section 7 of the Natural Gas Act.

(6) The aforesaid abandonment of facilities by Applicant is permitted by the public convenience and necessity, and approval therefor should be granted as hereinafter ordered.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Applicant, United Fuel Gas Company, authorizing construction and operation of the facilities hereinbefore described, as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities authorized shall be constructed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the aforesaid Regulations, within one year from the date on which this order issues.

(D) Permission for and approval of the proposed abandonment of facilities by Applicant are granted.

(E) Applicant shall advise the Commission of the date of the abandonment of said facilities within 10 days thereof.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., David S. Black and Carl E. Bagge.

WARREN PETROLEUM CORPORATION (OPERATOR), G–20478, RI63–486; KERR-MCGEE OIL INDUSTRIES, INC., G–20479, RI63–460; TEXACO INC., G–20451, RI64–69; CITIES SERVICE OIL COMPANY, RI63–485, RI65–269.

ORDER AMENDING ORDER, GRANTING EXTENSION OF TIME, AND DENYING, IN PART, PETITION TO AMEND ORDER

(Issued August 25, 1965)

On August, 9, 1965, Texaco Inc. (Texaco) filed a petition requesting amendment of the Commission's order issued herein on June 3, 1965, 33 FPC 1212, conditionally approving a rate settlement for the jurisdictional sales of natural gas in the above dockets.

Texaco requests that Ordering Paragraph (E) of the order be amended to provide Texaco and the other above-designated respondents an option to retain and commingle the refund amounts pending further order of the Commission at 4.5 percent interest per annum, in lieu of the 6 percent rate of interest now provided, the lower interest rate being provided under similar refund circumstances for Permian Basin area producers in Opinion No. 468, Area Rate Proceedings, *et al.*, Docket No. AR61–1, *et al.*, issued August 5, 1965, *supra*, p. 159 at p. 242.

Texaco further requests that it be granted an additional extension[1] of time up to and including September 15, 1965 without interest obligation to comply with the provisions of Paragraph (F) of said order. Texaco states, in effect, that the additional time requested is necessary for its management to reconsider its decision to place the refund monies in escrow should a lower commingled refund interest rate be made available.

We believe it appropriate that these respondents be permitted to retain these refund amounts with their general assets pending further order of the Commission and that the appropriate rate of interest shall be 4.5 percent, the prime rate established by the Federal Reserve Board. While we shall extend the time for compliance, we see no reason why interest should not commence on July 15, 1965, as required by our order of June 3, 1965.

The Commission orders:

(A) Paragraph (E) of the order of June 3, 1965 herein is amended so as to provide for an interest rate of 4.5 percent per annum in lieu of 6 percent.

(B) An additional extension of time is granted to and including September 15, 1965, within which respondents may comply with Paragraph (F) of the order of June 3, 1965.

(C) Texaco's petition to amend Paragraph (E) of said order so as to require interest only from September 15, 1965, is denied.

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[1] By the Secretary's Notice issued July 1, 1965, an extension of time was granted to and including August 16, 1965 within which to comply with Paragraph (F) of the order issued June 3, 1965, and an additional extension was granted on August 16, until August 30, 1965.

Before Commissioners: L. J. O'Connor, Jr., Acting Chairman; Charles R. Ross and Carl E. Bagge.

A. J. INDUSTRIES, INC., PROJECT NO. 2307

ORDER AMENDING LICENSE

(Issued August 26, 1965)

On June 21, 1965, A. J. Industries, Inc., licensee for Project No. 2307 requested modification of Article 35 of our order issued October 24, 1963, as modified by our order of December 23, 1963, 30 FPC 1064, 1570, issuing a license for Project No. 2307 located within the Tongass National Forest near Juneau, Alaska.

Article 35 requires both the initiation and completion by the licensee of a program for the repair and modification of the generating equipment and pertinent facilities of the Salmon Creek and Annex Creek developments. The repair and modification of the project is scheduled to be completed over a five year period beginning as of the effective date of the license. Under Item 1, Article 35, the licensee is required to drill and grout Salmon Creek Dam within the third year and to gunite and waterproof the Salmon Creek Dam within the fourth year. Due to the very short construction season and the high cost of mobilizing work forces and materials, the licensee now requests that the drilling and grouting be deferred to the fourth year or 1967. According to the licensee, this would allow it to complete the aforementioned items in one construction season and eliminate the need for lowering the Salmon Creek reservoir two consecutive years during the summer months.

The Commission finds:

It is appropriate and consistent with the public interest that our aforementioned orders issued October 24, 1963, and December 23, 1963, be modified as hereby provided.

The Commission orders:

(A) Article 35 of our aforementioned October 24, 1963, and December 23, 1963, orders is hereby modified to read as follows:

Article 35. The Licensee shall repair and modify the Salmon Creek and Annex Creek developments to make the structures safe and restore the project to a satisfactory operating condition in accordance with the following schedule, the period to begin as of the effective date of the license:

First year:

1. Installation of air vent in blowoff line at outlet of Annex Creek dam.

2. Initiation of a program for the repair and modification of the generating equipment and appurtenant facilities of the Salmon Creek and Annex Creek developments.

Second year:

1. General cleanup around Salmon Creek dam and in and around Salmon Creek reservoir.

2. Scale downstream face of Salmon Creek dam.

3. Replacement of supports for Salmon Creek penstock No. 1.

4. Initiation of the rehabilitation of the Salmon Creek flume.

5. Continuation of the program for the repair and modification of generating equipment.

Third year:

1. Repair saddle dams at Upper Annex Creek Lake.

2. Replacement of supports for Salmon Creek penstock No. 1.

3. Continuation of the rehabilitation of the Salmon Creek flume.

4. Clean and paint valves of outlets of Salmon Creek and Annex Creek dams.
5. Continuation of the repair and modification of generating equipment.

Fourth year:

1. Drill and grout Salmon Creek dam.
2. Gunite and waterproof upstream face of Salmon Creek dam.
3. Continuation of the rehabilitation of the Salmon Creek flume.
4. Check the plate thickness of all penstocks.
5. Continuation of the program for the repair and modification of generating equipment.

Fifth year:

1. Repair tailrace concrete at Annex Creek power plant.
2. Completion of the rehabilitation of the Salmon Creek flume.
3. Completion of the repairs and modifications to the generating equipment and appurtenant facilities of the project.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., David S. Black and Carl E. Bagge.

AREA RATE PROCEEDING, ET AL. (PERMIAN BASIN AREA), DOCKET NO. AR61-1, ET AL.

ORDER DENYING STAY

(Issued August 26, 1965)

Texaco Inc., a respondent in this proceeding, acting also for a number of other producer respondents, has filed on August 19, 1965, a motion asking us to stay each of the ordering paragraphs of Opinion No. 468, *supra*, p. 159, until 60 days after the Commission passes upon the petitions for rehearing they expect to file, and, in the event one or more of the Movants files a petition for review, for an additional period extending 30 days after the Commission files the administrative record in the appropriate court of appeals. Under normal conditions we would defer passing on the motion until our consideration of the Movants' petitions for rehearing. In view of the motion's statement that "unless the Commission's orders are stayed, Movants will be required to comply with these orders not only before the Commission is required to act on applications for rehearing, but also prior to the statutory time provided for filing applications for rehearing"—a position which apparently is responsible for Movants' request that we act on this motion within seven days—we deem it appropriate to set forth promptly our reasons for rejecting the request and denying the motion as of this time.[1]

The thrust of the motion is that by ordering paragraph (N) of Opinion No. 468 we have set September 1, 1965 as the effective date of our orders. Contrary to Movants' contentions, however, with the exceptions discussed below, the fixing of this effective date does not require any action by respondents on or before September 1, 1965. Under the Natural Gas Act, orders issued pursuant to proceedings initiated under Section 4(e) or 5(a) of the Act normally are

[1] To the extent that a motion for stay filed on August 20, 1965, by counsel for Hunt Oil Company, and a number of related producer respondents also seeks action within a seven-day period, this order is equally applicable to that request. To the extent the Hunt motion goes beyond this, we shall consider it in connection with our review of the petitions for rehearing which are to be filed. Our holding herein is also applicable to the various other respondents who have filed motions similar to or concurring in the motions filed by Texaco or Hunt Oil Company.

effective as of the date of release of the Commission opinion and order. In the instant proceeding, however, we chose, as a matter of convenience to the respondents and their customers, to set an effective date some 26 days later at the beginning of a new monthly billing period, an action which had the effect of deferring for this additional period the effect of our decision with respect to those sales subject only to the prospective 5(a) determination.

We made clear, however, that no action on the part of respondents was required to effectuate any rate changes or refund requirements required by Opinion No. 468 on or by the September 1, 1965 effective date. On the contrary, ordering paragraph (E) expressly states that any reductions required to bring the respondents' rates down to the applicable base area rate need only be filed "within 45 days from the effective date"—*i.e.* by October 15, 1965.[2] Ordering paragraph (F) provides that quality differential statements need not be filed until 90 days after September 1, 1965—*i.e.* November 30, 1965, and that any reductions required thereby shall not be effectuated for at least 60 days thereafter. And ordering paragraph (I) provides that reports as to the appropriate refunds due in the consolidated 4(e) proceedings shall not be made until 120 days after September 1, 1965 (December 30, 1965), while paragraph (J) makes clear that the actual refund payments must await further order of the Commission. In short while all of these various rate changes will be effective *as of* September 1, 1965 nothing to implement them need be done by that date.

The only provisions of our orders which in terms are effective as of September 1, 1965 are the minimum rate provisions of paragraph (G) which authorize certain increased rate filings by some of the respondents (which obviously cannot aggrieve respondents, and will in any event be subject to suspension for thirty days after filing) and the provisions of ordering paragraphs (H) and (K) providing for moratoria on rate increase filings above the applicable area price ceilings. Assuming *arguendo* that these latter provisions might have an immediate impact upon one or more of the Movants, they have presented no reasons why we should suspend the effect of these provisions pending consideration of their prospective petitions for rehearing or court review actions and we know of none.

Accordingly, we shall deny the instant motion for stay. This conclusion is necessarily without prejudice to such action, if any, as may be appropriate in the light of the circumstances presented at the time we rule on the various petitions for rehearing which may be filed from Opinion No. 468.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., David S. Black and Carl E. Bagge.

AREA RATE PROCEEDING, ET AL. (SOUTHERN LOUISIANA AREA), DOCKET NO. AR61-2, ET AL.

ORDER ON REVIEW OF APPEAL FROM PRESIDING EXAMINER'S RULING FIXING DATE FOR STAFF PRESENTATION

(Issued August 26, 1965)

On August 6, 1965, the Presiding Examiner in the above-entitled proceedings certified to us an appeal from his ruling establishing a September 1, 1965, deadline

[2] Since pipelines normally pay producers only pursuant to billings submitted at the end of the month, any such reductions could not be reflected in reduced payments until after November 1, 1965.

for the distribution of a revised rate design presentation by the staff. On August 12, 1965, Texaco Inc. and seven other respondents in the proceedings filed a document entitled "Response to the Presiding Examiner's Ruling of July 30, 1965, Certified to the Commission Under Rule 1.28" in which it is urged that the Commission modify the Examiner's ruling. In view of the disposition we are making of the appeal the contentions advanced by these respondents need not be discussed here.

It is apparent that the Presiding Examiner's ruling was motivated by a commendable desire to bring to a conclusion these already long drawn out hearings. We feel certain that with the guidelines set out in our recently issued Opinion No. 468, *supra*, p. 159, the achievement of this objective will be greatly accelerated. Opinion No. 468 became available to all parties, including staff members assigned to these proceedings, upon its issuance on August 5, 1965. Accordingly, in disposing of this appeal our order and the directions herein contained will apply equally to all parties, including the staff.

These proceedings were instituted by Commission order on May 10, 1961, 25 FPC 942, more than four years ago, and have been the subject of extremely lengthy hearings with a record which now exceeds the record in the Permian proceeding. The public interest would not be served by any unnecessary delays. Of course, to the extent that the record fails to contain factual data necessary to a determination pursuant to the cost-finding methods utilized in Opinion No. 468, additional evidence on such matters may be essential. In Opinion No. 468 we indicated several areas which we are interested in considering in the light of more comprehensive records developed in other proceedings. As to these areas, the Examiner is in the best position to evaluate the state of the record, but if on the basis of the extensive record already developed these areas have been adequately covered, no further direct testimony thereon should be permitted.

The Examiner has indicated that he has requested the staff to introduce a new rate design presentation on September 1, 1965, which would cover rate recommendations for all gas. We believe rate design need not be the subject of further expert testimony, and should be handled in briefs by the staff and the parties. We do not mean to suggest that such evidence is not generally appropriate, but the failure of any party, including the staff, to adduce expert testimony as to rate design questions does not justify delay in bringing the lengthy proceedings to an early conclusion; however, this does not preclude a party from taking any position on such matters as the evidence of record may permit. Our ruling permits the presentation of any factual data relating to rate design that may be necessary to complete the record in this case. We also intend that to the extent it may affect such further evidentiary presentations or examinations as may be required, parties and the staff should be required to state their positions on the appropriate rate design prior to briefing.

Our ruling with respect to rate design presentations effectively makes moot the Examiner's direction to the staff to distribute such a presentation by September 1. The staff as well as all others will address themselves on that date principally to the matter of the factual sufficiency of the record. Any presentations which are permitted to be made should be limited along the lines we have indicated.

Accordingly, the subject appeal from the Presiding Examiner's ruling is disposed of as above set forth.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., David S. Black and Carl E. Bagge.

ATLANTIC SEABOARD CORPORATION, G–16401; HOME GAS COMPANY, G–16402; KENTUCKY GAS TRANSMISSION CORPORATION, G–16403; THE MANUFACTURERS LIGHT AND HEAT COMPANY, G–16404; THE OHIO FUEL GAS COMPANY, RP65–45

ORDER DENYING APPLICATION FOR LEAVE TO FILE OUT OF TIME A PETITION TO INTERVENE FOR LIMITED PURPOSES

(Issued August 26, 1965)

These consolidated proceedings involve proposed partial requirements (CDS–PR) rate schedules of the respondent Columbia companies. On July 6, 1965, Appalachian Power Company, Kentucky Power Company, Ohio Power Company and Wheeling Electric Company, subsidiaries of the American Electric Power System (petitioners) made application to file out of time a petition to intervene in these proceedings. Answers in opposition to petitioners' application and petition were filed by Lynchburg Gas Company on July 15, 1965, and by the Columbia companies on July 19, 1965.

In support of their application, petitioners state that they had no concern with these proceedings until June 24, 1965, when matters of "tremendous direct interest" allegedly became an issue. At the pre-hearing conference which was held on that date, the Presiding Examiner prescribed a procedure to be followed in these proceedings which would seek to ascertain how the question of the necessity of the respondents' PR rate schedules has been affected by the filing by Atlantic Seaboard of a restructured tariff on March 31, 1965,[1] and the proposed filing of such restructured tariffs by other respondents on or before September 1, 1965.

In their answers to petitioners' application, Lynchburg and Columbia maintain that the only issue in these proceedings is the necessity for the PR schedules, and point out that that issue is before the Commission on remand from the United States Court of Appeals for the District of Columbia. Lynchburg and Columbia contend that petitioners are concerned solely with issues which are irrelevant to these proceedings.

As the Commission understands petitioners' position, they are interested solely in the lawfulness of Columbia's restructured tariffs. Petitioners seek intervention in these proceedings on the basis of allegations that a decision on the question of Columbia's need for the PR schedules in the restructured tariffs "could work to eliminate later serious consideration of the lawfulness of the restructured rates."

These proceedings involve the lawfulness of Columbia's PR schedules. The restructed tariffs are the framework, and not the subject, of this inquiry. It appears that petitioners' interest is confined to the rate level of the restructured tariffs. Petitioners concede their lack of concern with the PR schedules, and by order issued today, *infra*, p. 593, we are allowing their intervention in Docket No. RP65–49, which involves the lawfulness of Seaboard's restructured tariff.

The Commission is not persuaded that anything in these proceedings will prejudice petitioners in proceedings concerned with the lawfulness of Columbia's restructured tariffs. There is no need, therefore, to inject into these proceedings issues which are extraneous to the PR question or to open these proceedings to wider participation. As petitioners have shown no justification for their

[1] Eighth Revised Volume No. 1, effective May 16, 1965, subject to refund.

intervention, we are denying their application to file out of time the petition to intervene.

The Commission orders:

Petitioners' application for leave to file out of time a petition to intervene is denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., David S. Black and Carl E. Bagge.

ATLANTIC SEABOARD CORPORATION, DOCKET NO. RP65-49

ORDER PERMITTING INTERVENTIONS

(Issued August 26, 1965)*

On April 19, 1965, a joint petition to intervene in this proceeding was filed by Coal Interests,[1] and on May 28, 1965, a petition to intervene was filed by Appalachian Power Company (Appalachian). Respondent, Atlantic Seaboard Corporation (Seaboard), has made no objection to the petition of Coal Interests, but filed an answer opposing Appalachian's petition on June 7, 1965.

Generally stated, both petitions to intervene assert that Seaboard's proposed restructured tariff will have an adverse impact on the consumption of competing fuels. The petitioners request the Commission to allow their intervention, because they may suffer competitive injury and the Appalachian area development program may be adversely affected if the tariff changes proposed herein are approved.

In its statement in opposition to Appalachian's petition, Seaboard argues at length that the Commission is not empowered to consider what effect Seaboard's rates may have on Appalachian. This argument is misdirected, however, for the question here is not the scope of the hearing which we have ordered, but the standing of the petitioners to intervene therein with respect to the matters which are properly in issue. As to this question, we reiterate our view, expressed in *United Fuel Gas Company*, Opinion No. 430, 31 FPC 1342, 1356-57, that the relevant cases make clear that parties who would be economically aggrieved by Commission approval of a proposed rate filing may intervene in the hearing thereon even though their economic aggrievement, as such, is not grounds for rejection of the proposed filing. Seaboard's arguments that the supporting judicial authority for this proposition is or should be confined to cases involving the certification of new service, rather than rate proceedings, is not persuasive. Where, as here, the rate proceeding involves issues of the relative level of demand and commodity portions of a pipeline's rates it is clear that the decision can have just as great an impact upon competing fuels as in a certification proceeding.

Since Seaboard has not challenged Appalachian's claims that it might in fact be competitively injured by a determination permitting the rates to go into effect and has not opposed the intervention of the Coal Interests at all, we do not have any question here as to whether we should provide for a preliminary hearing on the standing of the intervenors as we suggested in Opinion No. 430 might occasionally be appropriate. Nor do we believe it necessary or useful to attempt herein to prescribe the exact limitations on intervenors' participation.

*Reconsideration denied by order issued September 27, 1965, 34 FPC 970.

[1] Consisting of Fuels Research Council, Inc., National Coal Association, and United Mineworkers of America.

While it is clear that the effect upon petitioners of Commission approval of Seaboard's proposed rates is not, as such, relevant to the issue of whether the proposed rate schedule is just, reasonable, and nondiscriminatory, *Cf., Mid-America Pipeline Co.* v. *F.P.C.*, 330 F. 2d 226 (CADC), we leave it to the examiner to insure that any presentations or examinations by the intervenors are confined to matters which are relevant and material.

The Commission finds:

Intervention in the instant proceeding by Appalachian and the Coal Interests may be in the public interest.

The Commission orders:

The above-named petitioners are hereby permitted to intervene in this proceeding, subject to the rules and regulations of the Commission; *Provided, however*, that the participation of such petitioners shall be limited to matters relevant and material to a determination of whether the rate schedules filed by Seaboard meet the standards of Sections 4 and 5 of the Natural Gas Act; and *provided, further*, that admission of such intervenors shall not be construed as recognition by the Commission that they will be aggrieved by any order or orders of the Commission entered in this proceeding.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr. and Carl E. Bagge.

NORTHERN NATURAL GAS COMPANY, DOCKET NO. CP64-255 (PHASE I)

ORDER FURTHER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued August 26, 1965)

On June 18, 1965, Northern Natural Gas Company (Applicant) filed in Docket No. CP64-255 (Phase I) an application to amend the order of the Commission issued on December 21, 1964, 32 FPC 1491, as amended on June 15 and June 18, 1965, 33 FPC 1264, 1271, which authorized the Applicant to construct and operate facilities to provide initial gas service to the Mesabi Iron Range Area of Minnesota. The said order among other things reserved 2,233 Mcf per day of mainline capacity for the plant of Hanna Mining Company located near Cooley, Minnesota.

By the application to amend the Commission's order of December 21, 1964 Applicant seeks (1) authorization to construct and operate approximately 10.6 miles of 30-inch loop line, 0.5 mile of 6-inch branch line and a measuring station and (2) through its Peoples Division to sell and deliver not less than 6,200 Mcf per day and not more than 7,000 Mcf per day, in accordance with the contract dated April 27, 1965, between Applicant, operating as Peoples Natural Gas Division and The Hanna Mining Company.

Under the contract Hanna will pay an initial price of 43 cents per Mcf for all gas delivered, with an annual minimum bill computed by using 237 times the effective contract demand volume (at least 6,200 Mcf per day) at 30 cents, provided, however, that Hanna shall never pay more than 50 cents per Mcf. Hanna reserves the right to cancel the contract if the initial rate exceeds 43 cents per Mcf as a result of a final Federal Power Commission order.

The minimum bill provisions assure that Northern will receive an adequate return on its investment in making the sale. The cost of construction of the proposed facilities is estimated to be $1,292,300.

Due notice of the subject application to further amend and opportunity for hearing has been given by publication in the Federal Register on July 8, 1965 (30 F.R. 8649). No protest, petition to intervene, or notice of intervention has been filed herein.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued in Docket No. CP64–255 (Phase I) on December 21, 1964, as amended on June 15 and June 18, 1965, be further amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order issued December 21, 1964, as amended on June 15 and June 18, 1965, in Docket No. CP64–255 (Phase I) is further amended so as to authorize the Applicant to construct and operate the proposed facilities and to sell and deliver up to 7,000 Mcf of natural gas daily on a firm basis to the Hanna Mining Company, subject to the condition that Hanna shall not be entitled to any priorities or rights to additional gas for meeting any future increases in its requirements at the expense of firm resale customers desiring to acquire additional gas to meet any future increases in their requirements.

(B) In all other respects said order shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., David S. Black and Carl E. Bagge.

SOCONY MOBIL OIL COMPANY, INC. (OPERATOR), ET AL.

ORDER REJECTING RATE FILING

(Issued August 26, 1965)

Socony Mobil Oil Company, Inc. (Operator), *et al.* (Socony) on June 28, 1965, tendered for filing a proposed rate increase from 16¢ to 20.5¢ per Mcf for the sale of residue gas (from both gas-well gas and oil-well gas) to Transwestern Pipeline Company (Transwestern) under its FPC Gas Rate Schedule No. 260 from the Kermit Field, Winkler County, Texas (R.R. Dist. No. 8). Socony seeks to make the proposed rate effective as of September 1, 1965, the contractually provided effective date.

In Opinion No. 468 issued August 5, 1965, *supra*, p. 159, we determined, among other things, that the just and reasonable ceilings under Section 5(a) of the Natural Gas Act effective as of September 1, 1965, were 16.5¢ per Mcf for the sale of "new" residue gas (from gas-well gas) and 14.5¢ per Mcf for the sale of "new" residue gas (from oil-well gas),[1] subject to adjustment for quality differentials below the standards applicable to pipeline quality gas. The Section 5(a) determinations there made are applicable to all producer-respondents for all sales of natural gas made by them in the Permian Basin Area. Since Socony was a producer-respondent in Permian and the sale under its FPC Gas Rate Schedule No. 260 is and was being made in that area, the Section 5(a) determinations are applicable to Socony's sale. We also imposed in Opinion No. 468 a moratorium effective as of September 1, 1965, prohibiting any increased rate filing in excess of the just and reasonable rate ceilings determined there.

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[1] Since the contract comprising Rate Schedule No. 260 was entered into on February 10, 1961, the gas is "new gas" under Opinion No. 468.

With respect to those increased rates for sales in Permian which were in effect, subject to refund, under Section 4(e) of the Natural Gas Act, but which were not consolidated in the Permian hearing the effect of our Section 5(a) determination in the area rate proceeding was to create locked-in refund periods ending August 31, 1965, since as of September 1, 1965 we had established the prospective just and reasonable ceilings for such sales. Accordingly our Show Cause order, *supra*, p. 424, issued simultaneously with Opinion No. 468 directs the respondents with respect to such sales to show cause solely as to why the Permian decision should not be made applicable in determining the refunds owing for the periods prior to September 1, 1965. The effectiveness of Opinion No. 468 insofar as future rates are concerned is certainly no less with respect to those proposed rates involved in Section 4(e) proceedings which are still under suspension or to those rate filings, like Socony's, where the thirty day period in which we can exercise our suspension powers has not yet expired. Neither of these latter two classes of rates are entitled to any special consideration insofar as tolling the effect of the Commission's Section 5(a) determination merely because they have not had an earlier opportunity to collect a rate higher than that we have found to be just and reasonable. Clearly in no situation can a natural gas company avoid the effect of a valid Section 5(a) determination by the filing of a Section 4 rate increase subsequent to the institution of the Commission 5(a) proceeding.

In the absence of moratorium provisions such as those contained in Ordering Paragraph H of Opinion No. 468, it may be that Socony and other producers similarly affected by the prospective rate order, either with respect to the charges for existing rates or those for which they had a contractual right to file, could file any contractually authorized increase subject to the procedures of Section 4(e) of the Act. For the reasons set forth in detail in Opinion No. 468 we have exercised our authority under Sections 5(a) and 16 of the Act to prevent any such filings until January 1, 1968, or such earlier date as the Commission may in its discretion authorize. Accordingly if Socony believes there are circumstances warranting a special exemption from the area rate for this particular sale or that the general area rate ceiling should be raised to a level which would justify the increase for which it filed its remedy is to follow the procedures for filing petitions for special exemptions from the area ceiling or for seeking to have the Commission exercise its discretion to reopen the Permian proceeding discussed in Opinion No. 468. Of course, Socony is free to seek rehearing or court review of that Opinion and Order or any part thereof, but in the absence of a stay of the effectiveness of that decision,[3] Socony may not file any increase to become effective on or after September 1, 1965 at a rate in excess of the applicable area base rates established therein.

The Commission orders:

For the reasons set forth above, the proposed increased rate of 20.5¢ per Mcf tendered by Socony on June 28, 1965, for sales under its FPC Gas Rate Schedule No. 260 is hereby rejected.

[3] We have this day denied a motion for stay of the ordering paragraphs of Opinion No. 468 filed by Texaco Inc., on behalf of Socony, among others *supra*, p. 589.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr. and Carl E. Bagge.

TOWN OF SUMITON, ALABAMA AND SOUTHERN NATURAL GAS COMPANY, DOCKET NO. CP65-353

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND CONDITIONED SALE OF NATURAL GAS

(Issued August 26, 1965)

On May 6, 1965, the Town of Sumiton, Alabama (Applicant) filed in Docket No. CP65-353 an application pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Southern Natural Gas Company (Southern) to establish physical connection of its natural gas transmission facilities with the facilities proposed to be constructed by Applicant, and to sell and deliver natural gas to Applicant for resale and distribution in Sumiton, Alabama, and environs, all as more fully set forth in the application.

Applicant proposes to construct and operate a natural gas distribution system in Sumiton, Alabama, and approximately 10.83 miles of 3½-inch transmission line extending therefrom to a proposed point of connection on Respondent's Jasper lateral about 22 miles northwest of Birmingham, Alabama. The project appears to be economically feasible for the Town of Sumiton, as the debt service ratio based on third year leveling of sales is 1.75.

Total estimated volumes of natural gas required to meet Applicants annual and peak day requirements for the initial three-year period of proposed operations are stated to be:

	First year	Second year	Third year
Annual (Mcf)	67,115	72,087	76,802
Peak day (Mcf)	895	962	1,025

The total estimated cost of Applicant's proposed construction of transmission and distribution facilities is $490,000, which will be financed from the sale of revenue bonds.

Respondent filed an answer in this proceeding on May 13, 1965, stating it had no objection to the granting of the requested order for service, providing its pending application in Docket No. CP64-314 is granted. There Southern proposes, among other things, to construct additional main line facilities so as to meet increased requirements of existing customers. By our order of April 13, 1965, 33 FPC 729, Southern was granted temporary authorization in Docket No. CP64-314 for the construction *only* of a portion of the proposed facilities. The facilities authorized to be constructed will provide capacity in excess of the requirements of Southern's existing customers sufficient to meet the above-outlined needs of the Applicant. However, Southern is not now authorized to operate those facilities or to sell gas by the use thereof.

Until such time as Southern is either (1) authorized to render the service proposed from the facilities constructed under the above-mentioned temporary authorization, as fully outlined in its application in Docket No. CP64-314, or (2) granted a permanent certificate for the construction and use of the facilities which were the subject of the temporary grant, Respondent will not be able to institute deliveries to the Town of Sumiton. However, if and when such authorization is granted, Respondent should be required to institute such deliveries, provided Sumiton is prepared to receive natural gas from Southern. We shall so provide

in this order. Should neither of the foregoing conditions occur, it may be that Southern will petition the Commission for permanent authorization to operate that portion of the facilities necessary to institute service to the instant Applicant. In that event such service would be in the public interest.

Due notice of the filing of the application and opportunity for hearing thereon has been given by publication in the Federal Register on May 20, 1965 (30 F.R. 6880). No protest, petition to intervene, or request for hearing has been filed in this proceeding.

The Commission finds:

(1) Southern Natural Gas Company, a Delaware corporation having its principal place of business in Birmingham, Alabama, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order dated October 6, 1942, in Docket No. G–296 (3 FPC 822).

(2) Applicant, Town of Sumiton, Alabama, having its principal place of business in Sumiton, Alabama, is legally authorized to engage in the local distribution of natural gas to the public within the meaning of Section 7(a) of the Natural Gas Act.

(3) It is necessary and desirable in the public interest to direct Respondent to establish physical connection of its transmission facilities with the facilities proposed to be constructed and operated by Applicant, and when authorization is granted to operate the facilities involved, to render natural gas service to Applicant for distribution and resale as hereinbefore described and as more fully described in the application in this proceeding.

(4) Applicant should be prepared to receive natural gas from Respondent for distribution in the Town of Sumiton, Alabama, within one year from the date of the issuance of authorization to Southern in Docket No. CP64–314 to operate the facilities constructed under the above-discussed temporary authorization.

(5) The requirement that Respondent serve Applicant under the above-discussed conditions as requested, will not place an undue burden upon it or impair its ability to render adequate service to existing customers.

The Commission orders:

(A) Southern Natural Gas Company, Respondent, is directed to establish physical connection of its facilities with the facilities proposed to be constructed and operated by Applicant, as hereinbefore described, and under the above stated conditions, to render natural gas service to Applicant for transportation, distribution and resale as hereinbefore described.

(B) Respondent shall report to the Commission the date of commencement of service to Applicant within 10 days after such service begins.

(C) Applicant shall be prepared to receive service as directed herein in accordance with Finding (4) above.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., David S. Black and Carl E. Bagge.

UNION ELECTRIC COMPANY, PROJECT NO. 2277

ORDER ISSUING LICENSE (MAJOR)

(Issued August 26, 1965)*

Application was filed on June 10, 1960, and supplemented on September 6 and December 7, 1960, by Union Electric Company (Applicant) of St. Louis, Mis-

*See order on rehearing issued October 18, 1965, 34 FPC 1169. Order modifying license issued March 3, 1966, 35 FPC 316.

souri, for a license under Section 4(e) of the Federal Power Act (Act) for Project No. 2277, known as the Taum Sauk Project, located on the East Fork of Black River at its confluence with Taum Sauk Creek, in Reynolds, Iron, Washington and St. Francois Counties, Missouri, in the vicinity of Lesterville, Missouri.

On June 24, 1960, Applicant advised that it had authorized its contractor to commence construction because of the need for the capacity of the project by the summer of 1963. By a decision dated May 3, 1965, the United States Supreme Court affirmed the Commission's findings and order asserting licensing authority over the Taum Sauk project by virtue of the effect of the project on the interests of interstate commerce by its utilization of non-navigable headwaters of a navigable stream to generate electric energy for an interstate power system (281 U.S. 90).

The Secretary of the Army and the Chief of Engineers have reported that the plans of the project structures are satisfactory insofar as the interests of navigation are concerned.

The Department of the Interior, in reporting on the application, recommended for inclusion in any license for the project conditions in the interests of fish and wildlife and recreation. These conditions are included herein substantially as set forth in Article 10 of attached Form L–11, and Articles 31 and 32 hereof.

The Missouri Conservation Commission has advised that the wildlife interests of the State are adequately protected by an Agreement between the State Commission and Applicant.

The initial filling of the upper reservoir disclosed an excessive seepage condition. By Article 34 herein, we are requiring that the licensee make periodic reports on seepage from the upper reservoir and perform such remedial work as may be required in the future.

The Commission finds:

(1) The project affects the interests of interstate commerce.

(2) Applicant is a corporation organized under the laws of the State of Missouri, and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effectuate the purposes of a license for the project.

(3) Public notice of the filing of the application has been given. No protests or petitions to intervene have been received. No conflicting application is before the Commission.

(4) The project does not affect a Government dam, nor will the issuance of a license therefor, as hereinafter provided, affect the development of any water resources for public purposes which should be undertaken by the United States.

(5) Subject to the terms and conditions hereinafter imposed, the project will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of waterpower development, and for other beneficial public uses, including recreational purposes.

(6) The installed horsepower capacity of the project hereinafter authorized for the purpose of computing the capacity component of the administrative annual charge is 467,000 horsepower, and the amount of annual charges, based on such capacity, to be paid under the license for the project, for the costs of administration of Part I of the Act is reasonable.

(7) The exhibits designated and described in paragraph (B) following conform substantially to the Commission's rules and regulations and show the general characteristics of the project as it was constructed with respect to pool elevations, heights of dams, capacities of reservoirs, size of water passages,

capacity of generating units, and general design of structures, and should be approved as part of this license only insofar as they show these general characteristics. The licensee should as hereinafter provided, supply revised exhibits for Commission approval.

The Commission orders:

(A) This license is hereby issued to Union Electric Company (Licensee) of St. Louis, Missouri, under Section 4(e) of the Federal Power Act (Act) for a period of 50 years, effective as of July 1, 1960, for the construction, operation and maintenance of Taum Sauk Project No. 2277, located on the East Fork of Black River at its confluence with Taum Sauk Creek, in the State of Missouri, and affecting the interests of interstate commerce, subject to the terms and conditions of the Act, which is incorporated herein by reference as a part of this license, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) Taum Sauk Project consists of:

(i) all lands constituting the project area and inclosed by the project boundary or the limits of which are otherwise defined, and/or interest in such lands necessary or appropriate for the purposes of the project, whether such lands or interest therein are owned or held by the Licensee or by the United States; such project area and project boundary being more specifically shown and described by certain exhibits which formed part of the application for license and which are designated and described as follows:

Exhibit J: (FPC No. 2277–1) Location Map, and

Exhibit K: (FPC No. 2277–2) Detail Map—Project Area

(ii) Project works consisting of a concrete gravity dam with a gated sluice and non-gated spillway section located on East Fork of Black River at the confluence of Taum Sauk Creek; a reservoir, known as the lower pool, with a maximum normal water surface elevation of 750 feet above mean sea level, usable storage of 4,360 acre-feet and a surface area of 370 acres; the upper pool created by a rockfill concrete faced dike, surmounted by a parapet wall, with a water surface which varies between elevation 1505 and 1597 feet m.s.l., storage of 4,360 acre-feet and an area of about 54.5 acres located on top of an adjoining mountain; a tunnel and penstock leading from the upper pool to a powerhouse located on an open channel connecting to the lower pool; a powerhouse containing two reversible pump-units, each having a rated generating capacity of 175,000 kilowatts; step-up transformers and switchyards; a double-circuit 138-kv transmission line extending from the switchyard to the Rivermines Substation, a distance of about 30 miles, and appurtenant electrical and mechanical facilities, the location, nature and character of which are more specifically shown and described by the exhibits hereinbefore cited and by certain other exhibits which also formed part of the application for license and which are designated and described as follows:

Exhibit L:

(FPC No. 2277–3)-------	Lower Dam, Site Plan and General Design;
(FPC No. 2277–11)------	Upper Pool Plan and Sections;
(FPC No. 2277–5)-------	Pressure Tunnel & Channel Profile & Cross Sections;
(FPC No. 2277–6)-------	Pumping & Generating Station, Site Plan; and
(FPC No. 2277–7)-------	Pumping & Generating Station, Plans & Sections.

Exhibit M: One typewritten page entitled, "General Description of Mechanical, Electrical and Transmission Equipment," filed in the Commission June 10, 1960.

(iii) all of the structures, fixtures, equipment or facilities used or useful in the maintenance and operation of the project and located on the project area,

including such portable property as may be used or useful in connection with the project or any part thereof, whether located on or off the project area, if and to the extent that the inclusion of such property as part of the project is approved or acquiesced in by the Commission; also, all riparian or other rights, the use or possession of which is necessary or appropriate in the maintenance or operation of the project.

(C) This license is also subject to the terms and conditions set forth in Form L–11 (July 1, 1965) entitled "Terms and Conditions of License for Unconstructed Major Project Affecting the Interests of Interstate or Foreign Commerce", *infra*, p. 602 which terms and conditions, designated as Articles 1 through 25, are attached hereto and made a part hereof, except for Articles 3, 4, 5 and 16 thereof, and subject to the following special conditions set forth herein as additional articles:

Article 26. The Licensee shall pay to the United States the following annual charge, effective July 1, 1960:

For the purpose of reimbursing the United States for the costs of administration of Part I of the Act, a reasonable annual charge as determined by the Commission in accordance with the provisions of its regulations, in effect from time to time. The authorized installed capacity for such purpose is 467,000 horsepower.

Article 27. Except when emergency shall require for the protection of navigation, life, health, or property, no substantial alteration or addition not in conformity with the approved plans shall be made to any dam or other project works under the license without the prior approval of the Commission; and any emergency alteration or addition so made shall thereafter be subject to such modification and change as the Commission may direct. Minor changes in the project works or divergence from such approved exhibits may be made if such changes will not result in decrease in efficiency, in material increase in cost, or in impairment of the general scheme of development; but any of such minor changes made without the prior approval of the Commission, which in its judgment have produced or will produce any of such results, shall be subject to such alteration as the Commission may direct. The Licensee shall comply with such rules and regulations of general or special applicability as the Commission may from time to time prescribe for the protection of life, health, or property.

Article 28. Within six months of the date of issuance of this license, the licensee shall file with the Commission for approval revised maps, plans, specifications, and statements insofar as necessary to show any divergence from or variations in the project area and project boundary as finally located or in the project works as actually constructed when compared with the area and boundary shown and the works described in the license or in the maps, plans, specifications, and statements approved by the Commission. Such revised maps, plans, specifications, and statements shall, when approved by the Commission, be made a part of this license under the provisions of Article 2 hereof.

Article 29. The operation and maintenance of the project and any work incident to additions or alterations shall be subject to the inspection and supervision of the Fort Worth Regional Engineer, Federal Power Commission, or of such other officer or agent as the Commission may designate, who shall be the authorized representative of the Commission for such purposes. The Licensee shall cooperate fully with said representative. The Licensee shall also furnish to said representative such further information as he may require concerning the construction and operation, and shall notify him of the date upon which work will begin on any substantial alterations or additions to the project works as far in advance thereof as said representative may reasonably specify, and shall

notify him promptly in writing of any suspension of work for a period of more than one week, and of its resumption and completion. The Licensee shall allow him and other officers or employees of the United States, showing proper credentials, free and unrestricted access to, through, and across the project lands and project works in the performance of their official duties.

Article 30. The Licensee shall dispose of all temporary structures, unused timber, brush, refuse, or inflammable material resulting from the clearing of the lands or from the construction and maintenance of the project works. In addition, all trees along the margins of the reservoirs which may die during the operation of the project shall be removed. Clearing of lands and the disposal of the material shall be done with due diligence and to the satisfaction of the authorized representative of the Commission.

Article 31. The operations of the Licensee, so far as they affect the use, storage and discharge of water from the project reservoirs, shall at all times be controlled by such reasonable rules and regulations as the Commission may prescribe for the protection of life, health, and property, and in the interest of the fullest practicable conservation and utilization of such waters for power purposes and for other beneficial public uses, including recreational purposes; and the Licensee shall release water from the lower reservoir of the project at such rate in cubic feet per second, or such volume in acre-feet per specified period of time, as the Commission may prescribe for the purposes hereinbefore mentioned and as the Commission herein prescribes in Article 32 herein.

Article 32. The Licensee shall release water over and/or through the lower dam continuously at a rate wherein the total flow from the lower pool is approximately equal to the measured natural inflow into the lower pool, except as modified by the Commission pursuant to Article 31 above.

Article 33. The Licensee shall, within one year from the date of this license, file with the Commission for approval its proposed recreational use plan for the project. The plan shall be prepared in conformance with Section 4.41R of the Commission's Rules and Regulations under the Federal Power Act.

Article 34. The Licensee shall submit a report on the methods employed for controlling seepage from the upper reservoir, and shall submit semi-annually a supplemental report on the seepage flows as measured daily. The licensee shall cause such remedial work as found necessary from time to time by the Licensee or by the Commission, provided that any major remedial work shall first have been approved by the Commission.

(D) The exhibits designated and described in paragraph (B) above are hereby approved as part of this license to the extent indicated in finding (7) above.

(E) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgment of the acceptance of this license, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

FORM L–11

(July 1, 1965)

TERMS AND CONDITIONS OF LICENSE FOR UNCONSTRUCTED MAJOR PROJECT AFFECTING THE INTERESTS OF INTERSTATE OR FOREIGN COMMERCE

Article 1. The entire project, as described in the order of the Commission, shall be subject to all the provisions, terms, and conditions of the license.

Article 2. No substantial change shall be made in the maps, plans, specifications, and statements described and designated as exhibits and approved by the

Commission in its order as a part of the license until such change shall have been approved by the Commission: Provided, however, that if the Licensee or the Commission deems it necessary or desirable that said approved exhibits, or any of them, be changed, there shall be submitted to the Commission for approval amended, supplemental, or additional exhibit or exhibits covering the proposed changes which, upon approval by the Commission, shall become a part of the license and shall supersede, in whole or in part, such exhibit or exhibits theretofore made a part of the license as may be specified by the Commission.

Article 3. Said project works shall be constructed in substantial conformity with the approved exhibits referred to in Article 2 herein or as changed in accordance with the provisions of said article. Except when emergency shall require for the protection of navigation, life, health, or property, no substantial alteration or addition not in conformity with the approved plans shall be made to any dam or other project works under the license without the prior approval of the Commission; and any emergency alteration or addition so made shall thereafter be subject to such modification and change as the Commission may direct. Minor changes in the project works or divergence from such approved exhibits may be made if such changes will not result in decrease in efficiency, in material increase in cost, or in impairment of the general scheme of development; but any of such minor changes made without the prior approval of the Commission, which in its judgment have produced or will produce any of such results, shall be subject to such alteration as the Commission may direct. The Licensee shall comply with such rules and regulations of general or special applicability as the Commission may from time to time prescribe for the protection of life, health, or property.

Article 4. The construction, operation, and maintenance of the project and any work incident to additions or alterations shall be subject to the inspection and supervision of the Regional Engineer, Federal Power Commission, in the region wherein the project is located, or of such other officer or agent as the Commission may designate, who shall be the authorized representative of the Commission for such purposes. The Licensee shall cooperate fully with said representative and shall furnish him a detailed program of inspection by the Licensee that will provide for an adequate and qualified inspection force for construction of the project. Construction of the project works or any feature thereof shall not be initiated until the program of inspection for the project works or any such feature thereof has been approved by such representative. The Licensee shall also furnish to said representative such further information as he may require concerning the construction, operation, and maintenance of the project, and of any alteration thereof, and shall notify him of the date upon which work will begin, as far in advance thereof as said representative may reasonably specify, and shall notify him promptly in writing of any suspension of work for a period of more than one week, and of its resumption and completion. The Licensee shall allow him and other officers or employees of the United States, showing proper credentials, free and unrestricted access to, through, and across the project lands and project works in the performance of their official duties.

Article 5. The operations of the Licensee, so far as they affect the use, storage and discharge from storage of waters affected by the license, shall at all times be controlled by such reasonable rules and regulations as the Commission may prescribe for the protection of life, health, and property, and in the interest of the fullest practicable conservation and utilization of such waters for power purposes and for other beneficial public uses, including recreational purposes; and the Licensee shall release water from the project reservoir at such rate in cubic feet per second, or such volume in acre-feet per specified period of time, as the Commission may prescribe for the purposes hereinbefore mentioned.

Article 6. The actual legitimate original cost of the original project, and of any addition thereto or betterment thereof, shall be determined by the Commission in accordance with the Act and the Commission's rules and regulations thereunder.

Article 7. After the first twenty (20) years of operation of the project under the license, six (6) percent per annum shall be the specified rate of return on the net investment in the project for determining surplus earnings of the project for the establishment and maintenance of amortization reserves, pursuant to Section 10(d) of the Act; one-half of the project surplus earnings, if any, accumulated after the first twenty years of operation under the license, in excess of six (6) percent per annum on the net investment, shall be set aside in a project amortization reserve account as of the end of each fiscal year, provided that, if and to the extent that there is a deficiency of project earnings below six (6) percent per annum for any fiscal year or years after the first twenty years of operation under the license, the amount of such deficiency shall be deducted from the amount of any surplus earnings accumulated thereafter until absorbed, and one-half of the remaining surplus earnings, if any, thus cumulatively computed, shall be set aside in the project amortization reserve account; and the amounts thus established in the project amortization reserve account shall be maintained therein until further order of the Commission.

Article 8. The Licensee shall install additional capacity or make other changes in the project as directed by the Commission, to the extent that it is economically sound and in the public interest to do so, after notice and opportunity for hearing.

Article 9. The Licensee shall, after notice and opportunity for hearing, coordinate the operation of the project, electrically and hydraulically, with such other power systems and in such manner as the Commission may direct in the interest of power and other beneficial public uses of water resources, and on such conditions concerning the equitable sharing of benefits by the Licensee as the Commission may order.

Article 10. The Licensee shall, for the conservation, and development of fish and wildlife resources, construct, maintain, and operate, or arrange for the construction, maintenance and operation of such facilities and comply with such reasonable modifications of the project structures and operation as may be ordered by the Commission upon its own motion or upon the recommendation of the Secretary of the Interior or the fish and wildlife agency or agencies of any State in which the project or a part thereof is located, after notice and opportunity for hearing and upon findings based on substantial evidence that such facilities and modifications are necessary and desirable, reasonably consistent with the primary purpose of the project, and consistent with the provisions of the Act.

Article 11. Whenever the United States shall desire, in connection with the project, to construct fish and wildlife facilities or to improve the existing fish and wildlife facilities at its own expense, the Licensee shall permit the United States or its designated agency to use, free of cost, such of Licensee's lands and interest in lands, reservoirs, waterways and project works as may be reasonably required to complete such facilities or such improvements thereof. In addition, after notice and opportunity for hearing, the Licensee shall modify the project operation as may be prescribed by the Commission, reasonably consistent with the primary purpose of the project, in order to permit the maintenance and operation of the fish and wildlife facilities constructed or improved by the United States under the provisions of this article. This article shall not be interpreted to place any obligation on the United States to construct or improve fish and wildlife facilities or to relieve the Licensee of any obligation under this license.

Article 12. The Licensee shall construct, maintain and operate or shall arrange for the construction, maintenance and operation of such recreational facilities including modifications thereto, such as access roads, wharves, launching ramps, beaches, picnic and camping areas, sanitary facilities and utilities, as may be prescribed hereafter by the Commission during the term of this license upon its own motion or upon the recommendation of the Secretary of the Interior or other interested Federal and State agencies, after notice and opportunity for hearing and upon findings based upon substantial evidence that such facilities are necessary and desirable, and reasonably consistent with the primary purpose of the project.

Article 13. So far as is consistent with proper operation of the project, the Licensee shall allow the public free access, to a reasonable extent, to project waters and adjacent project lands owned by the Licensee for the purpose of full public utilization of such lands and waters for navigation and recreational purposes, including fishing and hunting, and shall allow to a reasonable extent for such purposes the construction of access roads, wharves, landings, and other facilities on its lands the occupancy of which may in appropriate circumstances be subject to payment of rent to the Licensee in a reasonable amount: Provided, that the Licensee may reserve from public access, such portions of the project waters, adjacent lands and project facilities as may be necessary for the protection of life, health, and property and Provided further, that the Licensee's consent to the construction of access roads, wharves, landings, and other facilities shall not, without its express agreement, place upon the Licensee any obligation to construct or maintain such facilities. These facilities are in addition to the facilities that the Licensee may construct and maintain as required by the license.

Article 14. The Licensee shall be responsible for and shall minimize soil erosion and siltation on lands adjacent to the stream resulting from construction and operation of the project. The Commission upon request, or upon its own motion, may order the Licensee to construct and maintain such preventive works to accomplish this purpose and to revegetate exposed soil surface as the Commission may find to be necessary after notice and opportunity for hearing.

Article 15. No lease of the project or any part thereof whereby the lessee is granted the occupancy, possession, or use of the project, or any part thereof, shall be made without prior written approval of the Commission; and the Commission may, if in its judgment the situation warrants, require that all the conditions of the license, of the Act, and of the rules and regulations of the Commission shall be applicable to such property so leased to the same extent as if the lessee were the Licensee: Provided, that the provisions of this article shall not apply to leases of land or buildings or other property while not required to achieve the purposes of the license.

Article 16. Upon the completion of the project, or at such other time as the Commission may direct, the Licensee shall submit to the Commission for approval revised maps, plans, specifications, and statements insofar as necessary to show any divergence from or variations in the project area and project boundary as finally located or in the project works as actually constructed when compared with the area and boundary shown and the works described in the license or in the maps, plans, specifications, and statements approved by the Commission, together with a statement in writing setting forth the reasons which in the opinion of the Licensee necessitated or justified variations in or divergence from the approved maps, plans, specifications, and statements. Such revised maps, plans, specifications, and statements shall, if and when approved by the Commission, be made a part of the license under the provisions of Article 2 hereof.

Article 17. In the construction and maintenance of the project works, the Licensee shall place and maintain suitable structures and devices to reduce to a reasonable degree the liability of contact between its transmission lines, and telegraph, telephone, and other signal wires or power transmission lines constructed prior to its transmission lines and not owned by the Licensee, and shall also place and maintain suitable structures and devices to reduce to a reasonable degree the liability of any structures or wires falling and obstructing traffic and endangering life on highways, streets, or railroads. None of the provisions of this article is intended to relieve the Licensee from any responsibility or requirement which may be imposed by other lawful authority for avoiding or eliminating inductive interference.

Article 18. There is reserved to the appropriate department or agency of the United States, or of the State or county involved, the right to take over, maintain, and supervise the use of any project road as a public road after construc tion of the project works is completed.

Article 19. The Licensee, its successors and assigns shall, during the period of the license, retain the possession of all project property covered by the license as issued or as later amended, including the project area, the project works, and all franchises, easements, water rights, and rights of occupancy and use; and none of such properties necessary or useful to the project and to the development, transmission, and distribution of power therefrom will be voluntarily sold, transferred, abandoned, or otherwise disposed of without the approval of the Commission: Provided, that a mortgage or trust deed or judicial sales made thereunder, or tax sales, shall not be deemed voluntary transfers within the meaning of this article. In the event the project is taken over by the United States upon the termination of the license, as provided in Section 14 of the Act, or is transferred to a new Licensee under the provisions of Section 15 of the Act, the Licensee, its successors and assigns will be responsible for and will make good any defect of title to or of right of user in any of such project property which is necessary or appropriate or valuable and serviceable in the maintenance and operation of the project, and will pay and discharge, or will assume responsibility for payment and discharge, of all liens or incumbrances upon the project or project property created by the Licensee or created or incurred after the issuance of the license: Provided, that the provisions of this article are not intended to prevent the abandonment or the retirement from service of structures, equipment, or other project works in connection with replacements thereof when they become obsolete, inadequate, or inefficient for further service due to wear and tear, or to require the Licensee, for the purpose of transferring the project to the United States or to a new Licensee, to acquire any different title to or right of user in any of such project property than was necessary to acquire for its own purposes as Licensee.

Article 20. For the purpose of determining the stage and flow of the stream or streams from which water is diverted for the operation of the project works, the amount of water held in and withdrawn from storage, and the effective head on the turbines, the Licensee shall install and thereafter maintain such gages and stream-gaging stations as the Commission may deem necessary and best adapted to the requirements; and shall provide for the required readings of such gages and for the adequate rating of such stations. The Licensee shall also install and maintain standard meters adequate for the determination of the amount of electric energy generated by said project works. The number, character, and location of gages, meters, or other measuring devices, and the method of operation thereof, shall at all times be satisfactory to the Commission and may be altered from time to time if necessary to secure adequate determinations, but such alteration shall not be made except with the approval of the

Commission or upon the specific direction of the Commission. The installation of gages, the ratings of said stream or streams, and the determination of the flow thereof, shall be under the supervision of, or in cooperation with, the District Engineer of the United States Geological Survey having charge of stream-gaging operations in the region of said project, and the Licensee shall advance to the United States Geological Survey the amount of funds estimated to be necessary for such supervision or cooperation for such periods as may be mutually agreed upon. The Licensee shall keep accurate and sufficient record of the foregoing determinations to the satisfaction of the Commission, and shall make return of such records annually at such time and in such form as the Commission may prescribe.

Article 21. If the Licensee shall cause or suffer essential project property to be removed or destroyed or to become unfit for use, without replacement, or shall abandon or discontinue good faith operation of the project for a period of three years, or refuse or neglect to comply with the terms of the license and the lawful orders of the Commission mailed to the record address to the Licensee or its agent, the Commission will deem it to be the intent of the Licensee to surrender the license, and not less than 90 days after public notice may in its discretion terminate the license.

Article 22. Whenever the Licensee is directly benefited by the construction work of another Licensee, a permittee, or of the United States of a storage reservoir or other headwater improvement, the Licensee shall reimburse the owner of the headwater improvement for such part of the annual charges for interest, maintenance, and depreciation thereon as the Commission shall determine to be equitable, and shall pay to the United States the cost of making such determination as fixed by the Commission. For benefits provided by a storage reservoir or other headwater improvement of the United States the Licensee shall pay to the Commission the amounts for which it is billed from time to time for such headwater benefits and for the costs of making the determinations pursuant to the then current Commission Regulations under the Federal Power Act within 60 days from the date of rendition of a bill therefor and, upon failure to do so, shall thereafter be subject to the payment of the penalties specified in the then current Regulations. The Licensee shall have the right to pay such amounts under protest within the 60-day period and to reconsideration of the amounts billed or a hearing as provided by the then current Regulations under the Act.

Article 23. On the application of any person, association, corporation, Federal agency, State or municipality, the Licensee shall, after notice and opportunity for hearing, permit such reasonable use of its reservoirs or other project works or parts thereof as may be ordered by the Commission in the interest of comprehensive development of the waterway or waterways involved and the conservation and utilization of water resources of the region for water supply for steam electric, irrigation, industrial, municipal or similar purposes, consistent with the primary objective of the project. The Licensee shall receive such reasonable compensation as may be appropriate for use of its reservoirs or other project works or parts thereof for such purposes, any such compensation to be fixed either by Commission approval of an agreement between Licensee and the party or parties benefiting or by the Commission in the event the parties are unable to agree. Applications shall contain information in sufficient detail to afford a full understanding of the proposed use, including satisfactory evidence that the applicant possesses necessary water rights pursuant to applicable State law, or a showing of cause why such evidence cannot be submitted, and a statement as to the relationship of the proposed use to any State or municipal plans or orders which may have been adopted with respect to the use of such waters.

Article 24. Upon abandonment of the project the Licensee shall remove all buildings, equipment and power lines from the stream and restore said stream to a condition satisfactory to the Commission's authorized representative and shall fulfill such other obligations under the license as the Commission may prescribe.

Article 25. The terms and conditions expressly set forth in the license shall not be construed as impairing any terms and conditions of the Federal Power Act which are not expressly set forth herein.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr. and Carl E. Bagge.

UNITED STATES DEPARTMENT OF THE INTERIOR, SOUTHWESTERN POWER ADMINISTRATION. DOCKET NO. E-6943

ORDER CONFIRMING AND APPROVING RATES AND CHARGES

(Issued August 26, 1965)

The Secretary of the Interior, acting on behalf of the Southwestern Power Administration (SWPA), on June 7, 1965, filed a request that the Commission extend its confirmation and approval, pursuant to the provisions of the Flood Control Act of 1944 (58 Stat. 887), for the period beginning July 1, 1965 and ending June 30, 1970, of contractual rates and charges applicable for the sale of the total output of power and energy developed at the Narrows Dam Project to the Tex-La Electric Cooperative, Inc. (Tex-La). Such rates and charges are set forth in Contract No. 14-02-0001-921 between the United States of America and Tex-La dated May 10, 1960.

The Narrows Dam Project, located on the Little Missouri River in Southwestern Arkansas in the service area of Southwestern Electric Power Company (Southwestern), is isolated from SWPA's main integrated system, and Southwestern has constructed the only transmission line connecting the project. At present two 8,500 kw generating units are in operation at the project. A third 8,500 kw unit is now being installed and expected to commence operation during the fiscal year 1968. The project now provides 14,000 kw of dependable capacity, 18,400,000 kwh of primary energy and 10,000,000 kwh of secondary and dump energy. Installation of the third generating unit will increase the project's dependable capacity to 21,000 kw, and the secondary and dump energy to about 11,000,000 kwh.

The rates and charges for which extension of the Commission's approval is requested are those previously approved by the Commission in its order issued September 23, 1960, 24 FPC 518, in this docket. Approval of those rates and charges expired June 30, 1965. The rates and charges are set forth in the contract between SWPA and Tex-La dated May 10, 1960, referred to above, which provides that SWPA will sell the entire output of the project to Tex-La for an annual consideration of $300,000. After the addition of the third unit Tex-La will pay $367,992 per year.

Tex-La is an organization of rural electric cooperatives and municipalities in eastern Texas and Louisiana and, having no transmission system of its own, entered into a companion contract with Southwestern, concurrently with its contract with SWPA, for the scheduling and receipt by Southwestern of all power and energy purchased by Tex-La under the SWPA contract. The Tex-La-Southwestern contract provides for Tex-La to sell and deliver to Southwestern all the electric power and energy generated at the Narrows Dam. Southwestern

credits the account of Tex-La, each month, by an amount equal to the total compensation owed by Tex-La to SWPA. For the services it receives from Tex-La, Southwestern in turn fulfills the total electric power requirements of all of Tex-La's members. Both contracts are for a term ending June 30, 1985.[1]

A study by our staff confirms the statement of the Secretary of the Interior that the annual revenues to be received under the proposed arrangement represent the top market price for such power in the project area.

In comparison with the payout charges accumulating under the present arrangement, it is estimated that the proposed annual revenues of $367,992 following the installation of the third generating unit at the project will provide funds for the amortization of the project.

Notice of the request for approval of the proposed rates and charges was sent to state officials and other interested parties and published in the Federal Register on June 22, 1965 (30 F.R. 8020), stating that any person desiring to make comments or suggestions for the Commission's consideration should submit same on or before June 30, 1965. No comments or suggestions were received.

The Commission finds:

The proposed rates and charges for the sale of the total output of the Narrows Dam Project by SWPA to Tex-La, all as set forth above, for the period from the date of this order through June 30, 1970, will not be inconsistent with the provisions of the Flood Control Act of 1944.

The Commission orders:

The proposed rates and charges for the sale of the total output of the Narrows Dam Project by SWPA to Tex-La, all as filed with the Commission on June 7, 1965 and referred to above, hereby are confirmed and approved for the period from the date of this order through June 30, 1970.

[1] The Tex-La-Southwestern contract has been filed with the Commission pursuant to the rate filing requirements of Section 205 of the Federal Power Act.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., David S. Black and Carl E. Bagge.

AREA RATE PROCEEDING, ET AL. (HUGOTON-ANADARKO AREA), DOCKET NO. AR64-1; AREA RATE PROCEEDING, ET AL. (TEXAS GULF COAST AREA), DOCKET NO. AR64-2

ORDER DENYING APPEAL FROM EXAMINER'S RULING ON REQUEST FOR ADDITIONAL EVIDENCE

(Issued August 27, 1965)*

A group of parties[1] including a number of Hunt interests (Appellants) has requested that we require the producer Respondents in these two proceedings to submit a breakdown of the data already received by us in response to our all-area questionnaire. Specifically, Appellants want lease production expenses and

*Reconsideration denied by order issued October 21, 1965, 34 FPC 1190.

[1] **Hassie Hunt Trust**
Alinda Hunt Hill Trust
William Herbert Hunt Trust Estate
Lamar Hunt Trust Estate
A. G. Hill
Caroline Hunt Trust Estate
Nelson Bunker Hunt Trust Estate
Hunt Oil Company
H. L. Hunt
Caroline Hunt Sands
Lamar Hunt
N. B. Hunt
W. H. Hunt
Hidalgo Gas Production Corporation
Placid Oil Company

312-270—69——42

costs from leases where all the wells were completed after December 31, 1954, and all production during 1962 originated at depths below 10,000 feet. They want investment costs, operating expenses, depletion, depreciation, and amortization, and related production volumes as reported in the questionnaire for Continental U.S., Texas Railroad Districts 2, 3, 4 and 10, and the Oklahoma Panhandle, Oklahoma Anadarko and Kansas areas.

In essence what Appellants are seeking is information upon which to predicate an argument that our area determinations should prescribe a separate price for gas derived from deep wells at any given date as against gas derived from shallow wells.

Appellants originally made their request at a joint prehearing conference on January 27, 1965, but their request was denied by the Presiding Examiners, Max L. Kane and Dyer Justice Taylor, in Docket Nos. AR64–1 and AR64–2 respectively. The basis of the ruling was that the state of the record did not afford any cogent basis or acceptance for the date or the depth limitations. The examiners added that the information sought would not produce evidence which was either relevant or material, was designed to establish an individual company cost of service, would not be representative of costs below the depth cut-off, and the burden of obtaining the information would not be commensurate with its value. The examiners refused to certify the question to the Commission, since they found no "extraordinary circumstances" requiring prompt decision by the Commission in accordance with Section 1.28(a) of the Rules.

On June 25, 1965, Appellants filed an appeal from the Examiner's Ruling with the Commission, and on July 12, 1965, the Commission issued an order inviting the parties and the staff to reply to the appeal as to whether "extraordinary circumstances" existed and whether the request for data should be granted. Replies were filed by Sun Oil Company, Forest Oil Corporation, Humble Oil & Refining Company,[2] Amerada Petroleum Corporation, Texaco Inc. (adopting Humble's response), Associated Gas Distributors and our staff.

Appellants argue that the depth of exploratory and development wells has increased substantially since World War II, and that the greater depth has more than proportionately increased the cost of drilling. Appellants say that the data requested will provide the first opportunity to measure the difference in the cost of producing new deep gas as opposed to old and shallow gas.

Appellants' request would obviously entail additional delay and expense since many leases would have to be examined by the producers, and we should not accede to it unless the data would have a reasonable chance of making a useful contribution to the record. To make use of the data requested would also require additional cost separations and classifications of property involving complicated determinations based on judgment. Furthermore, the data would not provide a complete representation of the deep well costs because those on leases with shallow wells would not be included and because, as the examiners concluded, there is no basis for accepting as meaningful either the date or depth limitations contained in petitioners' data request. It is no answer to say, as Appellants do, that they are agreeable to still further breakdowns. These would only proliferate the record and increase the burden on other producers and the delay in bringing these cases to a conclusion.

As indicated, Appellants are in effect contending that we should superimpose separate ceilings for gas from deep and shallow wells upon the two-price system

[2] For themselves and seven other producers: Phillips Petroleum Company, Sinclair Oil & Gas Company, Continental Oil Company, Socony Mobil Oil Company, Inc., Gulf Oil Corporation, Pan American Petroleum Corporation, and Warren Petroleum Corporation.

we adopted in Permian. The contention, however, that deep wells cost more than shallow ones, even if it could be statistically demonstrated, its meaningless by itself unless we can also know whether the cost per Mcf of gas reserves added is significantly greater in one case than the other. Appellants' data request, if granted, would not give us this information nor have they suggested that such information could feasibly be secured were we to attempt to broaden the scope of their proposed inquiry. Correspondingly, nothing has been suggested to us which would indicate that (considering quantity and quality differences in deep as compared with shallow wells) the higher costs of drilling deep wells have in fact had an inhibiting effect upon the increasing activity at such deeper depths or that failure to establish such a price differential would inhibit deeper drilling in the future. In short there is no basis for believing that producers' decisions as to whether to drill shallow or deep at any given time reflect cost factors divorced from expectations as to the likelihood of success in terms of the amount and kind of gas at various elevations. When these factors are added to the deficiencies of the particular data request before us, indicated above, we believe there is no basis for our overruling the judgment of the examiners in these proceedings that on the present state of the record there has been an insufficient showing of both the materiality and relevance of the material sought to be secured.

The Commission orders:

Appellants' appeal from the Presiding Examiners' denial of their request for additional data is denied.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr. and Carl E. Bagge.

CITIES SERVICE GAS COMPANY, DOCKET NO. CP65-410

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued August 27, 1965)

On June 21, 1965, Cities Service Gas Company (Applicant) filed in Docket No. CP65-410 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities and the sale, on an interruptible basis, of up to 317 Mcf (14.73 psia) of natural gas per day to Consolidated Utilities, Inc. (Consolidated) for resale, all as more fully set forth in the application in this proceeding.

Applicant will tap its Pampa 20-inch pipeline in Gray County, Texas, and construct and operate meter and appurtenant regulator facilities in order to sell and deliver gas to Consolidated for resale for irrigation fuel and incidental farm purposes to Consolidated's customers in the same general area. The sale will be made under Applicant's proposed Rate Schedule IRG-1.

Consolidated's estimated third year peak day and annual natural gas requirements are 317 Mcf and 52,812 Mcf, respectively.

The total estimated cost of the proposed facilities is $2,206, which cost will be financed out of funds on hand. The application indicates that net income of $237 will be realized on the project in the third year of operation.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on August 25, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Cities Service Gas Company, a Delaware corporation having its principal place of business in Oklahoma City, Oklahoma, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of December 28, 1943, in Docket No. G–298 (4 FPC 471).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the proposed transportation and sale of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the proposed transportation and sale of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is issued authorizing Applicant, Cities Service Gas Company, to construct and operate the proposed facilities and to sell and deliver natural gas as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities authorized shall be constructed and placed in actual operation and the sale of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 6 months from the date on which this order issues.

(D) The certificate issued is granted on the express condition that the interruptible service authorized herein shall be curtailed or interrupted to the extent required to meet existing or future contracted maximum delivery obligations of Applicant for firm service to its customers.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr. and Carl E. Bagge.

CONSOLIDATED GAS SUPPLY CORPORATION AND UNITED FUEL GAS COMPANY, DOCKET NO. CP65-394

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND PERMITTING AND APPROVING ABANDONMENT OF FACILITIES

(Issued August 27, 1965)

On June 9, 1965, Consolidated Gas Supply Corporation (Consolidated) and United Fuel Gas Company (United) filed in Docket No. CP65-394 a joint application pursuant to Sections 7(b) and 7(c) of the Natural Gas Act for permission and approval for United to abandon certain compressor facilities, and for a certificate of public convenience and necessity authorizing the construction and operation of certain measuring and regulating facilities and the exchange and delivery of natural gas, all as more fully set forth in the application.

Pursuant to their agreement of December 10, 1963, Consolidated and United propose the following exchange of natural gas: (1) Consolidated for the account of United, will deliver into the available system of Gas Transport, Inc., whose lines traverse those of Consolidated in Jackson County, West Virginia, not in excess of 1,000 Mcf per day of natural gas gathered by Consolidated; (2) United will deliver into the available system of Consolidated in Raleigh County, West Virginia, not in excess of 2,000 Mcf per day of natural gas gathered by United; (3) Consolidated will deliver to United at an existing interconnection of their respective systems in the Diamond-Belle area of Kanawha County, West Virginia, sufficient volumes of natural gas to make up the difference in volumes exchanged in Jackson and Raleigh Counties, as described above, less 20 percent thereof, which is to be the cost of transportation. If the occasion arises whereby United is required to deliver deficiency volumes to Consolidated, the parties will at such time establish a mutually agreeable delivery point, subject to the approval of the Commission.

In order to implement the proposed exchange, United will construct and operate the necessary measuring facilities at the delivery points in Jackson and Raleigh Counties, West Virginia. Consolidated will construct and operate the necessary measuring facilities at the delivery point in Kanawha County, West Virginia. Total estimated cost of United's construction is $4,800, and that of Consolidated is $3,000. All such costs will be financed with funds on hand.

In addition to the foregoing, United requests permission and approval to abandon its Wingrove Compressor Station in Raleigh County, consisting of one 300 horsepower compressor unit, presently operating solely for the purpose of handling gas herein proposed for exchange with Consolidated. Commission authorization for the proposed exchange will eliminate the necessity for this facility. Consolidated's Lee Compressor Station, a nonjurisdictional field gathering facility located in Jackson County, West Virginia and consisting of one 180 horsepower compressor, will also be rendered unnecessary by the proposed exchange.

Under the proposed arrangement, both parties will operate in a more efficient manner, and will save annual operating expense of the Lee and Wingrove stations, which are approximately $13,600 and $21,300 respectively. There is no abandonment of service proposed by either Consolidated or United.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on August 25, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits thereto, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Consolidated and United are both "natural-gas companies" within the meaning of the Natural Gas Act, as heretofore found by the Commission.

(2) The proposed construction and operation of facilities and exchange of natural gas by Consolidated and United are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid construction and operation of facilities and exchange of natural gas by Consolidated and United are required by the public convenience and necessity, and a certificate therefor should be issued, as hereinafter ordered and conditioned.

(4) The proposed abandonment by United of its Wingrove Compressor Station is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(5) The aforesaid abandonment of facilities by United is permitted by the public convenience and necessity, and approval therefor should be granted as hereinafter ordered.

(6) Consolidated and United are able and willing properly to do the acts and to perform the service proposed, and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Consolidated Gas Supply Corporation and United Fuel Gas Company authorizing the construction and operation of facilities and exchange of natural gas hereinbefore described, as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon the compliance of Consolidated and United with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c) (3), (c) (4) and (e) of Section 157.20 of such Regulations.

(C) The facilities authorized shall be constructed and placed in actual operation and the exchange of natural gas shall be undertaken, as provided by paragraph (b) of Section 157.20 of the aforesaid Regulations, within 3 months from the date on which this order issues.

(D) Permission for and approval of the proposed abandonment of facilities by United are granted.

(E) United shall advise the Commission of the date of said abandonment within 10 days thereof.

(F) Consolidated and United shall file their Exchange Agreement dated December 10, 1963, with this Commission as a new rate schedule of their respective FPC Gas Tariffs within 60 days from the date on which this order issues.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr. and Carl E. Bagge.

NATURAL GAS PIPELINE COMPANY OF AMERICA, DOCKET NO. CP65-419

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued August 27, 1965)

On June 28, 1965, Natural Gas Pipeline Company of America (Applicant) filed in Docket No. CP65-419 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain compressor facilities in Wise County, Texas, all as more fully set forth in the application.

Applicant proposes to construct and operate at its Station No. 115 in Wise County, Texas, two 1,040 Hp turbine powered compressor units, to provide required compressor capacity for additional volumes of natural gas becoming available to it in the Jack-Wise County Area in Texas. Reserves in this area have recently been increased by 165,625 MMcf through revisions of reserve estimates under existing contracts and by reason of new contracts and amendments to existing contracts dedicating additional reserves. Station No. 115 is presently powered by three reciprocating compressor units totaling 1,980 Hp.

The total estimated cost of the proposed facilities is $394,000 and will be defrayed from Applicant's current funds.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At the hearing held on August 25, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought, and upon consideration of the record,

The Commission finds:

(1) Applicant, Natural Gas Pipeline Company of America, a Delaware corporation having its principal place of business in Chicago, Illinois, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of November 7, 1958, in Docket No. G-9966 (20 FPC 694).

(2) The proposed construction and operation of facilities by Applicant as hereinbefore described, and as more fully described in the application, in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed construction and operation of facilities are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Applicant, Natural Gas Pipeline Company of America authorizing the construction and operation of facilities as hereinbefore described and as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be completed and placed in actual operation, as provided in paragraph (b) of Section 157.20 of the aforesaid Regulations within 12 months of the date on which this order issues.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr. and Carl E. Bagge.

THE OHIO FUEL GAS COMPANY, DOCKET NO. CP66-5

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued August 27, 1965)

On July 9, 1965, The Ohio Fuel Gas Company (Applicant) filed in Docket No. CP66-5 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of additional points of delivery for the sale of natural gas to Columbia Gas of Ohio, Inc. (Columbia), for resale and distribution in Sullivan and Iberia, Ohio and environs, all as more fully set forth in the application.

Applicant proposes to construct and operate a tap and measuring station in Sullivan Township, Ashland County, Ohio, and a tap and measuring station in Washington Township, Morrow County, Ohio, together with valves, fittings and incidental facilities, for delivery of natural gas to Columbia for service to the two communities involved.

The estimated third year annual and peak day requirements of Sullivan are 39,941 Mcf and 328 Mcf respectively; estimated requirements of Iberia are 23,440 Mcf and 186 Mcf respectively, for a total of 63,381 Mcf annually and 514 Mcf on the peak day.

Applicant's present contractual commitments with Columbia are adequate to provide initial service to the prospective market, and consequently no increase in contract demand is requested. Service by Applicant to its other customers will not be impaired.

Applicant's estimated rate of return in the third year based on incremental costs and revenues is 31 percent, and the project thus appears feasible.

Total estimated cost of Applicant's proposed construction is $10,110, and will be financed with funds on hand.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on August 25, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits thereto, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, The Ohio Fuel Gas Company, an Ohio corporation having its principal place of business in Columbus, Ohio, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission.

(2) The proposed construction and operation of facilities by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid construction and operation of facilities are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed, and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Applicant, The Ohio Fuel Gas Company, authorizing construction and operation of the facilities hereinbefore described, as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities authorized shall be constructed and placed in actual operation and the delivery of natural gas shall be undertaken, as provided by paragraph (b) of Section 157.20 of the aforesaid Regulations, within one year from the date on which this order issues.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr. and Carl E. Bagge.

TEXAS GAS TRANSMISSION CORPORATION, DOCKET NO. CP65-416

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued August 27, 1965)

On June 25, 1965, Texas Gas Transmission Corporation (Applicant) filed in Docket No. CP65-416 a "budget-type" application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of facilities which may be necessary for the definition, development and testing of prospective gas storage reservoirs, all as more fully set forth in the application.

Applicant requests authorization herein to test and develop additional natural gas storage facilities in the Kentucky, Ohio and Indiana area, close to its northern markets and to the sites of previous exploration. Authorization is sought for the 36-month period from August 28, 1965 to August 28, 1968.[1]

Total volumes of gas to be injected into the prospective storage fields will not exceed 10,000,000 Mcf or 2,000,000 Mcf for any single project. Only off-peak

[1] Applicant's presently effective storage budget certificate authorization was granted August 28, 1964, 32 FPC 672, in Docket No. CP64-266, and expires August 28, 1965.

gas will be used and there will thus be no impairment of Applicant's ability to meet the requirements of its existing customers. No new sales or service are involved.

Total estimated cost of Applicant's proposed storage development program is not to exceed $3,000,000, with expenditures in any year not to exceed $1,000,000. Applicant will finance such costs with funds on hand.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on August 25, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits thereto, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Texas Gas Transmission Corporation, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission.

(2) The proposed construction and operation of facilities by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid construction and operation of facilities by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued, as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Applicant, Texas Gas Transmission Corporation, authorizing construction and operation of the facilities hereinbefore described, as more fully described in the application in this proceeding, for the testing and development of prospective natural gas storage reservoirs during the period from August 28, 1965 to August 28, 1968, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations, and the provisions of subsection (d) of Section 157.7 of such Regulations.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr. and Carl E. Bagge.

TRANSCONTINENTAL GAS PIPE LINE CORPORATION, DOCKET NO. CP65-424

FINDINGS AND ORDER AFTER STATUTORY HEARING PERMITTING AND APPROVING ABANDONMENT OF FACILITIES

(Issued August 27, 1965)

On June 30, 1965, Transcontinental Gas Pipe Line Corporation (Applicant) filed in Docket No. CP65-424 an application pursuant to Section 7(b) of the

Natural Gas Act for permission and approval to abandon certain natural gas facilities, as more fully set forth in the application.

The facilities to be abandoned are (1) 3.37 miles of 4-inch pipeline, a 265 horsepower booster compressor station and metering and dehydration equipment in the South Clara Driscoll Field, Nueces County, Texas, and (2) a 344 horsepower booster compressor station attached to the Albert West Unit Well No. 2-A in the Oakville Field, Live Oak County, Texas.

The subject facilities were originally utilized by Applicant to take into its system gas purchased from certain acreage in the South Clara Driscoll and Oakville Fields. This gas was dedicated under contracts with Banquete Gas Company, Inc., now Texas Gas Producing Company (Texas Gas) and Western Natural Gas Company, now Sinclair Oil & Gas Company (Sinclair). These facilities are no longer needed since production from the acreage has ceased and the reserves have been depleted.

Texas Gas has agreed to cancel its contract with Applicant and file for the requisite abandonment authorization. Sinclair received partial abandonment authorization on April 15, 1965, but did not terminate the contract as other acreage dedicated under its contract with Applicant is still productive.

The pipeline will be abandoned in place, the compressors are to be held as spare equipment and the other facilities are to be salvaged for future use or sale.

Due notice of the filing of the application was published in the Federal Register on July 14, 1965 (30 F.R. 8867). No petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on August 25, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Transcontinental Gas Pipe Line Corporation, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of April 28, 1950, in Docket No. G-1277 (9 FPC 32).

(2) The facilities to be abandoned, as hereinbefore described and as more fully described in the application in this proceeding, are subject to the jurisdiction of the Commission and abandonment of such facilities by Applicant is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(3) Such abandonment, as hereinbefore described and as more fully described in the application in this proceeding, is permitted by the public convenience and necessity and an order approving same should be issued as hereinafter ordered.

The Commission orders:

(A) Permission for and approval of the abandonment by Transcontinental Gas Pipe Line Corporation of the facilities hereinbefore described, as more fully described in the application in this proceeding, are granted.

(B) Applicant shall advise the Commission of the date of abandonment of the facilities within 10 days thereafter.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr. and Carl E. Bagge.

UNITED FUEL GAS COMPANY, DOCKET NO. CP64-164

FINDINGS AND ORDER AFTER STATUTORY HEARING PERMITTING AND APPROVING ABANDONMENT OF FACILITIES

(Issued August 27, 1965)

On January 24, 1964, United Fuel Gas Company (Applicant) filed in Docket No. CP64-164 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon certain natural gas storage and compressor facilities, all as more fully set forth in the application.

Applicant requests permission and approval to abandon its Storage Field X-19, consisting of two storage reservoirs, "Area A" and "Area B", located in Smithfield District, Roane County, West Virginia, and its 600 horsepower Epling Compressor Station at the same location.

The proposed abandonment is requested because Applicant has incurred substantial losses of stored gas in the operation of the field. In addition, the field has low-pressure, low-capacity characteristics inconsistent with Applicant's emphasis on high-pressure transmission and storage operations. Epling Compressor Station will be abandoned since its sole purpose was the injection and withdrawal of gas in Storage Field X-19. Withdrawal of stored gas from the field has been completed.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on August 25, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits thereto, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, United Fuel Gas Company, a West Virginia corporation having its principal place of business in Charleston, West Virginia is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of March 1, 1944, in Docket No. G-341 (4 FPC 534).

(2) The proposed abandonment of facilities by Applicant is subject to the provisions of Subsection (b) of Section 7 of the Natural Gas Act.

(3) The aforesaid abandonment of facilities by Applicant is permitted by the public convenience and necessity, and approval therefor should be granted as hereinafter ordered.

The Commission orders:

(A) Permission for and approval of the abandonment by Applicant of the facilities hereinbefore described, as more fully described in the application in this proceeding, are granted.

(B) Applicant shall advise the Commission of the date of the abandonment of said facilities within 10 days thereof.

OPINION NO. 471

MICHIGAN WISCONSIN PIPE LINE COMPANY, DOCKET NO. RP60-9

OPINION AND ORDER ON DEFERRED ISSUES

(Issued August 30, 1965)*

Syllabus

1. In a pipeline zoning case initial question to be decided is whether company's present rate structure is unduly discriminatory or preferential. P. 634.
2. Burden of proving that system-wide rates are discriminatory and unfair is upon party alleging same; here such showing has not been made. PP. 624; 635.
3. Since all of pipeline's customers benefit substantially from facilities of entire system, imposition of zone rates would be unjust and unreasonable. P. 624.
4. In determining whether a zoning should be ordered, a case turns on the particular facts involved. P. 640.
5. *Distinguishing Northern Natural*, Commission *concludes* that Michigan Wisconsin's present system-wide rates are not unduly prejudicial or preferential and should be continued on its system as presently constituted. PP. 624; 627; 639.
6. Rate differentials between customers of different pipelines is not a valid consideration in determining proper rates applicable to customers of a single pipeline. P. 625.
7. A consistent and predictable course of conduct of supplier affecting its financial relationship with the consumer is a "practice" subject to Commission's tariff filing requirements. P. 626.
8. Since Michigan Wisconsin's 10-cent formula affects gas rates and has been consistently applied to relatively short laterals, it must be included in its tariff. P. 626.
9. Since instant decision has industry-wide application, Commission will initiate a rule-making proceeding to determine whether all natural gas companies should be required to include statement of lateral line policies in their tariff. P. 626.
10. In a proceeding under Section 4 of the Natural Gas Act, Commission *denies* request for establishment of rate zones and zone rates on Michigan Wisconsin's system and *requires* pipeline to file statement of its 10-cent formula for inclusion in tariff.

Charles V. Shannon and *Louis Flax* for Michigan Wisconsin Pipe Line Company.

Ned Willis for North Central Public Service Company.

Charles R. S. Anderson for Iowa Southern Utilities Company.

John F. Gaston for Iowa Electric Light & Power Company.

N. E. McManus for Keokuk Gas Service Company.

Eugene E. Threadgill and *Justin R. Wolf* for California Chemical Company.

John J. Goen and *Dick A. Witt* for Iowa State Commerce Commission.

Albert J. Feigen for American Gas Company.

Charles R. S. Anderson for Allerton Gas Company; City of Bethany, Missouri; City of Bloomfield, Iowa; City of Lamoni, Iowa; City of Stanberry, Missouri; St. Joseph Light & Power Company; and Wapello Light Company.

Reuben Goldberg and *George Spiegel* for Michigan Gas and Electric Company.

William E. Torkelson for Public Service Commission of Wisconsin.

*Initial decision appears on p. 627. Opinion No. 471–A and order issued October 21, 1965 denying rehearing and stay, 34 FPC 1188.

Glen H. Bell and *Charles P. Seibold* for Wisconsin Fuel and Light Company.

N. J. Lesselyoung and *Glen H. Bell* for Milwaukee Gas Light Company.

John F. Zimmerman and *Glen H. Bell* for Wisconsin Michigan Power Company and Wisconsin Natural Gas Company.

Eugene O. Gehl and *Glen H. Bell* for Wisconsin Power and Light Company.

Seymour Tabin and *Glen H. Bell* for Wisconsin Public Service Corporation.

H. J. O'Leary and *Glen H. Bell* for Madison Gas and Electric Company.

Frank J. Kelley and *Hugh B. Anderson* for Michigan Public Service Commission.

Samuel H. Olson, Aloysius J. Suchy and *David R. Kaplan* for the County of Wayne, Michigan.

Richard M. Merriman, Harry A. Poth, Jr., and *Peyton G. Bowman, III* for Michigan Gas Utilities Company.

Jerome J. McGrath for Fuels Research Council, Inc.; National Coal Association; United Mine Workers of America; Mid-West Coal Producers Institute, Inc.; and Upper Lake Docks Coal Bureau, Inc.

Arthur R. Seder, Jr. for Michigan Consolidated Gas Company.

Julius C. Meier for the Staff of the Federal Power Commission.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., David S. Black and Carl E. Bagge.

BLACK, *Commissioner:*

In our Opinion No. 387, American Louisiana Pipe Line Co. and Michigan Wisconsin Pipe Line Co., 29 FPC 932, 948, 952 (May 16, 1963), we prescribed rates for Michigan Wisconsin Pipe Line Company (Mich Wisc), ordered refunds and reserved two issues for subsequent determination. These issues, presently before us for decision, are (1) whether prospective zone rates should be established for the Mich Wisc system; and (2) what should be the terms and conditions under which Mich Wisc would provide new and additional service from branch or lateral lines, and whether such terms and conditions should be inserted in its tariff.

Hearings on these questions began on April 20, 1964, and were concluded on September 23, 1964. A number of towns, utilities and other organizations presently served by Mich Wisc in Missouri, Iowa, Michigan and Wisconsin, as well as the State Commissions of Iowa, Wisconsin and Michigan intervened. The Examiner issued his decision on March 1, 1965, holding that (1) the existing system-wide rates were not discriminatory and that the zone rate system advocated by the Iowa-Missouri customers was not necessary; (2) there was inadequate evidence in the record upon which to base a determination of just and reasonable lateral extension policies; and (3) Mich Wisc's 10-cent formula and any other lateral extension policy need not be included in Mich Wisc's tariff.

We agree with the Examiner that the Mich Wisc system need not be subject to zone rates and that the record does not support a determination regarding fair and reasonable lateral policies. We disagree, however, with his finding that the 10-cent formula need not be inserted in the tariff. Since this formula has been a consistent practice of Mich Wisc, it comes within the ambit of Section 4(c) of the Natural Gas Act and Section 154.1 of Commission Regulations and must, therefore, be included in the tariff. We make no finding with regard to other formulas or policies which may be adopted in the future.

Before proceeding to discuss the reasons for our findings, we note that Iowa Southern Utilities Company and other companies in Iowa and Missouri have requested oral argument and that Mich Wisc opposes such a request. Since the questions under consideration have been fully covered in the briefs, we do not believe oral argument would serve a useful purpose. The request is denied.

ZONE RATES

A better understanding of the issues involved necessitates a brief description of the Mich Wisc system. This system has the configuration of the letter "Y". The bottom leg is 795 miles in length and consists of a looped main transmission pipeline and compressor stations running in a northeasterly direction from the Hugoton-Anadarko Field, Texas to Compressor Station Number 10 near Millbrook, Illinois. Smaller lateral lines bring gas from this main line to several communities in Missouri and Iowa.

At Station 10 the pipeline splits into two segments forming the arms of the "Y". The right arm is a 22-inch main transmission pipeline, now looped with a 30-inch line, extending for 256 miles in a northeasterly direction to the Austin Storage Field near Grand Rapids, Michigan. This arm also connects with the American Louisiana Pipe Line Company's (American Louisiana) line near Bridgman, Michigan. Lateral lines connected to this arm extend service to smaller storage fields and to customers in Indiana and Michigan. The left arm is comprised of a 22-inch line, looped with a 24-inch line which extends 229 miles at successively reduced diameters in a northwesterly direction to Green Bay, Wisconsin. Laterals off this arm provide service to a number of Wisconsin customers and interconnect with Northern Natural Gas Co. (Northern) and with Midwestern Gas Transmission Co. (Midwestern) in southern and central Wisconsin, respectively.

Mich Wisc receives gas not only from the Anadarko Basin but also from the three pipelines with which it is interconnected. The record indicates that 63.81 percent is taken from Hugoton-Anadarko, 12.10 percent from American Louisiana, 17.11 percent from Midwestern, and 6.98 percent from Northern.

Most of the time gas flows northeasterly through the Texas-Illinois leg into the pipeline branches supplying Wisconsin and Michigan. During non-peak periods excess gas is stored in the Michigan storage fields. At peak demand periods the flow reverses. Gas from American Louisiana and the storage fields flows southwesterly towards Station No. 10 to service Michigan and Illinois consumers. Often the demand is so great that this gas is sent past Station 10 up into the Wisconsin branch in order to service Wisconsin customers.

The customers of Mich Wisc in Iowa and Missouri contend that they are significantly nearer the gas supply than the Michigan and Wisconsin customers. Consequently, the Mich Wisc system should be divided into two rate zones in order to reflect different transmission costs. Zone 1 would be the section of pipeline south of Station 10 and Zone 2 would encompass the two branches north of Station 10 that extend into Wisconsin and Michigan. Their argument is premised upon the fact that the weighted average commodity haul of the Southwest gas to the Iowa-Missouri customers is about 620 miles, while the average length of haul from Mich Wisc's various sources of supply to the customers in Wisconsin and Michigan is 926 miles. The Iowa-Missouri group also argues that the proposed Zone 1 comprises a distinct market area, that the flow of gas through the zone is that of a typical long-line pipeline, that zone pricing is used by most long-line pipelines, and that the Iowa-Missouri communities are at a serious cost disadvantage because of the discriminatory rate structure of Mich Wisc's tariff.

Mich Wisc, a group of Wisconsin distributors, the Public Service Commission of Wisconsin, the Michigan Public Service Commission, and the staff oppose the establishment of zone rates and urge the retention of the present system-wide rates. While their arguments vary in several minor respects, they all point out that the Mich Wisc system is an integrated whole with the benefits of one part enuring equally to all of its customers. The system-wide rates are,

therefore, not discriminatory. In support of this contention it was argued that (1) the Mich Wisc system's varied sources of gas benefit all customers either directly or by displacement; and (2) the Missouri-Iowa customers benefit from the increased concentration of customers in the proposed Zone 2 and the storage facilities since these factors enable the entire line to operate at maximum capacity with a resulting lower unit cost.

Adopting, in general, the arguments made by the opponents of zoning, the Examiner found that the Mich Wisc system is operated as a grid with natural gas entering the system at divergent points. This gas regardless of its source is used to supply the over-all system requirements. Since the proponents have failed to establish that the system-wide rates are unduly preferential or prejudicial, he disallows the request for rate zones and concludes that system-wide rates are desirable and equitable.

As pointed out by the Iowa-Missouri group, this Commission has approved the establishment of zone rates. In *Northern Natural Gas Co.*, 14 FPC 11 (1955), aff'd. 236 F. 2d 372 (CA8), certiorari denied 352 U.S. 967, we discussed the governing criteria and concluded that zone rates should be established whenever system-wide rates were discriminatory and unfair. The burden of proving such discrimination is upon the party or parties alleging it.[1] We agree with the examiner that the Iowa-Missouri group has not made such a showing. On the contrary, the record discloses that the imposition of zone rates would be unjust and unreasonable since all of Mich Wisc's customers benefit substantially from the facilities of the entire system.

The Iowa-Missouri group has argued that the Mich Wisc system is similar to that involved in the *Northern Natural* case. There we found that the varying distances between the customers and sources of gas resulted in different transmission costs and that it was discriminatory to have those relatively close to the source of gas, shoulder the transmission costs of customers far from the source. There is no question that the Mich Wisc system presently under consideration is in many respects similar to the Northern pipelines. Nevertheless, we agree with the examiner that there are differences between the two systems and conclude that the system-wide rates of Mich Wisc should be applied to the Mich Wisc system as it is presently constituted. Future changes in the system may require a different conclusion but we make no finding in that regard.

One of the most important distinguishing circumstances between the two situations is the fact that all of Mich Wisc's customers benefit from the Michigan storage fields. During the days of maximum demand, gas flows from the storage fields and American Louisiana southwesterly to Station 10 and through Station 10 commingled with Southwestern gas into the Wisconsin branch of the system. Although the storage gas does not physically reach the Iowa-Missouri customers, it benefits them by providing gas to the customers in Wisconsin and Michigan at times of peak load so that more gas may be diverted from Mich Wisc's main line in Iowa and Missouri. This use of storage gas also enables Mich Wisc to make greater use of its main line from the Southwest throughout the year. In fact, the summer transportation of gas to the storage fields enables the leg between the Hugoton-Anadarko fields and Station 10 to operate at a greater capacity during July than during the winter at the time of the peak demand of the Iowa-Illinois customers.

Furthermore, the purchases of gas from American Louisiana, Midwestern and Northern made north of Station 10 also benefit the entire system although this

[1] *City of St. Charles* v. *Illinois Commerce Commission*, 21 Ill. 2d 259, 28 PUR 3d 85, 89, 172 N.E. 2d 353, 356; *North Carolina ex rel Utilities Commission* v. *Carolina Power & Light Co.*, 250 N.C. 421, 29 PUR 3d 358, 366, 109 S.E. 2d 253, 261; *Phinney Bay Water District* v. *City of Bremerton*, 39 PUR 3d 410, 413, 362 P. 2d 358, 361.

gas also does not physically reach the Iowa-Missouri customers. This is so because by certifying the sales by these three companies to Mich Wisc for use upstream from Station 10 we released pipeline capacity in Iowa and Missouri for additional use by customers in such states and in fact allocated additional quantities of gas to Mich Wisc's customers, including the Iowa-Missouri group.[2]

Another factor which must be given weight is the high load concentration at the northern end of the Mich Wisc complex. The original pipeline, as authorized in Docket No. G-669 (5 FPC 953) was constructed to transport gas from the Southwest to markets in Michigan and Wisconsin and to the Austin Storage Field in Michigan. The large northern loads here are clearly advantageous to the Iowa-Missouri customers. Since the unit cost of transporting gas decreases in proportion to the increasing size of the pipeline, the Iowa-Missouri customers presently share in the economics of a system with a load factor of 54 percent while their load factor is only 38 percent. The needs of these customers considered alone would not support a pipeline having the inherent benefits of the line presently serving them.

The Iowa-Missouri customers attempt to dismiss this distinguishing feature by pointing to other pipelines having major loads at or near the end of the lines whose systems have been zoned either upon the initiative of the company or this Commission. We have carefully examined each such instance cited by the Iowa-Missouri group and find that the Examiner has properly distinguished these examples from the present case. We agree with the Examiner that these cases are not governing and adopt his rationale.

The Iowa-Missouri group also argues that Mich Wisc's rates resulted in the loss of industrial sales to the economic detriment of the areas of Iowa and Missouri serviced by Mich Wisc. This contention was supported by evidence that some municipal bodies serviced by other pipelines were able to purchase gas at a rate lower than that charged the Iowa-Missouri group by Mich Wisc. However, rate differentials between customers of different pipelines is not a valid consideration in determining proper rates applicable to customers of a single pipeline. This is so because rates are designed to equitably distribute costs among line customers.

LATERAL LINE POLICY

Questions have also been raised as to (1) whether the Commission should prescribe the terms under which Mich Wisc shall build long and short laterals to service additional customers; and (2) whether such terms should be included in Mich Wisc's tariff.

Over a number of years Mich Wisc has consistently applied a 10-cent formula in determining how much it will pay for its relatively short lateral lines.[3] Under this formula, which is still being utilized, Mich Wisc will shoulder the cost of a lateral up to 10 cents per Mcf. The customer must pay for any additional costs. In computing 10 cents per Mcf ceiling, the annual cost of the lateral is estimated

[2] *American Louisiana Pipe Line Co.*, 16 FPC 897, (September 4, 1956) which provided for deliveries of gas to Bloomfield and Lamoni, Iowa, and Aledo, Illinois, upon certifying additional supplies for the system from American Louisiana; *Midwestern Gas Transmission Company, et al.*, 22 FPC 775, 790 (October 31, 1959) which require additional allocations to Mich Wisc customers (including Iowa-Missouri customers) after certificating purchases of Canadian gas from Midwestern; and *Northern Natural Gas Co.*, 25 FPC 1234, 1237, which resulted in allocations among Mich Wisc's then existing customers on a pro rata basis after certificating sales by Northern Natural.

[3] *American Louisiana Pipe Line Co., Michigan Wisconsin Pipe Line Co., et al.*, 27 FPC 967, 908–81; *Michigan Wisconsin Pipe Line Co.*, 21 FPC 552, 557–59; 22 FPC 566; *Midwestern Gas Transmission Co.* and *Michigan Wisconsin Pipe Line Co.*; 22 FPC 775, 797–98; 24 FPC 33, 35–36; *Michigan Wisconsin Pipe Line Co.*, 24 FPC 177, 181, 183–87.

to be 15 percent of the construction costs. This annual cost figure is in turn divided by the firm third year gas requirement in order to get the cost per Mcf.

As the Examiner points out the record does not afford an adequate basis upon which to judge whether the formula is just and reasonable. The record is also devoid of evidence regarding a proper formula for computing the cost allocation of longer laterals. Consequently, we make no finding regarding the propriety of the existing 10-cent formula and do not establish guidelines for the formulation of future lateral policies.

The final question to be determined is whether lateral formulas must be included in Mich Wisc's tariff. The controlling provision is Section 4(c) of the Act which provides in part:

> Under such rules and regulations as the Commission may prescribe, every natural-gas company shall file with the Commission * * * and shall keep open in convenient form and place for public inspection, schedules showing all rates and charges for any transportation or sale subject to the jurisdiction of the Commission and the classifications, practices, and regulations affecting such rates and charges * * *.

Section 154.1 of the Commission's Regulations further provides for the filing of rates and charges "and the classifications, practices, rules, and regulations affecting such rates, charges, and services." The examiner confined the word "practices" to things of the general class, such as "schedules," "classifications," "regulations," and "contracts," and would, thereby preclude the insertion of such company policy determinations.

We disagree with the Examiner. A consistent and predictable course of conduct of the supplier that affects its financial relationship with the consumer in our opinion is a "practice" subject to the filing requirements. The filing of such a procedure as part of the pipeline tariff is not only consistent with but furthers the purpose underlying the filing and posting requirements of rate schedules. A pipeline tariff announces not only what the pipeline has done in the past but the terms and conditions upon which it would, as a matter of policy, provide service to new customers meeting the tariff's eligibility requirements. Even if the tariff were viewed as merely an informational description of existing service obligations, this description of the pipeline's actual practice would be of real benefit to both existing and potential customers, for it would show them, as well as the Commission, the terms by which gas would be sold upon completion of Section 7 proceedings.

Since the 10-cent formula affects gas rates and has been consistently applied by Mich Wisc to its relatively short laterals, it must be included in Mich Wisc's tariff. The longest lateral to which Mich Wisc has applied the 10-cent formula has been about 37 miles; we conclude that Mich Wisc should apply the formula to any laterals not exceeding 40 miles in length. The pipeline may, of course, if it wishes, specify a longer cut-off mileage, and it might even adopt the 10-cent formula or some other formula or procedure for longer laterals. In such an event, it must file an amendment to its tariff to reflect this action.

The record includes a statement of the 10-cent formula as proposed by the staff for inclusion in Mich Wisc's tariff. While we find no fault with the statement, we shall not prescribe it because we believe that it would be more appropriate for Mich Wisc to express its own formula.

Recognizing the industry-wide application of this decision, we shall initiate a rulemaking proceeding with a view toward requiring all natural gas pipeline companies to include a statement of their lateral line policies in their tariffs.

The Commission further finds:

(1) The Iowa-Missouri Group, proponents of the proposed zones and zone rates have failed to sustain the burden upon them of proving that Mich Wisc's present rates are unduly preferential or unduly discriminatory.

(2) The evidence affirmatively establishes that Mich Wisc's present rates are not unduly preferential or unduly discriminatory, and that system-wide rates should be continued.

(3) Zones and zone rates should not be established on the Michigan Wisconsin system.

(4) The 10-cent formula, as applied to short laterals, should be made a part of Michigan Wisconsin's tariff.

(5) No other lateral or extension policies should be set forth in Michigan Wisconsin's tariff.

The Commission orders:

(A) The proposal and request of the Iowa-Missouri group that rates zones and zone rates be established on the Michigan Wisconsin system are denied.

(B) Within sixty days of the issuance of the order and subject to the approval of the Commission, Mich Wisc shall file for inclusion in its tariff a statement of its 10-cent rule which shall be applicable to lateral pipelines not longer than 40 miles.

(C) The proposal and request of Michigan Gas and Electric Co. and the Staff that a long-line extension policy of Michigan Wisconsin be made a part of Michigan Wisconsin's tariff are denied.

(D) The pending Presiding Examiner's decision insofar as it relates to zoning and is consistent with this opinion and order is adopted as part of this opinion.

(E) Exceptions not specifically granted are denied.

(F) The requests for oral argument are denied.

INITIAL DECISION

OF THE PRESIDING EXAMINER ON ISSUES DEFERRED IN OPINION AND ORDER PRESCRIBING RATES ISSUED MAY 16, 1963

(Issued March 1, 1965)

PURDUE, *Presiding Examiner:* In the consolidated rate proceedings, *American Louisiana Pipe Line Co. and Michigan Wisconsin Pipe Line Co.*, 29 FPC 932, 948, 952, the Commission reserved two issues for subsequent hearing and determination in the above numbered proceeding. These issues, now presented for decision, are specified in the Commission's order of February 20, 1964, herein, providing for the subsequent hearing, *viz.:*

1. The terms and conditions under which Michigan Wisconsin would provide new and additional service from branch or lateral lines, and whether such terms and conditions should be reflected in its tariff; and

2. Whether zone rates, to be effective prospectively, should be established for the Michigan Wisconsin system.

Most of the evidence adduced at the hearing, and most of the argument in the briefs, concern the second of these issues. Hence, in treating of the two issues, they will be transposed.

This phase of the rate proceeding, following a prehearing conference, came on for hearing before the Examiner on April 20, 1964, and concluded on September 23, 1964, consuming 16 hearing days. The following companies, commissions, and municipalities intervened in the proceeding and entered an appearance at the hearing: North Central Public Service Co., Iowa Southern Utilities Co.,

Iowa Electric Light & Power Co., Keokuk Gas Service Co., California Chemical Co., Iowa State Commerce Commission, American Gas Co., Allerton Gas Co., City of Bethany, Missouri, City of Bloomfield, Iowa, City of Lamoni, Iowa, City of Stanberry, Missouri, St. Joseph Light & Power Co., Wapello Light Co. (all of the aforesaid companies and municipalities and said commission being referred to collectively as the "Iowa-Missouri group"), Wisconsin Fuel and Light Co., Milwaukee Gas Light Co., Wisconsin Michigan Power Co., Wisconsin Natural Gas Co., Wisconsin Power & Light Co., Wisconsin Public Service Corp., Madison Gas and Electric Co. (said companies being referred to collectively as the "Wisconsin group of gas utility companies"), the Public Service Commission of Wisconsin, the Michigan Public Service Commission, the County of Wayne, Michigan, Michigan Gas and Electric Co., Michigan Gas Utilities Co., Fuels Research Council, Inc., National Coal Association, United Mine Workers of America, Mid-West Coal Producers Institute, Inc., Upper Lake Docks Coal Bureau, Inc., and Michigan Consolidated Gas Co.

At the hearing, evidence both oral and documentary was introduced by the Iowa-Missouri group, Michigan Wisconsin, the Wisconsin group of gas utility companies, Michigan Gas and Electric Co., and the Staff of the Federal Power Commission. Cross-examination of witnesses was conducted by said participants, the Public Service Commission of Wisconsin, and the County of Wayne, Michigan. The Iowa-Missouri group, Michigan Wisconsin, the Wisconsin group of gas utility companies, the Public Service Commission of Wisconsin, the Michigan Public Service Commission, the County of Wayne, Michigan, Michigan Gas and Electric Co., and Michigan Gas Utilities Co. filed briefs after the conclusion of the hearing; and the issues were submitted for consideration and decision.

PRELIMINARY STATEMENT OF FACTS

The evidence (including Commission orders of which official notice is taken) establishes the following facts:

As originally completed in 1949, the Michigan Wisconsin system consisted of a 24-inch main transmission pipeline extending from the Hugoton Field, Texas, in a northeasterly direction for a distance of 795 miles to a junction near Millbrook, Illinois, where its Compressor Station 10 is located, together with lateral lines to serve certain markets in Missouri and Iowa. From Station 10, a 22-inch main transmission pipeline extended northeasterly for a distance of approximately 256 miles to the terminus of such line at the Austin Storage Field near Grand Rapids, Michigan (about 1051 miles from the point of commencement of the system), together with lateral lines to serve certain markets in Michigan. A main transmission pipeline, commencing as a 22-inch line and successively reducing to 14 inches, 12 inches, 10 inches, and 8 inches, extended in a general northerly direction from Station 10 approximately 229 miles to the terminus of such line at a point near Green Bay, Wisconsin (about 1024 miles from the point of commencement of the system), together with branch lines to serve various other Wisconsin markets. Michigan Wisconsin leased from Michigan Consolidated Gas Co. (an affiliated company in the American Natural Gas Company system), and operated, extensive storage fields, the Austin and Goodwell fields, at and near the terminus of its main Michigan transmission pipeline. Michigan Wisconsin purchased its original gas supply from Phillips Petroleum Co., the gas being produced by Phillips in the Hugoton Field. From time to time, Michigan Wisconsin expanded the capacity of its pipelines (including loops and additional compressor facilities on its aforementioned 24-inch line, and continuous loops between Station 10 and Austin Storage Field), and leased and operated additional large storage fields near the terminus of its pipeline in

Michigan. Michigan Wisconsin now operates the pipeline system and storage fields as expanded.

In 1956 Michigan Wisconsin started purchasing supplies of natural gas at and near Bridgman, Michigan from American Louisiana Pipe Line Co. (another of its affiliates in the American Natural system), American Louisiana having constructed a pipeline from the Gulf Coast to Detroit, Michigan. In 1959 Michigan Wisconsin commenced purchasing supplies of gas from the Laverne area in Oklahoma, which it transmitted to its main pipeline in a supply lateral. In 1960 Michigan Wisconsin constructed a 24-inch line connecting its existing facilities near Appleton, Wisconsin, with the terminus of a pipeline of Midwestern Gas Transmission Co. at Marshfield, Wisconsin, and additional pipelines to serve various new markets in Wisconsin; and commenced purchasing supplies of natural gas from Midwestern. The Wisconsin portion of the Michigan Wisconsin system as thus extended terminates about 290 miles north of Station 10. The Midwestern gas originates in the Province of Alberta, Canada, being transported thence by Trans-Canada Pipelines, Ltd. and sold to Midwestern at the Canadian-United States border near Emerson, Manitoba. In 1962 Michigan Wisconsin commenced purchasing natural gas from Northern Natural Gas Co., which Northern delivers into Michigan Wisconsin's system at a point in southern Wisconsin. Michigan Wisconsin also makes relatively small purchases of gas in Kansas and elsewhere in Oklahoma. In 1962 (the latest period for which figures were available at the time of a study made by a staff witness), the percentage of Michigan Wisconsin's gas supply from its various sources was as follows: Anadarko Basin (Texas, Oklahoma, and Kansas), 63.81%; American Louisiana, 12.10%, Midwestern, 17.11%; and Northern, 6.98%.

Michigan Wisconsin has 33 customers, consisting of 25 distribution companies in Michigan, Wisconsin, southern Iowa, northern Missouri, and western Illinois; and 8 small municipalities in the 3 latter states. Michigan Wisconsin's principal customers are its affiliate Michigan Consolidated Gas Co. which serves the Detroit metropolitan area and certain other communities in Michigan, and Milwaukee Gas Light Co. (another affiliate of Michigan Wisconsin in the American Natural system) which serves Milwaukee and certain other communities in Wisconsin.

Michigan Wisconsin's rates have historically been uniformly available throughout its system. Originally Michigan Wisconsin's gas tariff had a straight rate for all gas delivered. In 1959 this tariff was replaced by a gas tariff containing rate schedules (each available throughout the system) providing for three services; *viz.*, annual contract quantity service, small general service, and overrun service.

Respecting the question of zone rates, the Iowa-Missouri group of intervenors propose that for rate making purposes two zones be established on Michigan Wisconsin's system, the dividing line to be Station 10. Zone 1 would lie upstream from (south of) Station 10; and Zone 2, downstream therefrom. The customers in proposed Zone 1 consist of 12 distribution companies in southern Iowa, northern Missouri, and western Illinois, and the eight small municipalities in these localities. The rates that the Iowa-Missouri group of intervenors seek would reduce the cost of gas to the customers in proposed Zone 1 by approximately $1,000,000 per annum, and increase the cost of gas to customers in proposed Zone 2 by substantially the same amount. Michigan Wisconsin, the Wisconsin group of gas utility companies, the Public Service Commission of Wisconsin, the Michigan Public Service Commission, the County of Wayne, Michigan, Michigan Gas Utilities Co., Michigan Gas and Electric Co., and the Staff of the Federal Power Commission, oppose the zoning of the system.

Respecting the lateral line question, the Staff contend that "Michigan Wisconsin's lateral line policy should be reflected in its tariff"; and introduced evidence through an expert witness that said company's policy concerning its so-called 10-cent formula, applicable to short laterals, be included in the tariff. Michigan Gas and Electric Co. urges that a plainly stated extension policy in Michigan Wisconsin's tariff is required both for short and long lines. Michigan Wisconsin opposes the inclusion of any lateral line extension provision in its tariff. Michigan Wisconsin is supported by the Michigan Public Service Commission, the County of Wayne, and Michigan Gas Utilities Co. The other intervenors take no position on this issue.

QUESTION OF ESTABLISHMENT OF ZONE RATES

The proponents of the zoning (hereinafter referred to as "the proponents") contend that the Iowa-Missouri-Illinois customers "are significantly closer to their source of gas supply than the Michigan and Wisconsin customers are to any gas supply area from which the pipeline obtains its gas"; that consequently the system-wide rates are unduly discriminatory against the customers in proposed Zone 1 and unduly preferential to the customers in proposed Zone 2; and that a reduction in the rates to the customers in proposed Zone 1 as shown by a zone cost allocation sponsored by their expert witness is necessary in order to remove the undue discrimination and preference.

In the zone cost allocation, the proponents' expert witness functionalized Michigan Wisconsin's cost of service for the test year, ended August 31, 1960, between production, storage, and transmission costs. He allocated production costs between Zones 1 and 2 on the basis of annual volumes of sales; storage costs, on the basis of peak-day and annual volumes; and transmission costs, by employing a Mcf-mile study. A Mcf-mile study is a procedure used to divide transmission costs between customers or groups of customers on a pipeline system on the basis of volumes delivered at each point and distance of transmission; *i.e.*, on the basis of peak-day and annual Mcf-miles. In his initial presentation, the witness employed three alternative methods. In Method A, he treated all the gas on Michigan Wisconsin's system as if it came from the southwest, on the theory that Michigan Wisconsin had the "alternative" of going to the southwest "to seek" additional gas to supply the increased requirements of its customers instead of obtaining such gas from American Louisiana and Midwestern. The transmission cost element thereby calculated in the charges paid to American Louisiana and Midwestern was allocated by the witness between proposed Zone 1 and proposed Zone 2. Method B differs from Method A in that the Mcf-miles of the haul of Midwestern gas on Michigan Wisconsin's system were reflected and charged to Zone 2. In Method C, for which the witness expressed a preference, the Mcf-miles of haul on the Trans-Canada and Midwestern systems were also reflected and charged directly to Zone 2. Under Method C, based upon the revenue for the test year, the Iowa-Missouri-Illinois customers would contribute $1,050,613 less per annum toward meeting the Michigan Wisconsin over-all system cost of service, while the Michigan Wisconsin customers would contribute $1,038,593 more per annum.

The opponents of the zoning argue (1) that no discrimination or preference exists and that the system-wide rates should be continued, and hence that there is no reason or occasion for a Mcf-mile allocation; and (2) that in any event the Mcf-mile study is erroneous in several respects.

All of the gas physically delivered to the Iowa-Missouri-Illinois customers comes from the southwest, in the looped 24-inch pipeline leading to Station 10. As correctly computed in the Mcf-mile study, the weighted average commodity

haul to these customers is about 620 miles. According to the study, the length of haul from Michigan Wisconsin's various sources of supply to serve the customers in Wisconsin and Michigan is 926 miles—306 miles, or about 50%, more.

As testified to by the proponents' expert witness, "The 926 miles is the weighted average miles of haul of Southwest gas 783 miles through Michigan Wisconsin's mainline to Station 10, American Louisiana gas 1,053 miles to Bridgman, and Midwestern gas 1,141 miles on the Midwestern and Trans-Canada system plus 138 miles average haul of Midwestern gas on Michigan Wisconsin's system." The mean Iowa-Missouri-Illinois delivery point to Station 10 is about 198 miles. The Mcf-mile study does not include the purchases of gas from Northern inasmuch as Michigan Wisconsin did not commence making these purchases until after the test year. The witness testified, however, that "Northern Natural's system originates in the same Southwest Area as does Michigan Wisconsin's and roughly parallels the Michigan Wisconsin system. Introduction of Northern Natural gas, therefore, in no way disturbs the use of distances from this Southwest Area as indicators of costs incurred and services rendered." Except for the Midwestern gas, the study excludes the hauls in the system north of Station 10, whether made directly to distributors, made to storage, or made to distributors from storage. The witness stated that his purpose in this exclusion was to derive a "simple" and "conservative" statement, inasmuch as in such portion of the system "reversals of flow" (due to winter conditions differing from summer conditions) and "other complicating factors" occur. The computations made by the witness in arriving at the length of haul, as thus defined and limited, of gas transmitted to Wisconsin and Michigan are correct.

The evidence establishes, and the Examiner finds, as follows:

The Michigan Wisconsin pipeline system was so designed that the storage fields at the terminus of the Michigan line are an integral and essential part of the operations of the system. The design of the system enables the 24-inch looped pipeline from the southwest supply area, and the looped pipeline from Station 10 to the storage fields to be operated at nearly a 100% load factor, with most of the gas from such source being injected into these fields during the nonheating season and withdrawn in the winter to meet space-heating and other firm loads. The transportation of the off-peak gas to storage and the delivery of peak-day withdrawals to customers were achieved by the system being designed and operated as a highly unified and interdependent system. Such a large portion of the company's annual supply of gas is required for placement in storage that the Michigan Wisconsin tariff limits each customer to 190 times the customer's maximum daily quantity on an annual basis.

The 24-inch line south of Station 10 is not sized to accommodate the volume requirements of the Iowa-Missouri-Illinois market or the distance gas is transported to serve such market. Instead, the controlling factor in sizing this line (as looped) and the looped line on to the storage fields is the volume required for injection into storage during off-peak months. In these pipelines, the volumes of gas transported in the summer months are larger than in the winter, and such facilities are fully utilized only during the summer. Hence, volumes equivalent to the sales to the Iowa-Missouri-Illinois customers could be delivered instead at the terminus of the Michigan line, with the present facilities.

Michigan Wisconsin's ability to meet the winter demands on its system and the wants of all its customers is dependent on the supply of gas from storage. During the five-month heating season, most of the storage withdrawals is absorbed near the storage fields in deliveries to Michigan Consolidated for the Detroit-area market. During such season, the remainder of the storage withdrawals, flowing southwesterly at times, is consumed in markets between the

storage fields and Station 10, except small volumes of such gas which at times flow northerly from Station 10 into Wisconsin for consumption. A substantial part of the requirements of all of Michigan Wisconsin's markets during the winter period, and nearly one-half of its peak winter demands, are supplied from the storage fields, either directly or by displacement.

"Delivery by displacement," as correctly defined by one of the expert witnesses, is "delivery of gas to a customer or customers in a portion of the system in a manner which permits increases in deliveries to all other customers or to certain other specific customers from other existing gas supplies." During the heating season, the Iowa-Missouri-Illinois customers receive gas by displacement from the storage withdrawals, with no transportation entailed for most of the distance from the storage fields back to the points of delivery from the main line to the customers south of Station 10. Michigan Wisconsin thereby effects major savings of investments for transmission facilities and savings of transmission expenses that would otherwise be necessitated. Storage gas is also delivered to other customers on the system by displacement, with attendant savings of like nature.

On the peak day in the year ended August 31, 1960, the storage-field withdrawal amounted to about 43% of the total delivery; and on the peak day in 1962, to 47.3% of the total delivery. Thus, by the use of storage and deliveries by displacement, Michigan Wisconsin has nearly doubled the peak-day capacities of the system. The present deliverability from storage is some 740,000 Mcf per day. To obtain that peak-day capacity from a pipeline would require an investment much greater than that invested in the storage fields.

Moreover, from the outset an unusually large proportion of Michigan Wisconsin's market has consisted of low load factor customers. By its utilization of the storage fields, Michigan Wisconsin operates its system at an unusually low sales load factor—in 1962 the system sales load factor was only 46.12%. Michigan Wisconsin thereby avoids the necessity of selling large volumes of gas at dump rates. Also, such use of storage enables Michigan Wisconsin to purchase gas at a high load factor with consequent substantial savings and ability to make purchases which it otherwise could not make.

The large loads on the Michigan Wisconsin system are concentrated north of Station 10, in Wisconsin and Michigan. In the twelve months ended August 31, 1960, the Wisconsin and Michigan loads accounted for 95.8% of the annual sales on the system; and in the year 1962, for 95.39% of the system annual sales. In the twelve months ended August 31, 1960, the load factor on the facilities south of Station 10 was 91.6% and throughout the years has been correspondingly high. The large loads in Wisconsin and Michigan economically justify the 24-inch main line and its loops, and such loads together with the storage fields make possible the high load factor operation of this line. Because of the load concentration in Wisconsin and Michigan, the customers in Iowa, Missouri, and Illinois receive the benefit of the lower unit costs of the large diameter pipeline; and, because of such load concentration and the storage fields, receive the further benefit of operation of the pipeline at a high load factor.

The system as now operated is a grid, with supplies of natural gas from the several sources entering the system at divergent points; and the gas from all the sources is used to supply the over-all system requirements. The gas supplies purchased from American Louisiana are delivered into the system in the northeasterly portion thereof, relatively near the storage fields. The gas supplies purchased from Midwestern are delivered into the system at a point in the extreme northwesterly portion thereof. The gas supplies purchased from Northern are delivered into the system at a point in the westerly part of proposed Zone 2.

In the nonheating season, a large portion of the purchases from American Louisiana is delivered to storage and the remainder flows directly to markets in proposed Zone 2. In the heating season, the American Louisiana gas flows to markets in proposed Zone 2 relatively near the points of entry of this gas on the system; and, on winter peak days, a small volume of such gas flows as far southwesterly as Station 10 and thence northerly into Wisconsin.

None of the supplies from Midwestern or Northern reaches the storage fields or even Station 10, all of it being absorbed in Wisconsin market. In general, on an annual basis Midwestern gas supplies all of the requirements of the markets north of Wisconsin Station B (which is 145 miles north of Station 10), and 32% of the requirements of the city of Milwaukee (which is 102 miles north of Station 10) and towns between Milwaukee and Wisconsin Station B. In general, on winter peak days, such gas supplies all of the requirements north of Wisconsin Station B. The gas from Northern is consumed at and relatively near Madison, Wisconsin.

The Midwestern and Northern purchases, however, materially affect the storage operations; and the customers supplied with gas from such sources are materially affected by the storage operations. These purchases make available by displacement, additional volumes for delivery to storage. On the other hand, due to the storage, requirements of such customers are supplied during the winter period by displacement; and these customers, as well as the other customers on the system, receive the benefits of the low sales load factor operation and the purchase of gas at a high load factor.

In the degree and nature of the dependence of the Michigan Wisconsin system upon storage in its operations, and the benefits derived thereby, the system is unique.

In the heating season, gas supplies from American Louisiana, Midwestern, and Northern are delivered to the customers south of Station 10, and to various other customers on the system, by displacement. These deliveries by displacement, as in the case of the deliveries from storage, effect major savings because of the avoidance of installation and operation of additional transmission facilities that would otherwise be necessitated.

The Iowa-Missouri-Illinois customers benefit from each and all of the aforementioned increments of the gas supply of the system, and from Michigan Wisconsin's operation of the added storage fields, by receiving additional allotments of gas by displacement. In the proceeding, Docket No. G–2306, *et al.*, wherein American Louisiana was first authorized to sell natural gas to Michigan Wisconsin, six of the customer companies that are now proponents of the zoning sought and received additional supplies of gas (including supplies for new markets) which more than doubled the then existing gas supply to the Iowa-Missouri customers. The petition of Iowa Electric in such proceeding recited that the supply of gas from American Louisiana would enable Michigan Wisconsin "to meet demands of its utility customers, including Iowa Electric, for additional supplies of natural gas." Later, existing customers and new customers south of Station 10 received allocations of gas in proceedings involving Michigan Wisconsin's receipt of supplies from the Laverne area. In December 1959, in Docket No. G–18312, 22 FPC 1166, more gas from American Louisiana was divided among Michigan Wisconsin's customers in accordance with a then recently approved demand-commodity tariff (filed in November 1958), which provides that increments of gas are to be divided among Michigan Wisconsin's customers in proportion to their respective maximum daily quantity volumes. The percentage thus received by customers south of Station 10 was 4.9%. In the proceeding involving the purchase of gas from Midwestern, Docket No. G–18316, then exist-

ing and new customers south of Station 10 sought and received 9.5% of the Midwestern supply, nearly twice the volume to which they would have been entitled on a strict pro rata basis. In a "statement" filed by Iowa Southern in a related proceeding (Docket No. G–18240, *et al.*), said proponent of the zoning herein referred to the Commission having ordered Michigan Wisconsin to deliver and sell to Iowa Southern volumes of gas "from the additional supply of Canadian gas." In the proceeding involving the application by Michigan Wisconsin for a certificate authorizing it to construct and operate facilities enabling it to purchase 75,000 Mcf of gas per day from Northern, and authorizing it to transport and sell such gas to its existing customers (Docket No. G–20572), a number of Iowa-Missouri customers supported the application, including three of the present proponents of zoning. Iowa Electric's petition to intervene in such proceeding seeking an allocation of natural gas described Michigan Wisconsin's application as one for authorization "to purchase 75,000 Mcf per day from Northern Natural at a point near Janesville, Wisconsin and to transport and sell such gas to Michigan Wisconsin's existing certificated markets." The Commission allocated the volume of gas from Northern among Michigan Wisconsin's customers on a pro rata basis. In 1962 in a proceeding (Docket No. CP62–212) wherein Michigan Wisconsin sought and received authorization to lease and operate two additional storage fields in Michigan, two of the zoning proponents in the instant proceeding sought and received allocations of gas to serve new markets, and three Section 7(a) applicants received supplies of gas for towns south of Station 10.

In a well considered opinion, *Northern Natural Gas Co.*, 14 FPC 11, affirmed 236 F. 2d 372, the Commission laid down rules and criteria concerning the question whether zones with rate differentials should be established on a pipeline system. The Commission there said: "The initial question to be decided * * * is not whether any of the zoning proposals are feasible, but, rather, whether the present rate structure of Northern is unduly discriminatory or preferential." (p. 18.)

The Examiner is of the opinion that the proponents have failed to establish that the system-wide rates are unduly preferential or prejudicial. The Examiner is further of the opinion that the evidence presented and the applicable precedents require a determination that the present system-wide rate structure of Michigan Wisconsin is not unduly discriminatory against the Iowa-Missouri-Illinois customers, or unduly preferential to the Wisconsin-Michigan customers; and hence that the system-wide rates should be continued. The reasons for these views are treated of under four subheads next ensuing.

Failure to Meet Burden of Proof.—A Mcf-mile study—certainly the one introduced by the proponents—is unsuitable and improper for the Michigan Wisconsin system and yields misleading results. The design of the pipeline system for extensive and indispensable dependence on the large storage fields at the terminus of the Michigan line, and the highly unified and interdependent operation of the system in accordance with such design, coupled with the multiple sources of gas supply, provide great benefits which cannot be measured on the basis of miles. These benefits accrue to all customers on the system, including the Iowa-Missouri-Illinois customers. Therefore, in allocating costs of hauling the gas on the Michigan Wisconsin system, mileage, or distance from source of gas supply, is not the sole or governing consideration.

The Mcf-mile study in evidence does not reflect the benefits and savings that the customers, including those in proposed Zone 1, receive from the pipeline operations in conjunction with storage—perhaps no Mcf-mile study could reflect these benefits. Specifically, the Mcf-mile study in evidence does not reflect the large savings in reduction of pipeline facilities and reduction of pipeline operat-

ing expenses because of the utilization of the storage and the deliveries from storage by displacement. The true mileage effect of the deliveries by displacement perhaps cannot be shown by a Mcf-mile study; at least no attempt to do so has been made here. Nor does the Mcf-mile study in evidence reflect the savings that accrue from the operation of the system at an unusually low sales load factor, from the purchase of gas at a high load factor, and from the high load factor operation of the 24-inch main line.

As to the gas purchased from other pipelines, such supplies are sources of gas for the Iowa-Missouri-Illinois customers as well as the southwest gas. For these customers receive gas from such pipelines by displacement. The Canadian gas, delivered by Midwestern, of course comes from the opposite direction than the other supplies purchased by Michigan Wisconsin, which come from the southwest and south. Also, the Iowa-Missouri-Illinois customers are farther from the Province of Alberta, where the Canadian gas originates, than any other customers on the Michigan Wisconsin system except those at the extreme northeastern section of the system. Yet the proponents' type of Mcf-mile study fails to give effect to these facts. Furthermore, none of the deliveries by displacement of the gas from the other pipelines, and the attendant major benefits, are reflected in the Mcf-mile study.

By like token, for the foregoing reasons, distance of transmission from the Hugoton Field does not correlate with transmission costs.

In rebuttal, proponents' expert witness presented another variation in his Mcf-mile study, Method C–1, purporting to show the effect of measuring mileage of transmission of storage volumes to and from the storage fields. Under this method the witness reached substantially the same conclusions as under Method C. The opponents of the zoning contend that Method C–1 is defective for several reasons which have not been mentioned herein concerning the witnesses' Mcf-mile study, and that correction for such asserted errors increases substantially the percentage of transmission costs allocated to the Iowa-Missouri-Illinois customers under such method. But this question need not be passed upon. Method C–1 is wanting in all the respects above considered in which the other methods used in the Mcf-mile study are wanting.

The proponents have failed to meet the burden of proof—*i.e.*, have failed to "satisfy our minds" (*Transcontinental Gas Pipe Line Corp.*, 11 FPC 94, 97), or exactly speaking, have failed to satisfy the Examiner's mind—that they are prejudiced or discriminated against by the system-wide rates. Therefore, the proponents' request that zone rates be established for the Michigan Wisconsin system must be denied.

Concentration of Sales in Proposed Zone 2 Countervails against Distance Factor.—In the *Northern* case, *supra*, the Commission had before it for consideration a typical unidirectional pipeline system without unusual operations in conjunction with storage. The Commission recognized that "markets closer to the source of gas supply involve lesser transportation expense than more remote markets, and, therefore, are entitled to a lesser rate—unless it be shown that factors other than distance off-set the differences in transportation mileage and related costs." (14 FPC at p. 17.) The Commission said, "It is a simple economic fact that the delivery cost of natural gas increases in close proportion to the length of the transmission line of any given size." (p. 20.) But the Commission likewise recognized and expressed "the generality" that "for any given length of pipe line, with any given load factor, the larger the line the lower the unit delivery cost of gas." "This results from the fact," the Commission said, citing the *Smith-Wimberly Report*, page 240, *Natural Gas Investigation*, Docket No. G–580, "that, while the cost increases approximately in proportion with the

diameter, the capacity increases more than the area, so that the capacity of a 24-inch line, for example, is about three times that of a 16-inch line." (pp. 20–21.) The Commission also recognized that in determining whether rate zones should be prescribed, "factors other than distance of required transmission should be considered, such as load distribution, volumes of gas sold, and load factor of sales, * * *." (pp. 16–17.)

In the instant case, most of the gas in the 24-inch line south of Station 10 is not transmitted directly to market, but to storage; and in the heating season, gas is delivered to the customers south of Station 10 by displacement. But it is also true that the large diameter line would not be justified, nor could the high load factor of 91% at which it is operated be achieved, without the markets in proposed Zone 2 (Wisconsin and Michigan) that account for 95% of the annual sales of the system. Just as where there is a unidirectional pipeline, the customers in proposed Zone 1 benefit from the low unit costs attendant upon the large diameter line here involved and its high load factor operation. Hence, the criteria laid down in the *Northern* case for determining whether rate zones should be prescribed apply here.

In the *Northern* case, eight municipal areas accounted for 71% of the total jurisdictional sales, and the miles of transportation required to effect the deliveries at these eight points ranged from 448 to 803. With these facts before it, the Commission found that "there is no such concentration of sales in a single area of the system as would countervail" against the argument that the distance of transmission was the controlling factor; that 37.5% of the jurisdictional sales were made at or near the terminus of the system; that "the distribution of the remainder of these sales along the system is such as to foreclose a finding that sales at the farthest points of the system are so predominate as to be of controlling consideration rather than the distance factor." (p. 22.) Here, the fact that 95% of the sales are made in the proposed Zone 2 area justifies a finding that these sales are so predominate as to offset the distance factor substantially; and the Examiner so finds and concludes.

The proponents note that the system does not end at Station 10; that the Michigan Wisconsin load is not concentrated at the terminus of the line; that there is no major load at the Wisconsin terminus; and that "at the present time, the load at the Michigan end of the line is only about 3 times the size of the Iowa-Missouri load"; and aver that "Michigan Wisconsin, by modern standards, is not a large line." These circumstances make no material difference. The facts remain that 95% of the sales are made in the area beyond the confines of proposed Zone 1; that only a line of much smaller diameter than the 24-inch line would be economically feasible were it not for these sales (the peak-day requirements of the Iowa-Missouri-Illinois market in the test year utilized less than 50% of the certificated capacity of Michigan Wisconsin's main line); and that even the smaller line would be operated at a low load factor without the very large sales in proposed Zone 2.

Benefits from Pipeline Operations in Conjunction with Storage and Deliveries by Displacement Countervail against Distance Factor.—The evidence that five of the customers south of Station 10 have sought and received allotments of gas because of newly added storage fields points up the reality of the deliveries to the Iowa-Missouri-Illinois customers by displacement.

The large savings in pipeline facilities and pipeline operating expenses by reason of the deliveries of storage withdrawals and pipeline purchases by displacement; and the major savings, due to the storage, from the operation of the system at a low sales factor, the purchases of gas at a high load factor, and the high load factor operation of the pipeline from the southwest, offset the distance factor. These benefits, coupled with the concentration of sales in proposed Zone

2, compel the conclusion that the customers south of Station 10 sustain no undue prejudice by being charged under the same rate schedules as are the customers north of Station 10.

In 1950, soon after the commencement of deliveries by Michigan Wisconsin, the Commission rendered an opinion in a proceeding involving the respondent company where the evidence showed that all the gas to be delivered from storage would go to Michigan Consolidated. The Commission rejected contentions of customers other than Michigan Consolidated that all of the cost of storage service should be charged to Michigan Consolidated, "found that all customers of Michigan Wisconsin will benefit from its operation of" the Austin and Goodwell storage fields, and concluded "that a uniform rate should be charged for the service to be provided." *Michigan Wisconsin Pipe Line Co.*, 9 FPC 127, 131, 132. Here, similarly, the evidence shows that the benefits to all of the customers on the system from the operations in conjunction with storage and from the deliveries by displacement are so great that uniform rates should be charged.

In *Colorado Interstate Gas Co.* v. *Federal Power Commission*, 324 U.S. 581, 591, the Commission, in allocating between jurisdictional and nonjurisdictional sales the cost of service of a combined transmission pipeline of Colorado and Canadian River Gas Co. extending from the Texas Panhandle to Denver, treated the transmission line as a unit. The Supreme Court, in sustaining the Commission, said:

> * * * judgment and discretion control * * * the allocation of costs when it is sought to reduce to its component parts a business which functions as an integrated whole. The Commission found that but for the direct industrial market at Pueblo, Colorado and the wholesale market at Denver, the pipeline would not have been constructed. It is therefore obviously fair to determine transmission costs for the pipeline as a whole and not to compute them on a mileage demand basis. In that way the beneficiaries of the entire project share equitably in the cost. To allow the costs to accumulate the closer the gas gets to Denver would be to assume that the extension to Denver was a separate project on which the earlier customers were in no way dependent. These circumstances illustrate that considerations of fairness, not mere mathematics, govern the allocation of costs. What we have said also answers Canadian's complaint that the wholesale sales in Texas for consumption in the towns of Dalhart, Hartley, and Texline, Texas, are burdened with too large a share of transmission costs. We can see in this situation no difference between those customers and the ones located at more distant points on the pipeline.

And in an accompanying footnote:

> So far as appears Canadian presented no evidence showing the cost of these intrastate sales.

In the instant case, likewise, the evidence establishes that the Michigan Wisconsin pipeline would not have been constructed had it not been for the large markets in Michigan and Wisconsin; and upon the authority of the *Colorado* case this fact alone may justify denial of the zoning proposal. However, the Examiner prefers to rest his decision upon the facts hereinbefore set out. Since the construction of the pipeline, the annual sales south of Station 10 have increased from 966,800 Mcf (firm sales) in 1951 to 11,231,100 Mcf (total annual volumes) during the test year. If the physical transportation of gas were to be given predominant and controlling weight, in might be that the volumes now sold south of Station 10 have increased to the point where the cost of compressor fuel to transport these volumes is sufficiently less than the cost of fuel to transport like volumes to markets north of Station 10, as to

warrant a zone. But under the facts hereinbefore found, it is "obviously fair," as in the *Colorado* case, "to determine transmission costs for the [system] as a whole and not to compute them on a mileage demand basis." Here, as in the *Colorado* case, "considerations of fairness, not mere mathematics," should "govern the allocation of costs."

In *El Paso Natural Gas Co.*, 22 FPC 260, the Commission fixed the rates of El Paso, which historically had maintained differentials in rates between five sales zones on its far-flung system. (p. 275.) In allocating the transmission costs among groups of customers on the system, the Commission declined to employ the Mcf-mile method, but reflected distance as a factor by maintaining the zone differentials. Its reasons for rejecting the Mcf-mile method are apt:

> * * * the various parts of El Paso's system support each other by displacement.
>
> Futhermore, * * * it is not distance which is the more controlling factor in cost but load factor. The distance of haul, as reflected in the demand-commodity-miles method, is offset substantially by the volume of sales to California customers, concentrated at the end of the line and by the high annual load factor associated with those sales. (p. 277.)
>
> * * * El Paso's system is an integrated one. Not only does gas pass from the Southern Division to the Northern Division, but either Division, in effect, bears loads that would have to be carried by the other one. Therefore, there is little logic in computing the exact distance that gas travels from the various producing sources to the various customers. Furthermore, to attempt to determine just what gas goes to each of the several customers would lead to a result discriminatory in application and inherent with discrimination. An appropriate method of regulating this system therefore is to treat it as a unit, and in the first instance to allocate costs irrespective of the source of the gas and irrespective of the distance traveled and then if necessary, as we shall show below, provide differences in rates as applied to the various zones. (p. 278.)

In holding that distance should be reflected in accordance with the past zone differentials, the Commission said:

> The rates were designed on the basis of historical differentials. These differentials give effect to the factor of distance but give the factor of distance with respect to the California customers less than its full effect. (p. 281.)

In the instant case, the unique character of the Michigan Wisconsin system, the load concentration, and the savings and benefits springing from the deliveries by displacement and the high degree of utilization of storage, more than offset the factor of distance here involved.

The Examiner finds and concludes that the customers south of Station 10 sustain no undue prejudice by being charged the same rates as those north of Station 10. The Examiner also finds and concludes that, conversely, the customers north of Station 10 are accorded no undue preference by being charged the same rates as those south of Station 10.

Benefits to Iowa-Missouri-Illinois Customers by Deliveries from Pipelines.— It has been seen that the Iowa-Missouri-Illinois customers receive not merely supplies of gas from the southwest, from which area the gas that they consume is physically delivered, but also supplies sold to Michigan Wisconsin by the three pipelines—American Louisiana, Midwestern, and Northern. To be sure, the supplies from these pipelines are delivered to the customers south of Station 10 by displacement; but this means of delivery, itself, is an advantage, since it entails savings in which the Iowa-Missouri-Illinois customers share. In each instance when the question of adding to the Michigan Wisconsin system a supply of gas

from a pipeline was before the Commission, the Iowa-Missouri-Illinois customers recognized that they were potential recipients of increased or new allotments from such supply, by seeking allowances of gas. So real and concrete are the benefits to the Iowa-Missouri-Illinois customers from the deliveries to Michigan Wisconsin by the pipelines that such customers by Commission order received specific allotments of gas following the addition of each increment of the gas supply. The Iowa-Missouri-Illinois customers obtained their full pro rata share of the additional gas, and in one instance nearly twice as much as their pro rata share.

"He who derives a benefit from a thing ought to bear the disadvantages attending it." Since the Iowa-Missouri-Illinois customers have received their full share of the benefits from Michigan Wisconsin's purchases of gas from American Louisiana, Midwestern, and Northern, and should bear a proportionate share of the burdens thereof, the distance of haul of these deliveries is irrelevant. Hence, there is no reason or justification for a zoning because of such deliveries. For this additional reason, the Examiner finds and concludes that Michigan Wisconsin's present system-wide rates are not unduly prejudicial to the customers in proposed Zone 1 or unduly preferential to the customers in proposed Zone 2, and that there is no reason or justification for a zoning of the system.

The findings and conclusions set out under the four foregoing subheads are supported by the testimony of three expert witnesses, for Michigan Wisconsin, the Wisconsin group of gas utility companies, and the Staff, respectively.

In view of the Examiner's findings and conclusions, it is unnecessary to consider the claim of opponents of the zoning that the Mcf-mile study is erroneous in several respects which have not been treated of herein.

Response to Miscellaneous Arguments.—The proponents assert, "Except for Michigan Wisconsin there is no major independent pipeline over 500 miles long which does not in some manner give some effect to differences in transportation distance." The relevance of the adjective "independent" is not specified. At any rate, proponents' assertion is erroneous. Colorado Interstate Gas Co. is a "major independent pipeline" now over 700 miles long. This pipeline is not zoned and, so far as the record discloses, gives no effect in any other way to "differences in transportation distance."

Furthermore, qualifications in proponents' assertion are significant. Natural Gas Pipeline Co. of America is a "major independent pipeline over 500 miles long," and is unzoned. To be sure, Natural has a separate schedule for a few small customers in Kansas and Nebraska who take less than 5000 Mcf per day; but this circumstance is inconsequential. Another "major independent pipeline over 500 miles long" is Florida Gas Transmission Co. Florida has separate schedules covering gas it transports for others, giving effect to differences in distances of transportation; but its sales for resale and direct interruptible sales are made under uniform system-wide rates. *Houston Texas Gas and Oil Corp.*, 17 FPC 303, 304–05; *Florida Gas Transmission Co.*, 27 FPC 1123, 1125. Trunkline Gas Co., a major pipeline over 500 miles long as originally constructed, did not have any rate zones until it installed a major extension of its system from Tuscola, Illinois to the Indiana-Michigan border to serve Consumers Power Co. *Trunkline Gas Co.*, 21 FPC 704, 711–12.

Proponents note that "Pipelines with explicit zone rates include [those of]: Northern Natural Gas Company, Texas Eastern Transmission Corporation, Transcontinental Gas Pipe Line Corporation, Texas Gas Transmission Corporation, Tennessee Gas Transmission Company, El Paso Natural Gas Company, Southern Natural Gas Company, Trunkline Gas Company, Panhandle Eastern Pipe Line Company, United Gas Pipe Line Company, New York State Natural Gas Corporation, Hope Natural Gas Company, East Tennessee Natural Gas

Company, Atlantic Seaboard Corporation, Cities Service Gas Company." In their reply brief, proponents also cite the pipeline of Kansas-Nebraska Natural Gas Co., Inc., which, too, is zoned. Of the foregoing pipelines, those of Northern, El Paso, and Trunkline have already been considered.

In the case of the Hope pipeline, the distance element was not a factor leading to the zoning. The purposes of the zoning was to obtain a reasonable spread of costs between the interstate sales for resale and the intrastate business. *Hope Natural Gas Co.*, 10 FPC 583, 618–19. In a previous proceeding, the Commission had reflected differences in Hope's cost of service by prescribing different rates to some of its customers; but no distance element was involved. *Ibid.*, 3 FPC 150, 190–91.

The record discloses that Panhandle established the three zones on its system prior to the adoption of the Natural Gas Act. The zone boundaries coincide with state lines, and the existence of the zones is explained by the history of the pipeline. *Panhandle Eastern Pipe Line Co.*, 3 FPC 273, 277; *Ibid.*, 4 FPC 1081, 1082. Approximately the same rate differentials between zones have been maintained. *Ibid.*, 4 FPC 1093, 1095; *Ibid.*, 10 FPC 185, 192–93, 202; *Ibid.*, 13 FPC 53, 110. From such research as the Examiner has been able to do, with the aid of a memorandum of citations furnished by proponents in response to the Examiner's request at the prehearing conference, it seems that Atlantic Seaboard and Southern established their zones early in their development; and that Cities Service's zones, also, were made voluntarily and without Commission approval. On the systems of Atlantic Seaboard and Southern, the boundaries between the zones are state lines. About the most that can be said respecting the zones on these four pipelines is that the Commission has not seen fit to disturb existing rate relationships.

Although the record and Commission orders which the Examiner has officially noticed are not entirely clear, it seems that the Commission has approved the zonings on the remaining pipelines, either expressly or impliedly, generally attendant upon approval of rate-case settlements, or upon certification of pipelines and pipeline extensions.[1] In *Kansas-Nebraska Natural Gas Co., Inc.*, 25 FPC 448, 456–58, the Commission, itself, created two rate zones.

Whether the zonings on the aforementioned systems were unapproved, approved, or created by the Commission, does not affect the result reached herein. In determining whether a zoning should be ordered, a case turns on the particular facts involved; and material and controlling differences between the other systems and Michigan Wisconsin are readily apparent.

Particular mention will be made only of the cases or systems that proponents emphasize in their briefs. *Kansas-Nebraska Natural Gas Co., Inc., supra*, is not applicable. There, the Commission established two rate zones on a system located in western Kansas, the northeastern tip of Colorado, and in Nebraska. The opinion shows that there are two principal sources of gas for the system—the Hugoton Field in Kansas and the Julesburg Basin in western Nebraska and Colorado. A pipeline from the Hugoton Field extends in a northerly direction to a point of connection in southwestern Nebraska with a line extending from the Julesburg Basin in an easterly direction. A third source of gas is the Unruh Field in Kansas. A pipeline from this field proceeds northerly and connects with the rest of the system at points in Kansas and western Nebraska. The flow of

[1] See, *e.g.*, *Tennessee Gas and Transmission Co.*, 6 FPC 114, 116–17; *Tennessee Gas Transmission Co.*, 8 FPC 276, 285; *Ibid.*, 13 FPC 623, 629, 631; *Texas Eastern Transmission Corp.*, 10 FPC 908; *Transcontinental Gas Pipe Line Corp.*, 9 FPC 32, 54; *Ibid.*, 12 FPC 1084, 1471, 1474; *Texas Gas Transmission Corp.*, 10 FPC 731, 781; *New York State Natural Gas Corp.*, 13 FPC 1058, 1059, fn. 2, 1065, 1067; *East Tennessee Natural Gas Co.*, Docket No. CP64–21, Examiner's decision issued April 27, 1964, 32 FPC 158 at pp. 194–196, and Commission Opinion No. 435, adopting such decision as modified.

the gas on the system is in a general northeasterly direction. There are no storage fields and no concentration of load. Sixty percent of the sales are made in Zone 1; and 40%, in Zone 2. Manifestly the facts are unlike those here.

Proponents cite the system of New York State Natural Gas Corp., which extends from southwestern Pennsylvania to the vicinity of Albany, New York, and has four zones. There are substantial differences between that system and the Michigan Wisconsin system which preclude the Commission's implied approval of the zoning of that system from being applicable here. The evidence shows that New York Natural utilizes several storage fields, from which a substantial portion of its peak requirements are delivered. However, the record shows that two of these fields are located near the commencement of its system and the remainder are near the middle thereof; that consequently the flow of peak-day gas from storage to market requires the use of extensive large-diameter transmission lines to reach such important markets as Rochester, Syracuse, Utica, Schenectady, and Albany; and that, unlike Michigan Wisconsin with its storage fields near the Detroit area, there is no big concentrated market which can be served right out of storage. Obviously, greater capacity of these lines of New York Natural is required to meet its peak-day requirements than if the storage fields it utilizes were located at the terminus of its system. For example, on the Michigan Wisconsin-Michigan Consolidated combined system, the pipelines entering Woolfolk station from the southwest, that deliver gas to storage, are a 24-inch line and a 22-inch line; whereas the pipelines of Michigan Consolidated that take gas from storage in the heating season for the Detroit-area market consist of two 24-inch lines and a 30-inch line.

The record further shows that pipeline companies other than New York Natural deliver most of the gas put into the storage fields, and that the transmission facilities of New York Natural are used relatively little in bringing gas to storage. Hence the capacity of such transmission facilities is sized very closely in relationship to the market requirements and is not sized for the purpose of putting gas into storage. The evidence further shows that in Zone 1 on New York Natural's system, the line capability is limited to the amount of gas which the company sells in that region; and that the capacity of the system progressively increases in the other zones. It is not possible to move an additional volume of gas equivalent to that sold in Zone 1 through the facilities in any of the other zones. The customers upstream from the storage fields buy gas at a high load factor. So far as appears, gas does not flow into the system from sources that are in opposite directions.

Thus the system of New York Natural is not analogous to that of Michigan Wisconsin: (a) The storage fields are not near the terminus of the transmission system and are not near the major markets on the system. Hence, in order to have the capacity to handle the peak-day withdrawal from storage, the transmission facilities are designed larger, over the long distance from storage to main markets, than if their function were to move gas to storage during the nonheating season. Furthermore, the system cannot operate at a high load factor in the sale of gas in low load factor markets. (b) In the New York Natural system, transmission facilities having large capacity from the commencement of the system to the storage fields have not been installed to move off-peak gas to storage during the nonheating season. (c) To make peak-day Zone 1 deliveries to Zones 2, 3, or 4 would require more capacity in the latter zones than has been installed. (d) New York Natural's high load factor sales upstream from the storage fields is a situation that does not obtain on the Michigan Wisconsin system. (e) Apparently, the gas flowing into the New York Natural system does not have its sources in opposite directions; and hence, in such respect the

312-270—69——44

system is not inappropriate for a Mcf-mile study. (f) In the respective zones, starting with the beginning of the system, the transmission costs become materially higher; and generally speaking, distance along such system correlates with transmission costs.

Proponents point to *Transcontinental Gas Pipe Line Corp.*, 9 FPC 32, 54, where the Commission directed Transcontinental to sell natural gas to some small communities in Georgia, Alabama, and Louisiana. The total daily contract demands for firm service of these customers came to only 12,155 Mcf, whereas the daily contract demands for firm service of Transcontinental's markets to the northeast, chiefly in New York and Pennsylvania, were 408,100 Mcf, 97.12% of the total. (pp. 59–60.) Also, Transcontinental was to transport 60,000 Mcf per day to Philadelphia for Sun Oil Co.; and certain of the distributing companies in the east were to use natural gas for underfiring boilers in electric generating plants. (pp. 29, 33.) Manifestly, of the total annual volumes to be transported in the system, the volumes to be delivered to the aforementioned small communities were but a minuscule portion. Transcontinental had initially proposed a uniform rate to its resale customers. *Trans-Continental Gas Pipe Line Co.*, 7 FPC 24, 38–39. In the later opinion, the Commission said:

> We are directing Transcontinental to serve several interveners with relatively small loads.
>
> Considering the facts in this case, including testimony of company witnesses, it appears to us that a zoned rate schedule containing lower unit prices for deliveries in areas closer to the source of gas supply involving lesser transportation expense would be equitable. (9 FPC at p. 54.)

Respecting the one feature of load concentration in major markets, the *Transcontinental* case is analogous to the situation here. But the *Transcontinental* opinion antedated that of the Commission in the *Northern* case, *supra*, and the question of the effect of load concentration at and near the terminus of the Transcontinental line was not even raised. "Questions which merely lurk in the record, neither brought to the attention of the court nor ruled upon, are not to be considered as having been so decided as to constitute precedents." *Webster* v. *Fall*, 266 U.S. 252, 256. The same rule applies to Commission opinions.

Tennessee Gas Transmission Co., 27 FPC 202, cited by proponents, presented a question, not as to whether a system should be zoned, but as to the proper allocation of costs among zones. There, the Commission rejected the zone-by-zone method of allocating costs, and held that transmission costs should be allocated by taking rolled-in system-wide costs and dividing them among zones by a modified Mcf-mile method. The Commission noted, *inter alia*, that the system "is now operated in conjunction with storage facilities which, although located in Pennsylvania, affect the costs of pipeline operation in all zones and benefit every customer in an indeterminate amount"; and said that utilization of the system-wide average of costs was necessary "in order to reflect the unity of operation and interdependence of service on an integrated pipeline of this type." (pp. 208–09.) The Commission also pointed out that "the low unit costs of the facilities in the Southern zone are largely attributable to the very large volumes transported through that zone for sale further downstream and to the very high load factor operation of these facilities made possible by the use of storage in conjunction with the main-line facilities downstream"; and stated that the zone-by-zone method "would give the customers in those [upstream] zones an undue share of the economies realized from the operation of the system as a whole." (p. 210.) The Commission also stated: "This is not to say that differences in costs over a system as large as Tennessee's should be completely ignored by adopting the 'postage stamp' concept of rate-making. Such use of the average

cost method without zone differentials would, in the circumstances of the present case, result in undue discrimination." (p. 209.)

The *Tennessee* case does not militate against a denial of the proposal for a zoning in the instant case. There, the Commission supported its ruling that an allocation of costs should be based on system-wide costs and mileage, by facts of the same nature as some of those here employed in support of the denial of a zoning proposal. The difference is one of degree. There, the facts warranted a minimizing of differentials in zone rates; here, evidence of a similar nature to some of that in the *Tennessee* case is sufficiently strong and controlling to warrant a rejection of the proposal for a zoning.

Southern Natural Gas Co., 29 FPC 323, next cited by proponents, involved not a question of zoning, but a question of allocating transmission costs between jurisdictional and nonjurisdictional sales. (p. 341.) The Commission, in holding that the Mcf-mile method of allocation was properly used in allocating to zones the transmission costs attributable to jurisdictional sales, said, "* * * there are no circumstances here presented which outweigh the importance of the distance factor in making a fair allocation of the costs of transmission." (pp. 344–45.) In the instant case, respecting the question whether the Michigan Wisconsin system should be zoned, circumstances are presented which outweigh the importance of the distance factor.

The Commission also said, in speaking of gas purchased by Southern from United, "Ideally, the portion of the cost of the United gas relating to transmission should be separated out and broken down between demand and commodity, and as so classified should be included in Southern's transmission costs for the purpose of allocating them on the Mcf-mile basis." (p. 346.) Such a procedure was followed by the proponents' allocation witness in his Mcf-mile study. In the preparation of the Mcf-mile study, an allocation of the transmission cost element included in the charges paid to another pipeline is proper. But here, since a zoning of the system is not warranted, there is no reason or justification for a Mcf-mile study.

Proponents argue, "It is without logic to suggest that an upstream storage location is compatible with a mileage weighted allocation of transmission costs, but that a downstream location of storage requires a system-wide non-mileage weighted allocation of transmission costs." The opponents of the zoning make no such "suggestion." The facts here presented are (1) vast storage fields located near the terminus of the system in Michigan, coupled with (2) the system's major market being near such fields, coupled with (3) Michigan Wisconsin's markets being low-load factor markets.

Proponents recognize that "the location of storage may affect the overall economies of a transmission system," but assert that the benefits to the system which result from a particular storage location "are reflected in the total transmission cost to be assigned to all customers." This assertion is correct, but to say that the system should therefore be zoned is a non sequitur. The fact that the savings from the operation of the system in conjunction with storage are reflected in total transmission costs, to the benefit of all the customers, is one reason for not zoning the system. *Cf. Michigan Wisconsin Pipe Line Co.*, 9 FPC 127 (p. 637, *supra*).

Proponents correctly say that in their allocation study storage costs are allocated to all customers, irrespective of location, in proportion to peak and annual requirements. But such allocation does not give effect to the savings and benefits from the operation of the transmission facilities in conjunction with storage.

Proponents argue that Michigan Wisconsin in opposing the zoning is motivated by a desire to protect and benefit its affiliates, Michigan Consolidated and Mil-

waukee Gas. Whatever be Michigan Wisconsin's motive, the facts and the law justify its opposition to the zoning.

Proponents assert that Michigan Wisconsin "could have acquired additional reserves along its main line to meet its normal requirements." This assertion is contrary to the evidence.

Proponents complain in their briefs that the American Natural system formed American Louisiana Pipe Line Co., and contracted for "high-cost" Louisiana Gulf Coast and Midwestern supplies of gas, to the end of favoring its subsidiary Michigan Consolidated "at the expense of" the Iowa-Missouri-Illinois customers. There is a dearth of evidence that the contracts in question were improvident, or that the Iowa-Missouri-Illinois customers sustained any prejudice by reason of the acts and transactions in question. At the hearing, counsel for the proponents recognized that the decision of the American Natural system "to go to the Gulf Coast" instead of the southwest for new gas supplies was "a management decision"; and that, "we are not challenging that." Their expert witness testified, "I am sure that the American Natural management had perfectly good, cogent, and intelligent reasons" for not obtaining additional gas supplies in the Hugoton area"; and, "I wouldn't presume to criticize these reasons or criticize what they did." As to the Midwestern gas, the evidence shows that at the time such gas was contracted for, there were no available reserves in the southwest of the size required.

The proponents complain of rulings of the Examiner rejecting certain evidence, such as testimony, which was not the best evidence and for which no foundation was laid by the qualifications of the witness (Tr. 3050–51), that the customers in proposed Zone 1 were receiving gas of lower Btu quality than that delivered to customers in proposed Zone 2; and make arguments on the basis of rejected evidence. A decision cannot be based upon "evidential facts not spread upon the record." *Ohio Bell Telephone Co.* v. *Public Utilities Commission*, 301 U.S. 292, 300.

Michigan Wisconsin distorts the decision of the Supreme Court in *Colorado Interstate Gas Co.* v. *Federal Power Commission, supra*, 324 U.S. 581, 591–92. Michigan Wisconsin asserts,

> In the *Colorado Interstate* case, in which the Supreme Court said it was "obviously fair to determine transmission costs for the pipeline as a whole and not to compute them on a mileage demand basis," the loads at the Pueblo-Denver end of the line were some 66% of the total (Ransom, T. 3557).

Michigan Wisconsin argues, upon the strength of this purported authority for its position, that the concentration of loads in proposed Zone 2 on the Michigan Wisconsin system rules out the zoning proposal.

This argument is fallacious. No such figure as 66%, or any other percentage of the total load involved in the *Colorado* case, appears in the decision of the Supreme Court. The percentage of the total load at and near the terminus of the line was not a material consideration. If it had been, the Supreme Court would have set out in its opinion what the percentage was. Hence, the decision of the Supreme Court in that case is not authority for the proposition that the concentration of loads in proposed Zone 2 rules out the zoning. The language of an opinion must be construed in connection with the facts under consideration by the court. *Kirk* v. *Lynd*, 106 U.S. 315, 318; *White* v. *Aronson*, 302 U.S. 16, 21; *Armour & Co.* v. *Wantock*, 323 U.S. 126, 133. Compare *Goode* v. *Gaines*, 145 U.S. 141, 154, where a previous court in an opinion had not referred to a statute concerning the general subject under consideration, and it was held that such fact did not justify an assumption that the statute had been overlooked, but instead

justified an inference that the previous court concluded that the statute had no bearing on the specific question.[2]

Questions of Competition Between Communities for Industrial Development, and More "Balanced" Load on Michigan Wisconsin System

The Iowa-Missouri group adduced evidence that application of the system-wide rates places them at a competitive disadvantage with other communities in Iowa and Missouri (served by Natural Gas Pipeline Co. of America or Northern Natural Gas Co.) in attracting industry. The opponents of the zoning dispute such claim.

It is unnecessary to pass upon this question of fact. At the outset of the hearing, the opponents of the zoning made a motion to strike the foregoing evidence. The proponents, after being afforded opportunity to prepare points and authorities as to the admissibility of the evidence, took the position that such evidence was admissible (a) to show that Michigan Wisconsin's claimed undue discrimination against the Iowa-Missouri customers results in prejudice to them in the loss of industrial sales; and (b) to assist in the designing of rates in proposed Zone 1 should undue discrimination be established. (Tr. 3015–16.) The evidence was admissible only for these purposes; and undue discrimination not having been established, the evidence becomes irrelevant.

In particular, evidence of this nature cannot justify preferential rates to customers on one part of a pipeline system at the expense of those on another part of the system, in order to aid particular communities. This proposition is supported by decisions construing the Interstate Commerce Act, from which the Natural Gas Act was derived.[3] Prior to 1935 and 1938, the times of adoption of the Federal Power Act and the Natural Gas Act, the Supreme Court had held:

> * * * carriers * * * may not adjust their rates with the motive of * * * aiding a shipper, * * * or a locality, for so to do is to depart from the transportation standard, conformity to which the Act contemplates, and substitute others which are prohibited. *Texas & Pacific Railway Co.* v. *United States*, 289 U.S. 627, 637.
>
> The Act does not attempt to equalize fortune, opportunities or abilities. *Interstate Commerce Commission* v. *Diffenbaugh*, 222 U.S. 42, 46.

Also, the Interstate Commerce Commission had repeatedly held that:

> Carriers may adjust their charges to meet competition, or may decline to do so, as they see fit; and if their policy is to make no special concessions

[2] The 66% was a figure testified to by an expert witness for Michigan Wisconsin, without objection, in commenting on the Supreme Court's opinion in *Colorado;* and the witness was cross-examined, *inter alia,* concerning such opinion. At a later stage of the hearing, it developed that the figure was not contained in the court's opinion, but had been computed by the witness from the Commission's opinion in such proceeding. When the proponents of the zoning offered in evidence material culled from the record of the *Colorado* proceeding, in rebuttal of the testimony of the Michigan Wisconsin witness based upon the 66%, Michigan Wisconsin declined to agree that the testimony of its witness concerning such figure might be stricken out. The Examiner, therefore, received such rebuttal evidence, in view of the rule that "if a party interjects in a case incompetent and unrelated facts, the opposite party has the right to give his version of them if otherwise he would be prejudiced." *Twactman* v. *Connelly,* 106 F. 2d 501, 506. (Tr. 4568–70.) The result is that the record is cluttered up with incompetent and irrelevant evidence concerning *Colorado;* and if the Supreme Court were to read the argument in the briefs in the instant proceeding, it is doubtful if the Court would recognize its own opinion.

[3] The legislative history of the Natural Gas Act shows that Section 4(b) is essentially the same as Section 205(b) of the Federal Power Act, and that both were derived from Section 3(1) of the Interstate Commerce Act. Hearings, House Committee on Interstate and Foreign Commerce, on H.R. 5423, 74th Cong., 2d Sess., pp. 392, 2170; Hearings, House Committee on Interstate and Foreign Commerce, H.R. 11662, 74th Cong., 2d Sess., pp. 10, 46. *Cf., Federal Power Commission* v. *Natural Gas Pipeline Co.,* 315 U.S. 575, 584.

to attract traffic, shippers who would be benefited by the establishment of competitive rates have no lawful grounds of complaint. Sharfman, *The Interstate Commerce Commission*, Vol. III–B, p. 580, and cases cited in fn. 459.

To meet competition and to hold or develop traffic, the carriers have been allowed voluntarily to establish rates designed to direct its flow, * * *. But the Commission has not felt free to compel the carriers to establish such adjustments as they might be permitted to adopt in their own interest; * * *. *Ibid.*, pp. 658–59, and cases cited in fn. 608.

The rule applies, therefore, that

* * * where provisions of one statute have been adopted by another, the interpretation which has been authoritatively placed upon the former applies to the latter also. *Hope Natural Gas Co.* v. *Federal Power Commission* (CA4), 196 F. 2d 803, 807.

Proponents also aver that the establishment of zone rates will permit the development of a more "balanced" load on the Michigan Wisconsin system. This is not a valid reason for according preferential treatment to the customers in proposed Zone 1.

QUESTIONS RELATIVE TO EXTENSIONS OF FACILITIES

Terms and Conditions of Providing Service

In passing on the terms and conditions under which Michigan Wisconsin is to provide service to new communities, the Commission draws a distinction between short laterals and long laterals. *Midwestern Gas Transmission Co. and Michigan Wisconsin Pipe Line Co.*, 22 FPC 775, 795; *Ibid.*, 22 FPC 1157, 1158–59 (affirmed *Michigan Gas and Electric Co.* v. *Federal Power Commission*, 290 F. 2d 374, 375). The so-called "10-cent" formula, devised by Michigan Wisconsin in 1956, has been employed by said company and the Commission to determine the amount of the investment to be incurred by Michigan Wisconsin for relatively short laterals in providing new service to small communities located near Michigan Wisconsin's existing pipeline facilities.

The components and operation of the formula as initiated by Michigan Wisconsin are as follows: The estimated annual cost per Mcf of a lateral is arrived at by assuming that the annual operating expenses are 15% of the construction cost. The 15% is made up of the following items and estimates: return 6%; income taxes, 3%; general taxes, 1.5%; depreciation, 3½%; and operation and maintenance, 1%. The estimated construction cost of a lateral is accordingly multiplied by 15%. The resulting dollar amount is then divided by the estimated third-year firm requirements of the community or communities to be served through the lateral. Michigan Wisconsin adopts a 10-cent figure as the standard to determine how much Michigan Wisconsin will spend on a particular lateral. Under the formula, if the estimated annual cost of the entire lateral is 10 cents per Mcf or less, Michigan Wisconsin bears the full cost. If the estimated annual cost of the entire lateral is more than 10 cents per Mcf, Michigan Wisconsin bears so much of the cost of the lateral as results in a cost to Michigan Wisconsin of no more than 10 cents per Mcf.

Where the annual cost of the lateral exceeds 10 cents per Mcf, the portion of the construction cost to be borne by Michigan Wisconsin is determined by multiplying the estimated third-year firm sales volume by 10 cents and dividing by 15%. Such portion of the construction cost is the equivalent of the third-year firm sales times $0.66⅔ (because 0.10 divided by 0.15 equals 0.66⅔). For

example, if the estimated third-year firm sales are 100,000 Mcf, the portion of the construction cost to be borne by Michigan Wisconsin under the formula is $66,667.[4]

The evidence shows that Michigan Wisconsin has applied the 10-cent formula in the construction of at least 35 laterals that have brought service to some 58 communities.[5]

In numerous instances, the construction of the entire lateral by Michigan Wisconsin has fallen within the formula.

In numerous other instances, Michigan Wisconsin, by application of the formula, has constructed only a portion of the lateral. Thus, in supplying gas to Northern Illinois Gas Co. for serving Earlville, Illinois, Michigan Wisconsin, under the formula, constructed 1.5 miles of a 2-mile lateral. (21 FPC 552, 557.) In supplying gas to Bethany, Missouri, Michigan Wisconsin, under the formula, constructed 8.81 miles of a 16.5-mile lateral. (22 FPC 566, 567–68; Ex. 99.) In supplying gas to Central Missouri Gas Co. for serving Lancaster, Queen City, Greentop, and Kirksville, Missouri, Michigan Wisconsin, under the formula, constructed 13.94 miles of a lateral some 37 miles long. (24 FPC 33, 35, 36; Ex. 99.) In supplying gas to Wisconsin Public Service Corp. for serving Valders and Brillion, Wisconsin, Michigan Wisconsin, under the formula, constructed 6.72 miles of 17.3-mile lateral. In supplying gas to Michigan Gas Utilities Co. for serving Wayland, Michigan, Michigan Wisconsin, under the formula, constructed 4.02 miles of a 15-mile lateral. In supplying gas to said distributor for serving Berrien Springs, Michigan, Michigan Wisconsin, under the formula, constructed 4.34 miles of a 6-mile lateral. In supplying gas to said distributor for serving Fennville, Douglas, and Saugatuck, Michigan, Michigan Wisconsin, under the formula, constructed 5.51 miles of a 13.62-mile lateral. In supplying gas to Stanberry, Missouri, Michigan Wisconsin, under the formula, constructed 4.40 miles of an 8-mile lateral. In supplying gas to Wapello Light Co. for serving Wapello, Iowa, Michigan Wisconsin, under the formula, constructed 4.10 miles of a 6.64-mile lateral. In supplying gas to Wisconsin Southern Gas Co. for serving Sharon and Clinton, Wisconsin, Michigan Wisconsin, under the formula, constructed 2.35 miles of a 12.27-mile lateral. In supplying gas to American Gas Co. for serving Fairfax, Tarkio, and Rockport, Missouri, Michigan Wisconsin, under the formula, constructed 8.66 miles of a 26-mile lateral. (24 FPC 177, 180–81, 184–87, 189; Ex. 99.) In supplying gas to North Central Public Service Co. for serving West Point, Iowa, Michigan Wisconsin, under the formula, constructed one-third of a 4.6-mile lateral. (27 FPC 967, 981.) In supplying New Boston,

[4] The Commission has refined the formula somewhat in various opinions, but it remains essentially the same as initiated by Michigan Wisconsin. The cost of the measuring station is excluded, and the formula is not applied so rigidly as to locate the station at an inconvenient point. *Michigan Wisconsin Pipe Line Co.*, 21 FPC 552, 558; same-styled case, 24 FPC 177, 181. The formula should be applied to individual laterals, and not to the roll-in of several laterals for one distributor: "otherwise discrimination will occur in the rendering of service to the various towns along the route of the pipeline." *Michigan Wisconsin Pipe Line Co.*, 24 FPC 177, 181. Interruptible sales under a 10-year contract can be taken into account along with firm sales. *Idem.*, and case cited. Michigan Wisconsin's estimate of the cost of the proposed lateral is frequently used rather than that of an applicant under Section 7(a) of the Act or an intervenor seeking service from the lateral. *Idem.* The minimum size of pipe to be installed is 4 inches in diameter. *City of Grant City, Mo.*, 29 FPC 754, 757.

[5] *American Louisiana Pipe Line Co., Michigan Wisconsin Pipe Line Co., et al.*, 16 FPC 897, 899, 900–01; *Ibid.*, 27 FPC 967, 980–81; *Ibid.*, 28 FPC 41, 47; *Michigan Wisconsin Pipe Line Co.*, 21 FPC 552, 557–59; *Ibid.*, 22 FPC 566; *Midwestern Gas Transmission Co. and Michigan Wisconsin Pipe Line Co.*, 22 FPC 775, 797–98; *Ibid.*, 24 FPC 33, 35–36; *Michigan Wisconsin Pipe Line Co.*, 24 FPC 177, 181, 183–87, 189; *City of Grant City, Mo.*, 29 FPC 754, 756; *City of New Boston, Ill.*, 30 FPC 1603; *Wisconsin Power & Light Co.*, Docket No. CP64–161, order issued April 2, 1964, 31 FPC 767; *Illinois Power Co.*, Docket No. CP64–181, order issued May 15, 1964, 31 FPC 1259.

Illinois, with gas, Michigan Wisconsin, under the formula, constructed 1.5 miles of a 3-mile lateral. (30 FPC 1603, 1604.)

Turning to the consolidated proceedings *Midwestern Gas Transmission Co. and Michigan Wisconsin Pipe Line Co.*, 22 FPC 775; *Ibid.*, 22 FPC 1157, 1159, the Commission, at page 1159, observed that the 10-cent formula does not constitute, "a Commission-approved lateral policy so fixed and established that there can be no variation from it or refusal to apply it without constituting discrimination *per se*." And further, that "factual differences and varying policy considerations could well affect the extent to which the formula properly applied in other cases." The Commission there held that the 10-cent formula was not applicable to laterals constructed on the "Central Wisconsin project." This project called for the construction of a large diameter pipeline into Central Wisconsin, primarily to obtain gas from Midwestern, and branch lines extending therefrom. In so holding, the Commission pointed out:

> This pipeline would traverse the Central Wisconsin area and logically should serve that area. Also this region provides relatively assured and diversified markets, which augurs favorably for the economics of the project and its contribution to the Michigan Wisconsin system and the consumers it serves. (p. 795.)

Respecting another phase of the consolidated *Midwestern* and *Michigan Wisconsin* proceedings, the evidence in the instant proceedings shows that Michigan Wisconsin unlawfully established an unreasonable difference in facilities and services between the locality supplied with gas from its Columbus and Waterloo, Wisconsin, lateral facilities (served by its affiliate Milwaukee Gas Light Co.), and the other localities supplied with gas from Michigan Wisconsin laterals; and that thereby Michigan Wisconsin has unlawfully discriminated in favor of its affiliate Milwaukee Gas. Natural Gas Distributors, Inc., a party to such consolidated proceedings, sought an order therein, under Section 7(a), directing Michigan Wisconsin to extend laterals to Columbus and Waterloo, and to sell certain volumes of natural gas to it for serving such area. This project called for a combined 26-mile lateral from Madison to Columbus, and a 3.7-mile offshoot from such lateral to Waterloo. The communities to receive service were Columbus, Waterloo, Sun Prairie, and Fall River. In its opinion, issued October 31, 1959, the Commission specified that the cost of these laterals "will be borne by Michigan Wisconsin within the limits of its 10-cent formula * * *. Under this formula, Michigan Wisconsin * * * will pay only a part of the cost of the laterals to supply Natural Gas Distributors, Inc., * * *." *Ibid.*, p. 798. In its accompanying order, the Commission required that, "The cost of making physical connection with the facilities of [Natural Gas Distributors] shall be borne by Michigan Wisconsin within the limits of its 10-cent formula." *Ibid.*, p. 804.

Later, Michigan Wisconsin's affiliate Milwaukee Gas acquired the properties, and became the owner, of Natural Gas Distributors; and upon or shortly after the construction of the Columbus-Waterloo lateral facilities, became the customer of Michigan Wisconsin supplied with gas from such facilities. Significantly, the vice president of Michigan Wisconsin could not recall whether or not Milwaukee Gas acquired Natural Gas Distributors before the line to Columbus was constructed. The inference is justified that either the acquisition had taken place before such time, or else that the consummation of the acquisition was so imminent that it was regarded as a *fait accompli*, and that Michigan Wisconsin was dealing with Natural Gas Distributors as though it were already owned by Milwaukee Gas. If at the time the line was constructed, Michigan Wisconsin had been dealing with Natural Gas Distributors as an independent company, surely the vice president of Michigan Wisconsin would have recalled

such fact and would have been able to say that the acquisition had not taken place by such time.

The evidence establishes that proper application of the 10-cent formula allowed Michigan Wisconsin to make an estimated investment of only $552,700 (related to estimated firm third-year requirements of 829,207 (Mcf) toward the construction of the 26-mile lateral to Columbus and the 3.7-mile offshoot therefrom to Waterloo. The evidence further establishes that, nevertheless, Michigan Wisconsin bore the entire cost of these facilities, an amount of about $703,811.[6]

Michigan Wisconsin, in attempted justification of its action, notes that under Natural Gas Distributor's interpretation of the formula as presented at the hearing involving the Columbus-Waterloo facilities, Michigan Wisconsin could make an estimated investment of $629,300 toward the construction of this lateral and offshoot. Michigan Wisconsin then points out that the $703,811 it spent is only $77,300 in excess of such estimate. These facts do not excuse Michigan Wisconsin's action, either wholly or partially. The figure of $629,300 calculated by Natural Gas Distributors as the estimated investment to be borne by Michigan Wisconsin is patently erroneous, as Michigan Wisconsin well knew (In lieu of the 10-cent formula component, estimated third-year firm requirements, Natural Gas Distributors employed estimated maximum-day requirements multiplied by a factor of 160, the then existing relationship between maximum daily quantity and annual contract quantity under the Michigan Wisconsin tariff). Michigan Wisconsin further well knew that under the formula, properly applied and as applied by it in all other instances, the estimated investment that Michigan Wisconsin could make was no more than $552,700.

There is an absence of showing that factual differences from the many instances where the 10-cent formula has been applied, or any other considerations, warranted the action of Michigan Wisconsin in bearing the investment in the Columbus-Waterloo facilities beyond the limits of the formula. Michigan Wisconsin avers that it "considered" the Columbus-Waterloo extension "part of the Central Wisconsin project." This inference is without basis in fact, and is contrary to fact. The Central Wisconsin project is in central Wisconsin, and is limited to the main pipeline for transporting the Midwestern gas, and to the laterals extending therefrom. 22 FPC 778, 789, 795. On the other hand, Columbus and Waterloo are in southern Wisconsin; and the lateral to Columbus (with the offshoot to Waterloo) extends, not from the pipeline transporting the Midwestern gas, but from a pipeline, constituting part of the original construction of the Michigan Wisconsin system, that extends from the Wisconsin-Illinois border to Madison. The Commission recognized this plain distinction by ordering the application of the 10-cent formula to the Columbus-Waterloo facilities.

The Examiner finds and concludes that Michigan Wisconsin willfully violated the Commission order of October 31, 1959, directing it to bear the cost of the lateral to Columbus and the offshoot therefrom to Waterloo, only within the limits of the 10-cent formula. The Examiner further finds and concludes that Michigan Wisconsin unlawfully established and maintains an unreasonable difference in service and facilities between localities, and unduly discriminated in favor of its affiliate Milwaukee Gas, and imposed an undue burden upon the other customers of Michigan Wisconsin. *Natural Gas Act*, Sec. 4(b); *Michigan Gas and Electric Co.* v. *Federal Power Commission*, 290 F. 2d 374; *Michigan*

[6] Michigan Wisconsin's vice president testified that the $703,811 "probably includes some reinforcing" of "existing facilities," but Michigan Wisconsin made no showing that the reinforcing represented a substantial sum.

Wisconsin Pipe Line Co., 9 FPC 127, 135; *cf. Otter Tail Power Co.*, 2 FPC 134, 145.

In the case of two other short laterals, constructed by Michigan Wisconsin pursuant to authorization under Section 7(c), Michigan Wisconsin did not apply the 10-cent formula. The laterals were a 20-mile extension to Tomahawk, Wisconsin, involving an estimated construction cost of $531,000, and a 19.3-mile extension to Denmark, Wisconsin, involving an estimated construction cost of $545,000. Instead of the formula, Michigan Wisconsin used an incremental test for determining feasibility under its interpretation of the Commission's *Regulations under the Natural Gas Act*, Sec. 157.14(a)(16). The evidence shows, however, that each of these extensions could have been justified under the 10-cent formula.

Commenting on the fact that Michigan Wisconsin did not apply the 10-cent formula in the case of these 20-mile and 19.3-mile laterals, Michigan Gas and Electric says with some justification: "The record provides no rational choice by Michigan Wisconsin other than its own fancy." Michigan Wisconsin's vice president testified that these lines "involved substantially more money than we generally apply to a 10-cent formula case." But under the formula, Michigan Wisconsin bore the entire investment of $345,225 in a 17.5-mile lateral. *American Louisiana Pipe Line Co., Michigan Wisconsin Pipe Line Co., et al.*, 16 FPC 897, 900. And the Commission, without objection by Michigan Wisconsin, ordered that Michigan Wisconsin apply the formula to the 29.8-mile Columbus lateral and Waterloo offshoot, the company thereby being required to expend $552,700.

The evidence is insufficient to enable the Examiner to determine, as specified in the order directing the hearing herein, "the terms and conditions under which Michigan Wisconsin should provide new and additional service from its" short "branch or lateral lines"—other than the fundamental prohibition, already embodied in Section 4(b) of the Act, against undue preference and undue prejudice. Specifically, the record affords no adequate basis for determining whether Michigan Wisconsin's 10-cent formula is just and reasonable.

Michigan Wisconsin's vice president testified that the formula is "very generous" and "does not make Michigan Wisconsin whole." On the other hand, the evidence shows that before the formula was adopted, Michigan Wisconsin made an investment in a 20-mile lateral representing $1.54 per Mcf of anticipated third year sales, as distinguished from its investments under the formula—$0.66⅔ per Mcf of anticipated third year sales. In *Michigan Wisconsin Pipe Line Co., supra*, 21 FPC at page 558, the Commission, treating of the formula, raised, but did not decide, the question of "the accuracy of the variables employed (*viz.*, 10 cents and 15%)." The Commission pointed out:

> The major question is whether the 10-cent figure conforms to Michigan Wisconsin's past and future practice and is required by the public interest rather than representing an arbitrary choice of a criterion. Neither on this record nor on any other record has this question been fully explored.

The Commission reserved judgment on this question because of urgent requirements of Section 7(a) applicants, but said, at page 599:

> * * * we are prepared to reject the variables in this formula if it fails to meet the pragmatic test of experience.
>
> We believe that future 7(a) applications may bring to light difficulties in practical application of the formula that will require substantial revision in the public interest * * *. Perhaps additional experience in the application of this formula may point in the direction of initiating a further study by the Commission's staff.

Even assuming that 15% of the construction cost was originally a reasonable approximation of the total annual operating costs of a given lateral, operating costs have changed in the intervening years. The tax rate and the rate of return are different; and the vice president of Michigan Wisconsin said that the items of general taxes and operation and maintenance expense require a study. Furthermore, the 10¢, admittedly, is a judgment figure; and there is no direct mathematical correlation between the 10¢ and the assumption that 15% of the construction cost is a justifiable figure for annual operating costs. Given the latter assumption, it is the relationship between construction costs and third-year volumes which determines the indicated over-all lateral cost per Mcf. The 10¢ is merely a standard, and could still be used as a standard if it were assumed that the annual lateral costs per Mcf were 12% or 18% of the construction cost.

The Examiner is unable to find on the basis of the record that the formula is reasonable. A staff study, and such additional evidence from Michigan Wisconsin and the other parties as they may choose to present, will be required in order to make a determination of this question.

Respecting the long-line lateral construction, facts set out in *Northern Natural Gas Co. and Michigan Wisconsin Pipe Line Co.*, 25 FPC 1234, raise a suspicion that in its proposal for a 48.4-mile Baraboo lateral, Michigan Wisconsin was attempting unlawfully to discriminate in favor of its affiliate Milwaukee Gas, and also in favor of Wisconsin Power and Madison Gas—the customers to be served through such lateral. The Commission rejected the portion of Michigan Wisconsin's application involving this project, and pointed out:

> * * * the line which Michigan Wisconsin now says it can construct to Baraboo will be considerably more expensive per Mcf of gas proposed to be sold in this proceeding than the line Michigan Wisconsin has constructed to provide service to the Upper Peninsula. (p. 1241.)

The Commission went on to say:

> In view of Michigan Wisconsin's insistence on rigid application of its 10-cent formula for short laterals we agree with staff and Michigan Gas that it must also show an acceptable formula for determining the feasibility of longer laterals. Any other holding would clearly be unfair to existing and potential customers of Michigan Wisconsin and would open the door to unlimited discrimination. (p. 1242.)

In the instant record, however, there is no evidence as to what would be "an acceptable formula for determining the feasibility of longer laterals." Michigan Wisconsin takes the position that such a formula is not feasible, and that the long laterals—the construction of major facilities—must be handled on a case-by-case basis.

Question Whether Extension Policies Should Be Set Out in Tariff

The Staff and Michigan Gas and Electric contend that Section 4(c) of the Act[7] requires a statement of Michigan Wisconsin's extension policies, pertaining both to short laterals (as represented by the 10-cent formula) and to long laterals, to be filed as part of its tariff. The Staff argue that the application of Michigan

[7] Section 4(c) provides: "Under such rules and regulations as the Commission may prescribe, every natural-gas company shall file with the Commission, within such time (not less than sixty days from the date this act takes effect) and in such form as the Commission may designate, and shall keep open in convenient form and place for public inspection, schedules showing all rates and charges for any transportation or sale subject to the jurisdiction of the Commission, and the classifications, practices, and regulations affecting such rates and charges, together with all contracts which in any manner affect or relate to such rates, charges, classifications, and services."

Wisconsin's 10-cent formula is a "practice" which "affects" its "rates" within the meaning of Section 4(c). Michigan Gas and Electric argues that to the prospective purchaser, the place of delivery by Michigan Wisconsin is one of the "classifications, practices, and regulations affecting" Michigan Wisconsin's "rates" within the purview of such section. We do not agree.

Anent the Staff's argument, it is true that in a broad sense every construction or extension of facilities actually or theoretically "affects" rates. For the investment incurred and additional operating expenses enter into the cost of service; and the company's gross revenues are customarily increased. However, for reasons stated below, the 10-cent formula cannot be said to be a "practice" affecting Michigan Wisconsin's rates within the meaning of Section 4(c).

Anent Michigan Gas and Electric's argument, obviously a place of delivery is not a "classification" or "regulation," as contended by that company. Nor is a place of delivery a "practice affecting" Michigan Wisconsin's rates, because Michigan Wisconsin's rates are the same irrespective of the point of delivery. But assuming for the purpose of the discussion that a place of delivery is a "practice affecting" Michigan Wisconsin's rates, the place of delivery cannot be said to be a "practice" affecting Michigan Wisconsin's rates within the purview of Section 4(c).

It does not follow either from the fact that the formula broadly is a practice affecting rates, or from the assumption that a place of delivery is a practice affecting rates, that a statement of the policy (if any) of a natural-gas company relating to the construction of laterals or extensions must be filed with the Commission under Section 4(c). In the first place, it is axiomatic that the meaning of words in a section of a statute is limited by their context. The Supreme Court has repeatedly held that the word "practice" as used in the Interstate Commerce Act (from which the Federal Power Act and the Natural Gas Act were derived[8]) applies to acts or things belonging to the same general class as those meant by the words of the law that are associated with it. *Baltimore & Ohio R. Co.* v. *United States*, 277 U.S. 291, 299; *United States* v. *Pennsylvania Railroad Co.*, 242 U.S. 208, 229–300; *Missouri Pacific R. Co.* v. *Norwood*, 283 U.S. 249, 257. In so holding, the Court in the *Baltimore & Ohio* case, said,

> The word "practice," considered generally and without regard to context, is not capable of useful construction. If broadly used, it would cover everything carriers are accustomed to do. Its meaning varies * * * widely and depends * * * upon the connection in which it is used * * *.

Likewise, here, it seems clear that "practices" in Section 4(c) applies only to things of the same general class as encompassed in the terms "schedules," "classifications," "regulations," and "contracts."

In the second place, Section 4(c) pertains to rates and charges to customers, not to the construction of facilities. The section pertaining to the construction of facilities is Section 7. In the *Pennsylvania Railroad* case, *supra*, the Court in holding that the refusal to furnish tank cars is not a "practice" within Section 15 of the Interstate Commerce Act, said that if the section had been intended to cover such conduct, "there would have been explicit declaration of the intent." So, here, if there had been an intent in employing the term "practices" in Section 4(c) to go from the field of regulation of rates into the field of regulation of construction of facilities, there would have been explicit declaration of such intent.

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[8] See citations, note 3, *supra*.

The Staff cite Section 154.1 of the *Regulations under the Natural Gas Act*,[9] with particular reference to the language that a natural-gas company shall file schedules showing the practices "affecting such * * * services." This section of the rules does not support the Staff's position. "Such" in the phrase just quoted refers back to the earlier phrase, "any transportation or sale of natural gas subject to the jurisdiction of the Commission." Hence the word "services" means services consisting of the transportation or sale of natural gas—not the construction of facilities.

Section 154.1 of the Regulations implements the rate filing and posting requirements of Section 4(c) of the Act, and nothing else. In the proceeding wherein the Commission issued such rule and other rules pertaining to rate schedules and tariffs, the Commission set out that the proceeding was initiated "under Sections 4 and 16 of the Natural Gas Act to amend its regulations governing the form, composition and filing of schedules of rates and charges for the transportation and sale for resale of natural gas in interstate commerce"; and that it was "acting pursuant to authority granted by the Natural Gas Act, particularly Sections 4 and 16 thereof." The Commission did not mention Section 7 of the Act. Order No. 144, 13 F.R. 6371–72, Oct. 30, 1948.

In the period of over 16 years that have elapsed since the prescribing of Section 154.1 of the Regulations, the Commission has never attempted to require a pipeline company to include a lateral extension provision, or any other extension provision, in its tariff. Furthermore, in the period of nearly 27 years since the adoption of the Natural Gas Act, no pipeline company has voluntarily filed any such tariff provision.[10] It is true that a footnote to a Commission opinion involving Michigan Wisconsin recites that, "consistent with proper regulatory practice, it would be desirable for the [Michigan Wisconsin] tariff to contain a statement of line extension policy, * * *." *Midwestern Gas Transmission Co. and Michigan Wisconsin Pipe Line Co.*, 22 FPC 1157, 1160. This statement was dictum. Also, the Commission did not say that the Act or the tariff regulations require the filing of such a statement. It is a customary regulatory practice for the tariff or rate schedules of a local distributing company to set out the terms and conditions under which the company will provide service to a new customer in such matters as the length of the line it will run from the street to a house. But it has been seen that such a practice is not followed by, and under the Natural Gas Act cannot be required of, natural-gas pipeline companies.

Even if Michigan Wisconsin's extension policy embodied in its 10-cent formula were a "practice" within the purview of Section 4(c), the evidence is insufficient for the Commission to require that the tariff contain a statement spelling out what the formula is, and under what conditions it is to be applied. The Commission can prescribe provisions of a rate schedule and require a company to file the same. *Mondakota Gas Co.* v. *Montana-Dakota Utilities Co.*, 5 FPC 64, 76–77, 81–84. But manifestly rate schedule provisions should not be prescribed unless the evidence establishes that they are reasonable. It has been seen

[9] Section 154.1 of the Regulations provides: "On and after December 1, 1948 every natural-gas company shall file with the Commission and post in conformity with the requirements of this part, schedules showing all rates, and charges for any transportation or sale of natural gas subject to the jurisdiction of the Commission and the classifications, practices, rules and regulations affecting such rates, charges and services, together with all contracts in any manner affecting or relating thereto: *Provided, however*, That all such presently effective schedules filed with the Commission before the aforesaid date shall be restated as set forth in § 154.82 to conform with the following rules and regulations, and filed and posted on or before the dates specified in § 154.83."

[10] Atlantic Seaboard Corp. makes a separate "facility charge" to cover the cost of laterals it constructs. A provision for the payment of this charge in monthly amounts is a part of its tariff, and properly so.

(page 651, *supra*) that such evidence is lacking here. The staff witness who sponsored a suggested section respecting the formula for inclusion in Michigan Wisconsin's tariff, stated, "The reasonableness of the 10-cent formula was not part of my study."

Respecting long laterals, no proposed tariff provisions were submitted. The Examiner is unable to find that proposals which may be advanced in the future, and which are unknown to him, will be reasonable.

Furthermore, the Examiner agrees with, and adopts as part of this decision, the following passage in Michigan Wisconsin's brief:

> The construction of major facilities must be handled on a project basis with a showing of public convenience and necessity in each case in accordance with the provisions of Section 7(c) of the Act and the Commission's certificate regulations. [Account must be taken of] the practical considerations which are involved in the construction of major facilities. In the first place, the expenditure of several millions of dollars raises questions concerning the company's ability to finance the construction, the effect of the construction upon rates to existing customers, the prospective return on investment and the character and stability of the markets. Second, the construction of facilities of substantial size poses questions as to the design and engineering features of the project, the availability of pipe and materials and the integration of the new facilities into the existing pipeline. Thirdly, where the new facilities are to extend many miles into a new area additional operating and maintenance personnel and equipment must be organized and provided.
>
> The construction of major facilities thus involves many matters of judgment which must be considered and decided in the first instance by the management of the company, and then reviewed by the Commission for compliance with the standard of public convenience and necessity upon an application filed pursuant to the certificate provisions of Section 7(c) of the Act.
>
> "Public convenience and necessity is not defined by the statute," which leaves to the Commission administrative discretion "to draw its conclusion from the infinite variety of circumstances which may occur in specific instances." *Interstate Commerce Commission* v. *Parker*, 326 U.S. 60, 65. Section 7(e) of the Act "requires the Commission to evaluate all factors bearing on the public interest" (*Atlantic Refining Co.* v. *Public Service Commission of New York*, 360 U.S. 378, 391), and its function "is not only to appraise the facts and to draw inferences from them but also to bring to bear upon the problem as expert judgment and to determine from its analysis of the total situation on which side of the controversy the public interest lies." *United States* v. *Detroit & Cleveland Navigation Co.*, 326 U.S. 236, 241. The standard of public convenience and necessity therefore "is not a rigid absolute of unchanging content, to be mechanically applied regardless of the wide diversity of facts presented by different cases." *Transcontinental Gas Pipe Line Corp.*, 20 FPC 264, 270.

For these reasons, the Examiner concludes that it is improper to require Michigan Wisconsin to set out in its tariff a statement of long-lateral "extension policy."

The Commission said in *American Louisiana Pipe Line Co. and Michigan Wisconsin Pipe Line Co.*, 29 FPC 932, 935–36, "sales to affiliates present possibilities of abuse and should be scrutinized with care." The record herein demonstrates the soundness of these observations. Michigan Wisconsin has been shown to be guilty of abuse in the construction of short laterals for the sale of gas to its affiliate Milwaukee Gas. Furthermore, a possible abuse in the proposed construction of a long lateral to serve the same affiliate was prevented by Commis-

sion action. Great vigilance should be exercised in examining into and passing upon this respondent's extension projects, and in seeing to it that the Commission's mandates respecting such projects are complied with. But the means of guarding against abuse, and achieving nondiscriminatory treatment of customers, in the construction of extensions, does not lie in tariff provisions.

FINDINGS AND CONCLUSIONS

Upon consideration of the evidence adduced and the briefs of counsel, it is further found and concluded that:

(1) The Iowa-Missouri group, proponents of the proposed zones and zone rates, have failed to sustain the burden upon them of proving that Michigan Wisconsin's present rates are unduly preferential or unduly discriminatory.

(2) The evidence affirmatively establishes that Michigan Wisconsin's present rates are not unduly preferential or unduly discriminatory, and that system-wide rates should be continued.

(3) Zones and zone rates should not be established on the Michigan Wisconsin system.

(4) The 10-cent formula should not be made a part of Michigan Wisconsin's tariff.

(5) No other lateral or extension policies should be set forth in Michigan Wisconsin's tariff.

ORDER

WHEREFORE, *it is ordered*, subject to review by the Commission on appeal, or review by the Commission on its own motion, as provided in its Rules of Practice and Procedure, that:

(A) The proposal and request of the Iowa-Missouri group that rate zones and zone rates be established on the Michigan Wisconsin system be and the same are hereby disallowed and denied.

(B) The proposal and request of Michigan Gas and Electric Co. and the Staff that a statement embodying the 10-cent formula and practices in connection therewith be made a part of Michigan Wisconsin's tariff be and the same are hereby disallowed and denied.

(C) The proposal and request of Michigan Gas and Electric Co. and the staff that a long-line extension policy of Michigan Wisconsin be made a part of Michigan Wisconsin's tariff be and the same are hereby disallowed and denied.

HOWELL PURDUE,
Presiding Examiner.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr. and Carl E. Bagge.

TRANSCONTINENTAL GAS PIPE LINE CORPORATION, CP64–270; SOUTHERN NATURAL GAS COMPANY, CP64–259, CP64–314; EAST TENNESSEE NATURAL GAS COMPANY, CP65–66; TENNESSEE GAS TRANSMISSION COMPANY, CP64–165; CITY OF BUFORD, GEORGIA, CP65–11, CP65–20; CITY OF SUGAR HILL, GEORGIA, CP65–10, CP65–19; CITY OF AUSTELL, GEORGIA, CP65–74

ORDER GRANTING REQUEST FOR SECOND TEMPORARY AUTHORIZATION

(Issued August 30, 1965)

By a series of orders, the last of which was issued on October 6, 1964, the matters presented by the above-designated docketed applications were consoli-

dated for formal hearing. In the main they consist of competitive proposals by Transcontinental Gas Pipe Line Corporation (Transco), Southern Natural Gas Company (Southern), and East Tennessee Natural Gas Company (East Tennessee) to construct facilities so as to meet the increased natural gas requirements of Chattanooga Gas Company (Chattanooga). East Tennessee is currently the sole supplier of Chattanooga since neither Transco nor Southern have any facilities into the Chattanooga area. The proceeding in these matters was concluded on April 13, 1965, and is now awaiting an Examiner's Initial Decision.*

Southern, in its application in Docket No. CP64-314, seeks authorization to install, construct, and operate (1) 94,870 compressor horsepower at new and existing stations and (2) approximately 195 miles of various-sized new pipeline and pipeline loops, and appurtenant facilities, all at an estimated cost of $28,377,920. These facilities will increase Southern's daily design delivery capacity by approximately 180,000 Mcf per day. Southern proposes to utilize the facilities so as to make additional sales of 146,165 Mcf per day to both new and existing customers. Of this amount Southern has allocated 24,770 to Atlanta Gas Light Company (Atlanta), 5,000 Mcf to The Water, Light and Sinking Fund Commission of Dalton, Georgia (Dalton), and 29,000 Mcf to Chattanooga. Although all three of the major applicants propose to serve the increased requirements of Chattanooga, only Southern and Transco are vying to supply the increased requirements of Atlanta and Dalton.

On February 23, 1965, in view of the virtual impossibility of the completion of the proceeding which would permit the timely issuance of permanent authorization to construct the facilities necessary to meet its existing customers' increased requirements for the coming heating season, Southern filed a request for temporary authorization to construct that portion of the facilities asked for in its application in Docket No. CP64-314, which it alleged are unassociated with its competitive project to serve Chattanooga. In our order of April 13, 1965, 33 FPC 729, granting the request for temporary authorization for the construction only of the specified facilities we stated, among other things, that under the given circumstances we did not deem a request of six months in which to undertake an orderly construction program and thereby avoid excess costs to be unreasonable. Southern, by its filing of July 9, 1965, now requests a temporary certificate to construct the proposed looping of its Rome Lateral in order to meet the 1965-1966 heating season increased firm peak day requirements of Atlanta and Dalton at the Rome delivery point, which are a subject of the competitive proceeding, together with the noncompetitive firm peak day requirements of the City of Adairsville. The instant proposal will increase the Rome line's existing daily delivery capacity of 68,331 Mcf by 6,080 Mcf. The total cost of the subject facilities is estimated at $2,277,282.

East Tennessee, the only party filing any opposition to the instant request, in essence reiterates the contentions set forth in its opposition to Southern's first request for temporary authorization. There, as here, East Tennessee argued that the proposed facilities to be constructed under the temporary authorization could be utilized to supply the competitive markets and thereby prejudice East Tennessee's application in the instant consolidated proceeding. However, as pointed out in our order of April 13, 1965, the only competitive market that East Tennessee is concerned with is in the Chattanooga area and Southern does not here propose to construct any facilities so as to extend Southern's system into that area.

In granting Southern's request for temporary authorization to construct approximately 49.2 miles of 14-inch OD loop along its existing Rome line

*See 35 FPC 917, 930.

extending from Southern's North line to Rome, Georgia, and a crossing of the Etowah River, we shall require, as similarly required in the grant of the first request for temporary authorization, that the costs associated with the construction of these facilities shall not be included in Southern's rate base in the event that permanent certification is not granted.

The Commission finds:

Based on the allegations of Southern for a temporary certificate of public convenience and necessity and the further matters discussed above, the request for construction only of the above-enumerated facilities should be granted.

The Commission orders:

(A) The application of Southern Natural Gas Company in Docket No. CP64–314 for a second temporary authorization for construction only of the limited facilities enumerated above, is granted.

(B) The grant of the instant temporary authorization is without prejudice to such final determination of the applications in the proceeding in Transcontinental Gas Pipe Line Corporation, *et al.*, Docket No. CP64–270, *et al.*, as the record may require.

(C) The temporary certificate issued herein and the rights granted hereunder are conditioned upon Southern's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (c)(1) and (c)(4) of Section 157.20 of such Regulations. Should the Commission deny permanent certification of the facilities herein authorized to be constructed under temporary grant, all costs associated with the construction of said facilities shall not be included in Southern's rate base.

Before Commissioners: L. J. O'Connor, Jr., Acting Chairman; Charles R. Ross and Carl E. Bagge.

BROWN-NEW HAMPSHIRE, INC., PROJECT NO. 2300

ORDER APPROVING REVISED PROJECT EXHIBIT DRAWING

(Issued August 31, 1965)

On May 5, 1965, Brown-New Hampshire, Inc., filed for Commission approval a revised Exhibit L drawing showing changes in the project structures of Shelbourne Project No. 2300 located on the Androscoggin River about 3 miles east of Gorham, New Hampshire.

The changes in the project structures were undertaken by the licensee as a necessary emergency measure due to damage of the dam as a result of heavy ice floes occurring on March 5, 1964. Reconstruction of the damaged portion of the dam was accomplished between May and July of 1964 after the licensee had informed the Commission of its intention to do so in compliance with Article 3 of its license. Our staff has inspected the reconstruction work and has advised that the reconstruction has been completed as shown on the revised Exhibit L drawing and is adequate.

The Corps of Engineers has approved the revised Exhibit L drawing pursuant to Section 4(e) of the Federal Power Act insofar as the interests of navigation are concerned.

The Commission finds:

Exhibit L–1, Revision 1 July 6, 1964 Plan View of Station & Dam F.P.C.–2300–8 conforms to the Commission's rules and regulations and should be

approved as part of the license for the project, and Exhibit L–1 Plan View of Station & Dam F.P.C.–2300–4, now part of the license and which has been superseded, should be eliminated from the license.

The Commission orders:

The revised Exhibit L drawing designated in the finding above is hereby approved as part of the license for Project No. 2300, and the Exhibit L drawing referred to in the same finding as being superseded is hereby eliminated from the license.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr. and Carl E. Bagge.

MISSISSIPPI POWER COMPANY, DOCKET NO. E–7112

ORDER AMENDING ORDER TO SHOW CAUSE AND PROVIDING FOR HEARING

(Issued August 31, 1965)

On July 15, 1963, 30 FPC 198, the Commission issued an order directing the Mississippi Power Company (Mississippi Power), Gulfport, Mississippi, to show cause why a dual rate provision in its filed rate schedules for service to three cooperatively-owned wholesale electric customers is not unlawful within the meaning of Sections 205 and 206 of the Federal Power Act. The order does not question whether Mississippi Power's schedules of filed rates and charges for service to cooperatives are unjust, unreasonable and unlawful for reasons of rate level. Mississippi Power's answer to the show cause order was filed October 14, 1963. It defended the dual rate provision and raised the issue of Commission jurisdiction over Mississippi Power's sales to its wholesale rural electric cooperative customers.

By order issued September 5, 1963, permission to intervene in the proceeding was granted to Coast Electric Power Association, Dixie Electric Power Association, East Mississippi Electric Power Association, Pearl River Valley Electric Power Association, Singing River Electric Power Association and Southern Pine Electric Power Association (Intervenors).

Settlement conferences have been convened at the initiative of the Commission staff as contemplated by our order of July 15, 1963, attended by representatives of both Mississippi Power and Intervenors. To date no settlement agreement has been reached.

Since the Commission's show cause order was issued, several rate schedules for initial service to new wholesale delivery points have been accepted for filing which contain a dual rate provision identical to that questioned by the Commission's order. The designations of those rate schedules are as follows:

Customer	*Rate Schedule Designation*
Coast EPA	FPC No. 76
Do	FPC No. 77
Singing River EPA	FPC No. 78
Do	FPC No. 79
Southern Pines EPA	FPC No. 80
Pearl River Valley EPA	FPC No. 81
Do	FPC No. 82
East Mississippi EPA	FPC No. 84
Dixie EPA	FPC No. 85

It is appropriate for purposes of the Federal Power Act that these rate schedules, as well as any hereafter accepted for filing prior to termination of this pro-

ceeding which contain the dual rate provision in issue, be added to the list of rate schedules enumerated at *supra*, p. 199 of the Commission's Order to Show Cause issued July 15, 1963.

Under the circumstances, the Commission believes an opportunity for hearing on the questions raised by its Order to Show Cause will facilitate a resolution of matters raised in this docket.

The Commission further finds:

It is necessary and appropriate for the purposes of the Federal Power Act, particularly Sections 205, 206, 308 and 309 thereof, that a public hearing be held concerning the issues raised in the Commission's Order to Show Cause issued July 15, 1963, in this docket.

The Commission orders:

(A) The Commission's Order to Show Cause issued July 15, 1963, in this docket is hereby amended to include in the list of rate schedules appearing on *supra*, p. 199 of that Order Mississippi Power's Rate Schedule FPC Nos. 76, 77, 78, 79, 80, 81, 82, 84, 85, and any rate schedules hereafter accepted for filing prior to the termination of this proceeding which contain the dual rate provision cited in the Commission's Order to Show Cause.

(B) A public hearing shall be held concerning the lawfulness of the dual rate provision cited by the Commission's Order to Show Cause issued July 15, 1963.

(C) In accordance with Paragraph (B) above, a prehearing conference shall be held before a hearing examiner of the Commission on September 20, 1965, at 10:00 a.m. (EDST) in a hearing room of the Federal Power Commission, 441 G Street NW., Washington, D.C., for the purposes of narrowing issues and setting dates for submittal of testimony and cross-examination of witnesses.

(D) Notice of intervention or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C., 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.37) on or before September 16, 1965.

OPINION NO. 472

TRANSWESTERN PIPELINE COMPANY, G–20464, CP60–49, CP60–50, CP61–63, CP61–168, CP61–243, CP62–160; COLORADO INTERSTATE GAS COMPANY, CP63–344 (PHASE TWO); TRANSWESTERN PIPELINE COMPANY, CP64–104; ARKANSAS LOUISIANA GAS COMPANY, CP64–125, CP62–219; CITIES SERVICE GAS COMPANY, CP64–131; MARATHON OIL COMPANY (PLYMOUTH), CI61–169; CREE DRILLING CO., CI61–193; CONTINENTAL OIL COMPANY, CI61–375; PAN AMERICAN PETROLEUM CORPORATION, CI61–438; UNION OIL COMPANY OF CALIFORNIA, CI61–715; PETRO-ASSOCIATES, INC. (OP., ET AL.), CI61–936; SCHAFER OIL CORP. (NOW H&Y OIL COMPANY), CI61–1774; PHILLIPS PETROLEUM COMPANY, G–18201; A. G. HILL, CI61–497

OPINION AND ORDER MODIFYING AND ADOPTING INITIAL DECISION OF PRESIDING EXAMINER, AND PROVIDING FOR FURTHER HEARING

(Issued August 31, 1965)*

Syllabus

1. Proposals of Transwestern and Arkansas Louisiana to supply gas to Cities Service are decidedly superior to that of Colorado Interstate. PP. 663; 698.

*Initial decisions appear on PP. 668, 703. See order issued December 16, 1965 clarifying opinion, etc., 34 FPC 1474.

2. Ordinarily Commission would give no consideration to a defective application; it does so here for sole purpose of demonstrating that Cities Service's gas requirements are better satisfied by means other than those of Colorado Interstate. P. 663.
3. Since Commission is not confined to a determination of how Cities Service's requirements for the additional 200,000 Mcf daily during 1966 should be met [Company having immediate need for only 100,000 Mcf daily] it need not grant by default the only presently available application for this amount of gas. P. 664.
4. Risks to public in rejecting Colorado Interstate's proposal prior to final determination of where Cities Service will secure additional gas needed during 1966 are outweighed by risks that public will pay more than necessary for a long period of time if latter is forced to rely on Colorado Interstate for its gas supply. P. 664.
5. Since Colorado Interstate's application, after comparative evaluation, should be denied, it is unnecessary to determine legal effect of its lack of contract for sale of gas to Cities Service. PP. 664, 665.
6. Discussing denial of Arkansas Louisiana's application [without prejudice to further presentation of evidence respecting gas supply], Commission observes that policy of enforcing applicable requirements vigorously will result in greater efficiency, expedition, fairness and protection to the public. P. 665.
7. It is proper, for comparative purposes, to use the minimum Btu content included in pipeline contracts. P. 665.
8. Transwestern has violated the Natural Gas Act by engaging in unauthorized construction and operation of certain facilities involved here, but facts adduced fail to show that imposition of sanctions is warranted. P. 666.
9. If doubt exists whether contemplated activities are jurisdictional, pipelines should follow available procedures for determining whether authorization therefor should be obtained. P. 666.
10. In a proceeding under Section 7 of the Natural Gas Act, Commission *issues* certificates of public convenience and necessity; *denies* certificate; *authorizes* abandonment of facilities; *denies*, without prejudice, pipeline's application for certificate and *provides* for supplemental hearing.

J. Evans Attwell, James W. McCartney and *Raybourne Thompson* for Transwestern Pipeline Company.

James L. White, Martin L. Friedman, Michael J. Shea, Frank P. Saponaro, Jr., William R. Duff and *Robert R. McCracken* for Colorado Interstate Gas Company.

Robert Roberts, Jr., Gilbert L. Hetherwick, Bernard A. Foster, Jr., Donald B. Robertson and *Sherman S. Poland* for Arkansas Louisiana Gas Company.

Harry S. Littman, Jack Werner, Harold L. Talisman, Richard J. Connor, George J. Meiburger, Conrad C. Mount and *Claude H. Mullendore, Jr.* for Cities Service Gas Company.

Morton Taylor, R. Joseph Opperman and *Harold L. Kennedy* for Marathon Oil Company.

Bruce R. Merrill, Tom Burton and *Joseph C. Johnson* for Continental Oil Company.

J. P. Hammond, Clifford O. Stone and *Carroll L. Gilliam* for Pan American Petroleum Corporation.

George Bond for Union Oil Company of California.

William L. Cole, John Ormasa, Milford Springer, O. C. Sattinger, A. R. Robbins, John P. Egan, J. R. Elliott and *J. H. Kreft* for Pacific Lighting Gas Supply Company; Southern California Gas Company; and Southern Counties Gas Company of California.

William J. Grove for Oklahoma Illinois Gas Pipeline Company.

Jerry T. Duggan, Charles E. McGee and *James D. McKinney, Jr.* for The Gas Service Company.

E. A. Stansfield for Public Service Company of Colorado; Colorado Wyoming Gas Company; The Pueblo Gas & Fuel Company; and Cheyenne Light, Fuel & Power Company.

Charles C. McDugald and *Paul E. Goldstein* for Natural Gas Pipeline Company of America.

Charles S. Rhyne, Robert L. Winters, Edward D. Means, Jr. and *John Weston Miller* for Municipal Group for Opposing Increase in Natural Gas Rates.

Charles S. Rhyne, Edward D. Means, Jr., Leonard M. Campbell and *Max P. Zall* for City and County of Denver, Colorado.

Louis Johnson for City of Colorado Springs, Colorado.

Dean C. Mabry for City of Trinidad, Colorado.

Richard C. Byrd and *William L. Mitchell* for State of Kansas and Kansas State Corporation Commission.

Robert D. Youle for Midwest Industrial & Commercial Gas Users Association; and Sheffield Division, Armco Steel Corporation.

Albert J. Feigen for Ozark Transmission District, Inc.

Stanley S. Harris, Jeremiah C. Collins, C. Frank Reifsnyder and *Peter G. Powers* for El Paso Natural Gas Company.

Richard E. Tuttle, J. Calvin Simpson and *John P. Murphy* for Public Utilities Commission of State of California.

William M. Bennett and *Franklin G. Campbell* for California Public Utilities Commission.

Raybourne Thompson and *James W. McCartney* for Transwestern Pipeline Company and Trans-Cities Pipeline Company.

John F. Carr for the City of Springfield, Missouri, and Board of Public Utilities of Springfield, Missouri.

Franklin Campbell for California Public Utilities Commission and People of the State of California.

Richard C. Byrd, Alvin F. Grauerholz and *Harry G. Wiles* for Kansas State Corporation Commission.

William E. Hynan, Jr. and *John Mullally* for the Staff of the Federal Power Commission.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., David S. Black and Carl E. Bagge.

O'Connor, *Commissioner:* This is a certificate case, arising under Section 7(c) of the Natural Gas Act (Act), coming before us on exceptions to the initial decision of Presiding Examiner Max L. Kane, issued April 19, 1965, *infra*, p. 668. Since the parties' principal proposals are competitive, a comparative hearing was held in conformity with *Ashbacker Broadcasting Corp.* v. *F.C.C.*, 326 U.S. 327 (1945). Oral argument was held before the Commission on July 13, 1965. As appears more fully herein, we are adopting the Examiner's decision in most respects, and are relying on that decision for a detailed statement of the facts.

The principal question in this case requires us to determine the requirements of Cities Service Gas Company (Cities) for additional gas service and the best manner of meeting those needs.

Cities, in order to meet the increasing demands of its customers, has executed two 20 year contracts, one with Transwestern Pipeline Company (Transwestern) and the other with Arkansas Louisiana Gas Company (Ark La), both for 100,000 Mcf of gas per day, an aggregate of 200,000 Mcf of gas per day.[1] Transwestern

[1] During the first and second contract years, which are 1964 and 1965, Transwestern and Ark La each would sell 50,000 Mcf of gas per day.

would deliver its 100,000 Mcf to Cities at the points on the western end of Cities' existing main Oklahoma-Hugoton line (see attached map, *infra*, p. 669) by means of facilities proposed herein costing an estimated $1,275,700. Ark La proposes to deliver 100,000 Mcf a day at the opposite end of Cities' system through facilities which would cost an estimated $7,020,750. Such facilities include a 103 mile extension from Ark La's existing main line near Driggs, Arkansas, to the point of delivery to Cities at Jane, Missouri. To receive and transport gas proposed by the above dedicated sources, Cities proposes to construct facilities at an estimated cost of $6,320,600.

Colorado Interstate Gas Company's (CIG) competitive proposal involves the sale of 100,000 Mcf per day, beginning in 1965 and 200,000 Mcf per day beginning in 1966 by means of proposed new facilities costing an estimated $30,000,000. These facilities include a 275 mile line from CIG's Fourway compressor station in the Texas Panhandle roughly paralleling Cities existing Panhandle to Wichita mainline and by-passing Cities' Guymon line to a point on Cities system at Blackwell, Oklahoma.

Cities has filed no application for a certificate for facilities necessary to receive and transport the volumes CIG wishes to sell it; in fact, Cities has stated that it is unwilling to purchase such volumes because of objections to CIG's price, gas supply, location of facilities, and other aspects of its proposal.

This proceeding also involves additional issues which are treated in this opinion following consideration of the comparative issue.

Initially, the Examiner concluded that Cities has established a need for an additional 100,000 Mcf on an average day in 1965, 200,000 Mcf in 1966 and 1967, up to 286,000 Mcf in 1968, and increasing to 336,000 Mcf in 1970. He then considered whether the competing projects separately satisfy the requirements of public convenience and necessity with respect to markets, gas supply, facilities, financing, rates, and economic feasibility. He held that Transwestern's project for the sale of 100,000 Mcf of gas a day to Cities meets these requirements and should be granted, as should Cities' project for facilities to receive and transport such volumes of gas.

The Examiner also held that the Ark La project would meet these requirements, except that Ark La failed to adduce evidence showing that its gas supply is sufficient for both its present market and the proposed sale to Cities. Accordingly, the Examiner denied Ark La's project, but without prejudice to Ark La's making the further showing required with respect to gas supply. Ark La has stated in response that it desires to make such a further showing in the immediate future. Pending Ark La's future showing, the Examiner pointed out that Cities proposes to obtain the 100,000 Mcf a day anticipated from Ark La from temporary outside sources.

The Examiner would deny CIG's competing project for the sale of 200,000 Mcf a day to Cities. He held that CIG's project could have been rejected solely because CIG has no market, since CIG proposes to sell gas only to Cities, and Cities has stated that it cannot and will not accept CIG's proposal.

However, the Examiner went further and made a comparative evaluation of the Transwestern and Ark La projects with the CIG project, to determine which would better serve the public interest, on the evident expectation that Ark La could make the gas supply showing he required. On this basis, the Examiner held that the Transwestern and Ark La projects are superior to the CIG project, because Transwestern and Ark La: (1) have contracts with Cities establishing a market that will purchase their gas, while CIG has not; (2) their prices to Cities would be lower than CIG's price; (3) their prices have been sufficiently substantiated by cost data; (4) they would provide Cities with long-term supplies of gas, particularly Ark La's supplies from the new Arkoma basin, that are

more desirable to Cities than CIG's supply; (5) their deliveries at eastern and western points on Cities' system would enable the fuller utilization of certain existing facilities of Cities and provide gas at more convenient points for transportation by Cities to its customers; (6) their service to Cities would require a smaller investment than would CIG's service; (7) they would provide Cities with greater flexibility and reduced costs by wider ranges in daily deliveries of gas and more favorable make-up provisions than would CIG; and (8) their contract prices would provide Cities with greater rate stability than would CIG's price.

The Examiner further held that the Transwestern project alone is superior to the CIG project, on the basis of the considerations referred to above.

Staff and CIG except to the Examiner's decision, contending that the CIG project is superior and should be certificated. The other parties' exceptions take varying positions, generally in favor of the Transwestern or Ark La projects in whole, in part, or conditionally, as discussed more fully hereinbelow.[2]

THE COMMISSION'S DETERMINATIONS

A. *The Comparative Issue*

As indicated at the outset, we are in basic agreement with the Examiner's decision in this case. In summary, we conclude that Cities requires an additional long-term supply of 200,000 Mcf of gas on an average day during 1966 and 1967, of which 100,000 Mcf represents an immediate imperative need. In the circumstances of this case, we further conclude that the public convenience and necessity require us to: (1) certificate Transwestern to deliver 100,000 Mcf per day to Cities; and (2) to defer final action respecting the remaining 100,000 Mcf, relying on Cities' asserted ability to obtain such gas as it may require pending such final decision from outside temporary sources.

Crucial to our conclusion is our determination that the proposals of Transwestern and Ark La to supply 200,000 Mcf per day are decidedly superior to CIG's proposal; and secondly, that Transwestern can supply 100,000 Mcf per day on more advantageous terms than can CIG, and that the only immediate need of Cities is for 100,000 Mcf. With the few exceptions and clarifications discussed in this opinion, we adopt the Examiner's findings and conclusions on gas supply, markets, facilities and financing, economic feasibility, cost and cost allocation[3] incident to the instant applications, and his comparative evaluation of the applications. For the most part, the Examiner's decision adequately resolves the exceptions of the parties respecting these issues.

We recognize, as Staff and CIG argue, that Ark La has not submitted such evidence as to justify a grant of its application. While we would not ordinarily give consideration, comparative or not, to a defective application, we have done so here for the sole purpose of demonstrating that there are means of satisfying Cities' gas requirements which are preferable to those presented by CIG.

Viewed in this light, we reject the exceptions of Staff and CIG to the Examiner's result. In essence, Staff and CIG argue as follows: Cities has a need for an additional 200,000 Mcf per day. There are two proposals in this proceeding

[2] Exceptions were filed on May 19, 1965, by Staff, Ark La, Pacific Lighting Gas Supply Company, *et al.*, The Public Utilities Commission of the State of California, *et al.*, (California Commission), and the Municipal Group for Opposing Increase in Natural Gas Rates, *et al.*, and on May 20, 1965, by CIG. Replies to exceptions were subsequently filed by most of the above parties and also by The Gas Service Company and Transwestern.

[3] We emphasize that the cost allocation respecting Transwestern is adopted solely for the purposes of this case. As the Examiner points out, a definitive allocation of costs and a determination of "just and reasonable" rates may properly be deferred for a rate case under Section 4(e) or 5(a) of the Act.

to meet this need. One is CIG's application. The other is a combination of Ark La and Transwestern which proposes 100,000 Mcf each. Ark La's application cannot be granted because it failed to adduce evidence which would satisfy the minimum prerequisites of public convenience and necessity. Thus, there is only one proposal in this case—CIG's—which can satisfy Cities' need for 200,000 Mcf. To rely on the results of a further hearing regarding Ark La's proposal denies CIG's right to a comparative hearing in this case and could deprive the public of additional supplies of gas it needs if Ark La's further showing is not adequate.

While the reasoning of this argument may be logical, it stems from an incorrect premise. Specifically, since we are not confined in this proceeding to a determination of how Cities' requirements for 200,000 Mcf per day additional gas during 1966 should be met, we need not grant by default the only presently available application for this amount of gas. The immediate need is for 100,000 Mcf per day of gas and the record makes clear that this need can better be satisfied by a grant of the Transwestern application than by certification of CIG.

We are convinced that the risks to the public in rejecting CIG's proposal prior to a final determination of where Cities will secure the additional 100,000 Mcf per day of gas it will need during 1966 are outweighed by the risks that the public will pay more than is necessary for a long period of time if Cities is forced to rely upon CIG for its gas supply. There are two important factors supporting this conclusion. First, the nature of Cities' requirements for additional gas is less critical than, for example, the need to install capacity to meet the peak demands of firm customers. Here, Cities has estimated that it can sell 100,000 Mcf additionally on an average day in 1965 and 200,000 Mcf additionally in 1966 and 1967. These sales include both firm and interruptible. Of the latter group, several are to industrial customers which have an alternate source of fuel. Thus, we are not faced here with the prospect of depriving space-heating consumers of needed supplies of gas during the winter season. Second, the risk that Cities will have insufficient supplies of gas is minimized by other sources of supply available on at least a temporary basis. While these sources are not defined with precision in the record, the history of Cities' gas purchases gives promise that the claim is not an idle boast.[4] Of course, we expect Cities to immediately take such preliminary action as may be necessary to enable it to implement such temporary procurement measures as may become necessary.

This determination in no way deprives CIG of its right to a fair hearing. If it appeared that the CIG proposal were superior to the combined Transwestern/Ark La proposals (or any other possibility) we would balance the savings by granting Transwestern against the possible losses resulting from a failure to certificate the project which could supply the larger amount. In that situation, we would not permit the defective status of Ark La's application to deprive CIG of its right to full comparative consideration or to a grant of its application. However, we do not find CIG superior, and, as the status of Ark La's application could not have prejudiced CIG's proposal, this factor cannot be allowed to disqualify Transwestern.

There are five aspects of the comparative issue which require further comment. First, the Examiner found that CIG failed to sustain its burden of establishing that its proposal is either practical or economical, principally be-

[4] We take judicial notice of the fact that since the record has closed, Cities has filed data showing that it has attached uncommitted new reserves to its system capable of providing an additional 25,000 Mcf to 35,000 Mcf per day, pursuant to its budget certificate in CP65–166. We also note that CIG has recently indicated, by way of application for temporary authority that, with a minimal amount of construction, it could provide an additional 50,000 Mcf per day to Cities as it has in the past (Docket No. CP61–72).

cause it had no contract with Cities. As stated above, we evaluated each of the proposals before us and concluded, on a comparative basis, that CIG's application should be denied. In the light of this analysis, it is unnecessary to determine the legal effect of CIG's lack of a contract for the sale of gas included in its proposal.

Second, the Examiner denied Ark La's application without prejudice to the applicant's presentation of further evidence. His decision is ambiguous with respect to the scope of the proceeding at which such evidence would be adduced.

We completely agree with the Examiner's denial of Ark La's application and his reasons for so doing. In addition, we note that competitive proceedings such as the present one are becoming increasingly common, and decision between the competing applicants increasingly difficult, as pipelines vie for the markets that remain. In such circumstances, we are convinced that a Commission policy of enforcing the applicable requirements rigorously will result in greater efficiency, expedition, fairness and protection to the public. The proposition that firm adherence to principle is generally best in the long run is more than mere rhetoric. Experience shows that although the denial of defective proposals may initially seem non-productive and wasteful, such action generally results in new applications for projects from which the defects have been eliminated in a form which permits intelligent consideration.

The hearing which we establish herein to reconsider Ark La's application (or any amendment thereto) is not to be limited to that applicant's presentation. To the contrary, any party, including CIG and the Kansas State Corporation Commission, has a right to advance any proposal deemed most appropriate for satisfying Cities' remaining gas requirements.

The third concerns the Btu question. Transwestern and Ark La propose the delivery of gas having a Btu content of 1103 and 992, respectively. However, their contracts require a Btu content of only 1012 and 975, respectively. The comparable figures with respect to CIG are 980 and 963, respectively. The Examiner compared the applications using both sets of Btu figures and did not specify that Btu content relied upon. In our opinion, it is proper to use for comparative purposes the minimum Btu content included in the contracts. It is only gas of that quality which the suppliers are obliged to deliver, and to which Cities has a right to receive. While the current situation may justify more optimistic expectations, it would be a simple matter for Transwestern, CIG and Ark La to process the gas down to the minimum levels established by contract. Using the proposed contract rates, the 100 percent load factor cost at Cities' Graham and Saginaw stations per million Btu is 25.4 cents for CIG, 22.66 cents for Transwestern and 24.32 cents for Ark La.[5]

Fourth, the Examiner found that the unit cost of gas under Ark La's proposal was approximately 1.0 cent less than the rate it proposed to Cities, but did not consider whether any adjustment of Ark La's rate was necessary. Since we are not approving Ark La's application, it is unnecessary to resolve this question. We merely do not want our determination here interpreted as a decision on this issue.

Fifth, although the Kansas State Corporation Commission filed no exceptions to the Examiner's decision, at the oral argument it took the position that Cities should obtain the gas it proposes to buy from Transwestern, from producers in the Kansas-Hugoton Field to alleviate an under-production situation there. The record shows that Cities presently has substantial reserves in the Kansas-Hugoton Field which Cities is, and has been, underproducing. Unfortunately, the record is not equally clear concerning the deliverability of

[5] See Examiner's decision, *infra*, p. 693.

these reserves. Moreover, a series of recent applications request Commission authorization for sales and for abandonment of reserves dedicated to Cities in this area.[6] For these reasons, and considering Cities' imperative need for an additional supply of 100,000 Mcf of gas per day, we conclude that the public interest requires the certification of Transwestern's application herein. In the remanded hearing provided by our order, we anticipate that the parties will fully explore the possibility of supplying Cities' remaining gas requirements from this source.

B. *Other Issues*

The Examiner was correct in his holding that Transwestern has violated the Act by engaging in the unauthorized construction and operation of certain facilities involved in various dockets consolidated herewith, but not directly involved in a consideration of the competing projects. Staff correctly points out that such violations also included the unauthorized transportation of natural gas in interstate commerce. We agree with the Examiner's rejection of Staff's contention that Transwestern conclusively lacked the ability to have knowingly violated the Act. However, both the Examiner and Staff agree that the facts adduced fail to show that the imposition of sanctions is warranted.

Notwithstanding this conclusion, we reiterate the Examiner's admonition that if doubt exists whether contemplated activities are jurisdictional, Transwestern (and other pipelines) should follow the procedures available for determining whether Commission authorization therefor should be obtained, and the Examiner's warning that future unauthorized activities may result in the imposition of sanctions against Transwestern.

The Examiner would grant certain non-competitive authorizations involving the abandonment of certain obsolete facilities of CIG between Colorado Springs and Denver, and the construction and operation of replacement and other facilities to complete CIG's Rocky Mountain expansion program. He also would grant the producer applications herein for the sale of gas to Transwestern, subject to the condition that the initial rate not exceed the applicable ceiling prescribed by the Commission's Statement of General Policy No. 61–1. No party has excepted to these conclusions and we agree with the Examiner's disposition of these issues.

In addition, the Examiner would deny Ark La's application in Docket No. CP62–219 for the same reasons that he denied its application in Docket No. CP64–125. We agree with this determination of the Examiner and shall adopt his decision on this issue.

Numerous exceptions not mentioned above were advanced by various parties. These include the exceptions of Pacific Lighting, the Municipal Group for Opposing Increase in Natural Gas Rates, *et al.*, a group of various Kansas and Missouri towns, including Springfield, Missouri. We have considered these exceptions but have concluded that they are without merit and do not require any changes in the Examiner's decision. Therefore, such exceptions should be denied.

The Commission further finds:

Except as herein modified, the Examiner's decision should be adopted by the Commission as its decision in this case; and except as herein granted, the exceptions to the Examiner's decision should be denied.

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[6] Cities Service Gas Company, Docket No. CP65–140, El Paso Natural Gas Company, Docket No. CP65–384, Northern Natural Gas Company, CP65–389, Ashland Oil & Refining Company (Operator), *et al.*, G–3912, Sinclair Oil & Gas Company (Operator), *et al.*, CI65–1267, CI65–1271.

The Commission orders:

(A) Certificates of public convenience and necessity are issued to Cities in Docket No. CP64–131 and to Transwestern in Docket No. CP64–104 authorizing the sale of up to 100,000 Mcf per day of natural gas in interstate commerce for resale, together with the construction and operation of the facilities necessary therefore, as proposed in their respective applications.

(B) The certificate issued to Transwestern in Docket No. CP64–104 is subject to the following conditions:

(1) If there are any deficiencies in Transwestern's revenues during the first six years of operation under the Cities' contract (other than deficiencies resulting from increases in the cost of purchased gas), no such deficiencies will be taken into account in computing Transwestern's cost of service to Pacific Lighting Gas Supply Company, nor shall any such deficiencies be used to support increased rates in any rate increase application by Transwestern directed to Pacific Lighting Gas Supply Company.

(2) Transwestern shall, within 45 days of the date of issuance of this opinion, file its 20-cent contract price as a two-part rate reflecting demand and commodity charges acceptable to the Commission.

(C) Colorado Interstate's application for authorization to abandon its Colorado Springs to Denver 20-inch line and to construct and operate a replacement therefor, and to construct and operate additional compressor facilities required to complete its Rocky Mountain expansion program, as proposed in its application herein, is granted. In all other respects the application by Colorado Interstate in Docket No. CP63–344 (Phase Two) is denied.

(D) The applications of Ark La in Docket Nos. CP62–219 and CP64–125 are denied, without prejudice, however, to the applicant's presentation of further evidence to show a gas supply adequate to meet its present overall Ark-La-Tex system market requirements in addition to the requirements of the proposed sale to Cities.

(E) Pursuant to the authority conferred upon the Federal Power Commission by the Natural Gas Act, particularly Sections 7 and 15 thereof, the Commission's Rules of Practice and Procedure, and the Regulations under the Natural Gas Act (18 CFR, Chapter I), a supplemental hearing shall be held in this proceeding at which Ark La shall be afforded opportunity to show that its gas supply is adequate in reserves and deliverability, to meet the requirements of its Ark-La-Tex customers in addition to the Cities sale, and to consider any other proposal designed to meet Cities' need for additional gas service, as prescribed by the following:

(1) Notices or petitions to intervene in the Ark La application to serve Cities Service may be filed with the Federal Power Commission, Washington, D.C., 20426 in accordance with the Commission's Rules of Practice and Procedure on or before September 24, 1965.

(2) Applications to be consolidated in the remanded proceeding must be filed with the Federal Power Commission on or before October 11, 1965; and notices for petitions to intervene in such applications may be filed with the Commission on or before October 21, 1965.

(3) Presiding Examiner Max L. Kane, or any other officer or officers of the Commission designated by the Chief Examiner for that purpose (see delegation of authority, 27 F.R. 4276, etc.) shall establish the procedures to be followed in the remanded proceeding, including the setting of dates for a prehearing conference or hearing as early as may be appropriate after October 11, 1965.

(F) Certificates of public convenience and necessity are hereby issued for the facilities installed and operated by Transwestern for the transportation of nat-

ural gas in interstate commerce in Docket Nos. G–20464, CP60–49, CP61–63, CP61–243 and CP62–160.

(G) Certificates of public convenience and necessity are hereby granted to Transwestern in the applications as amended in Docket Nos. CP60–50 and CP61–168.

(H) Certificates of public convenience and necessity are hereby issued to the producer applicants in Docket Nos. CI61–169; CI61–193; CI61–375; CI61–438; CI61–715; CI61–936; CI61–1774; CI61–497 and G–18201, subject to the condition, however, that the total initial price including all reimbursements and charges shall not exceed 17 cents per Mcf at 14.65 psia, from the date of issuance of the certificate until such price may be lawfully changed in the manner provided by the Natural Gas Act.

(I) The Presiding Examiner's initial decision issued in this case on April 19, 1965, is modified as herein set forth and, as so modified, is adopted as the decision of the Commission as of the date of issuance of this opinion and order.

(J) Except to the extent herein granted, the exceptions filed to the Examiner's decision are denied.

INITIAL DECISION
OF THE PRESIDING EXAMINER UPON APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

(Issued April 19, 1965)

KANE, *Presiding Examiner:* This consolidated comparative proceeding involves principally competing applications seeking Federal Power Commission authorization and approval, pursuant to Sections 7(c) and 7(e) of the Natural Gas Act (Act), of an integrated transaction involving the purchase, sale and transportation in interstate commerce of natural gas and the installation of facilities required in connection therewith. The proposed purchaser, Cities Service Gas Company (Cities), in Docket No. CP64–131 seeks authorization to receive and transport to its markets additional volumes of natural gas allegedly required to meet its increased market demands. It proposes to purchase such additional volumes of gas totalling 200,000 Mcf per day[1] by 1966 from, and has for such purpose executed contracts with, Transwestern Pipeline Company (Transwestern) and Arkansas Louisiana Gas Company (Arkla).[2] To enable it to receive, transport and utilize the additional volumes of natural gas sought herein, Cities proposes and seeks authorization to construct the following facilities in a two-stage program estimated to cost a total of $6,320,600.00: (1) Interconnections between Transwestern's facilities (existing and proposed) and Cities' 26-inch Oklahoma-Hugoton pipeline in Harper and Beaver Counties, Oklahoma; (2) 14,000 horsepower of new and additional compressor facilities on its Oklahoma-Hugoton 26-inch system; and (3) thirty-six miles of 20-inch pipeline extending

[1] Cities has asserted in its brief that if it should be determined that authorization for both the Arkla and Transwestern proposals be not forthcoming as set forth in their respective applications, it is Cities' position that the public interest would be best served by its acceptance of 100,000 Mcf per day from either Arkla or Transwestern.

[2] The 100,000 Mcf per day proposed to be delivered by Transwestern into Cities' 26-inch Oklahoma-Hugoton line would be transported by Cities to its Grabham compressor station. The proposed 100,000 Mcf per day proposed to be delivered by Arkla would be delivered into Cities' proposed facilities and transported to its Saginaw compressor station in the Joplin-Springfield market area. The CIG deliveries referred to *infra*, it is proposed, will be made to Cities at Blackwell, Oklahoma, and Cities would be required to install additional facilities to transport such volumes to its Grabham and Saginaw stations. While contracts were entered into by Cities with Arkla and Transwestern for the purchase of the additional volumes of gas no contract could be negotiated with and none has been entered into with CIG.

PRINCIPAL FACILITIES INVOLVED IN TRANSWESTERN PIPELINE COMPANY, ET AL.
DOCKET NOS. G-20464, ET AL.

from its Saginaw compressor station in Newton County, Missouri, to Jane, Missouri, the proposed point of connection with Arkla's proposed 20-inch pipeline.

Transwestern in Docket No. CP64–104 seeks authorization to sell to Cities at a uniform price of 20 cents per Mcf (14.73 psia) 50,000 Mcf per day until December 31, 1965, increasing the amount to 100,000 Mcf per day in 1966, and for the term of the contract thereafter. In order to accomplish the sale and delivery of these volumes Transwestern requests authorization (1) to construct a metering station at the point of intersection of its existing 10-inch Dobie Springs' lateral and Cities' 26-inch Oklahoma-Hugoton line in Harper County, Oklahoma; (2) to construct a 10.8-mile extension of its existing 12-inch Laverne line in Beaver County, Oklahoma, to a second proposed point of interconnection with Cities' Oklahoma-Hugoton line; and (3) to add 1,000 compression horsepower in Beaver County, Oklahoma, and a dew-point control plant at the compressor station site. The total estimated cost for these proposed facilities is $1,275,700.00.

Arkla's proposal to accomplish the proposed sale and delivery of its portion of the additional volumes to Cities is contained in its request for authorization in Docket No. CP64–125 wherein it seeks authorization (1) to sell and deliver to Cities 50,000 Mcf per day in 1964 and 1965 and 100,000 Mcf per day for the following 18 years at a price of 22.5 cents per Mcf,[3] and (2) to construct at an estimated cost of $7,300,000 a new 103-mile 20-inch transmission line from a point near Driggs, Arkansas, to a point of connection with Cities' proposed new line at Jane, Missouri.

Arkla, in these proceedings, also seeks authority, by amendment to its certificate previously issued in Docket No. CP62–219, to enlarge and extend the facilities authorized in that docket in order to increase the size and capacity of its Arkoma line. The enlargement and extension of the facilities estimated to cost approximately $7,000,000 involves the construction of additional field facilities in the Arkoma Basin area of Oklahoma and Arkansas; 4,000 additional compressor horsepower at the Dunn Station, Driggs, Arkansas; and a new 2,000 horsepower compressor station near Wilburton, Oklahoma. On January 22, 1964, temporary authority was issued to Arkla for certain minor additional field facilities requested in this amended application.

Arkla requests certificate authorization to construct and operate these additional facilities irrespective of the ultimate disposition of its application for authorization of the sale to Cities in Docket No. CP64–125 on the ground that they are essential in order to enable it to transport gas from its expanding reserves in the Arkoma Basin to its existing Ark-La-Tex system. The Staff, however, in effect, opposes the granting of the amended certificate, taking the position that the sole market showing presented by Arkla in these proceedings is its contract for the proposed sale to Cities and that absent certification in Docket No. CP64–125, Arkla's application in the amended certificate in Docket No. CP62–219 should be denied until it is supplemented with a deliverability and market showing justifying the requested increased capacity of its Arkoma line as being in the public interest.[4]

CIG, in its competitive application, as amended, filed in Docket No. CP63–344 (Phase Two) proposes to sell to Cities the total volumes of natural gas sought by Cities herein, to wit, 100,000 Mcf daily in 1965 and 200,000 Mcf daily beginning in 1966 and for the remainder of the 20-year period thereafter, at the proposed

[3] At a pretrial conference Arkla announced it had reduced the contract price of 22.75 cents, as reflected in Arkla's application in this proceeding, to 22.5 cents per Mcf because of certain changes made in the Internal Revenue Code.

[4] Staff also asserts that the absence of a system-wide showing of Arkla's markets renders impossible its evaluation of the merits of the amended application.

price of 22.5 cents per Mcf at 14.65 psia. The facilities required to effectuate the sale to Cities, for which authority is sought herein costing in excess of $34,000,000 consist of the following: (1) 275 miles of 24-inch pipe from its existing Fourway compressor station on the southern terminus of its existing main line to a point of connection on Cities' line at Blackwell, Oklahoma, together with the construction of a sales meter station at that point; (2) increase of the installed horsepower at its Fourway compressor station by 16,480 horsepower; (3) addition of 1,320 horsepower at its Mocane station and 500 horsepower at its Rawlins' station; construction of a new 4,500 horsepower compressor station at Arlington on its Wyoming line; and (5) construction of a new 3,960 horsepower compressor station at Woodward on its Oklahoma line.

In addition to the foregoing, CIG seeks authorization to construct facilities to meet the 1966–1967 heating season requirements of its existing Rocky Mountain area customers and to retire allegedly obsolete, operatively dangerous, facilities on its Bivins-Denver line. In connection with such authorization CIG proposes to construct 58.9 miles of high pressure line and to retire the 56.4 miles of 20-inch line between Colorado Springs and Denver, as well as 3,200 horsepower at the McClintock station.[5]

Procedural Developments

The protracted proceedings herein fall into two stages, an initial hearing and a reopened hearing caused by complete changes in the proposed projects. Because of the many twists and turns that these proceedings took prior to the conclusion of the hearing, it is deemed advisable to outline the procedural developments herein in order to understand the reason for the delay between the initial applications and the final decision herein. Thus, on December 18, 1959, Transwestern filed its application in Docket No. G–20464, requesting authorization to construct and operate certain field facilities. A temporary certificate was issued on July 8, 1960, after the application has been amended and supplemented. Thereafter hearings were held before another Presiding Examiner on July 25, 1961, and on September 6 and 7, 1961. The Presiding Examiner issued his initial decision on February 27, 1962, *infra* p. 703, not only recommending denial of the application for permanent authorization but also finding that Transwestern's unauthorized construction and use of certain facilities constituted a willful violation of the Natural Gas Act. By order issued April 30, 1962, 27 FPC 893, the Commission granted Transwestern's request to reopen the proceedings for the purpose of taking additional evidence with respect to increased markets and to afford Transwestern an opportunity to explain its alleged violation of the Natural Gas Act as found by the Examiner. During that interim period, Transwestern filed its applications in Docket Nos. CP60–49, CP60–50, CP61–63, CP61–243, CP61–168 and CP62–160. These dockets involved requests for authorization for facilities constructed pursuant to temporary certificates of public convenience and necessity issued during and shortly after the initial construction of the Transwestern pipeline system. By orders issued December 10, 1962, and March 3, 1964, these miscellaneous applications were finally consolidated for hearing with the various applications in the instant proceedings after being initially consolidated with Transwestern's application in Docket No. G–20464 and with the applications of Transwestern, Trans-Cities Pipeline Company, and Cities, filed in Docket Nos. CP63–16, CP63–15, and CP63–17, covering the proposed "Trans-Cities" project.

[5] CIG proposed construction of facilities to meet the market requirements of its Rocky Mountain customers in the year 1964–65 was deleted from its proposal in Docket No. CP63–344 in accordance with the amendment filed by CIG and approved by the Examiner.

The latter dockets comprising the so-called "Trans-Cities" project involved requests for authorization to install facilities required by Transwestern for the sale and delivery to Cities of up to 200,000 Mcf of gas per day at Blackwell, Oklahoma, through the newly formed Trans-Cities Company. By notice issued February 7, 1963, hearings on the consolidated Transwestern, Trans-Cities, and Cities applications were scheduled to begin on March 4, 1963. By order issued March 1, 1963, the Commission permitted intervention by all the parties filing except El Paso, CIG, Western Natural, and Gulf Pacific. Hearings were convened pursuant to the Commission's order on March 4, 1963, and continued with intermittent short recesses through May 16, 1963. In the interim, by order issued April 26, 1963, the Commission granted the motions for rehearing by CIG and El Paso and permitted their intervention and participation in the then pending consolidated proceedings. During the course of the hearing, motions were filed by the Municipal Group, The City of Springfield and the Board of Public Utilities of Springfield, and El Paso to consolidate the G–20464, *et al.* applications with an application filed by Transwestern in Docket No. CP63–204. In the latter docket, Transwestern had requested authorization to install additional facilities and to increase deliveries to its California customer, Pacific Lighting Gas Supply Company. The Commission denied the motions for consolidation by order issued June 11, 1963, 29 FPC 1159.

On June 14, 1963, CIG filed its application in Docket No. CP63–344 and requested consolidation of its applications in Docket Nos. CP63–206 and CP63–344 (Phase Two) and the related producer applications with the applications previously consolidated in Docket No. G–20464, *et al.* On July 30, 1963, the Commission consolidated the Trans-Cities project and the Transwestern applications in Docket No. G–20464, *et al.* with the CIG application in Docket No. CP63–344 (Phase Two). CIG's application involving the Wind River project in Docket No. CP63–206 and the related producer applications were also consolidated as were the Western Transmission project applications in Docket Nos. CP63–329 and CI63–1460. Hearings on these consolidated applications and projects were then scheduled for September 9, 1963. However, the Commission, by notice issued September 6, 1963, granted the motions of Transwestern, Trans-Cities, and Cities for indefinite postponement of the said scheduled hearing. Thereafter, on September 9, 1963, the Commission issued its order granting severance of the Western Transmission project applications in Docket Nos. CP63–329 and CI63–1460 and set those applications for separate hearing. On October 24, 1963, the Commission also severed the producer applications involved in the Wind River project.

Notices of withdrawal of the Trans-Cities project applications were thereafter filed by Transwestern and Trans-Cities in Docket Nos. CP63–16 and CP63–15 on November 4, 1963, and in Docket No. CP63–17 by Cities on November 1, 1963. A new application was filed by Transwestern in Docket No. CP64–104 on November 4, 1963. Cities' application in Docket No. CP64–131 was filed December 9, 1963, and on January 2, 1964, the Commission authorized withdrawal of the Trans-Cities' project applications noting that Transwestern and Cities had developed an alternate proposal which was the subject of the applications filed in Docket Nos. CP64–104 and CP64–131. Thereafter, the Commission issued its March 3, 1964 order consolidating the applications of Transwestern, Arkla, and Cities with the miscellaneous Transwestern applications in Docket No. G–20464, *et al.* and the applications of CIG in Docket Nos. CP63–206 [6] and CP63–344 (Phase Two).

On March 4, 1964, the Commission granted certificates of public convenience and necessity to certain producers whose applications had been consolidated in the

[6] On April 13, 1964, CIG filed a notice of withdrawal of its application in this docket.

matter of E. E. Fogelson, *et al.*, Docket No. G–19013, *et al.*, 31 FPC 476. The applications of other producers were severed from those proceedings and thereafter consolidated with the G–20464, *et al.* applications. These applications involved sales being made to Transwestern under temporary certificates in Docket Nos. CI61–169, CI61–193, CI61–375, CI61–438, CI61–715, CI61–936, and CI61–1774. On application for rehearing, the Commission also consolidated additional producer applications in Docket Nos. G–18201 and CI61–497.

Petitions to intervene in the finally consolidated proceeding were filed by the Gas Service Company; the Midwest Industrial Commercial Gas Users Association, and Sheffield Division of Armco Steel Corporation (Midwest); the Municipal Group; The City of Springfield, and the Board of Public Utilities of Springfield, Missouri; CIG; Pacific Lighting Gas Supply Company; El Paso Natural Gas Company; Transwestern; The Public Service Company of Colorado; Colorado Wyoming Gas Company; The Pueblo Gas and Fuel Company, and Cheyenne Light, Fuel and Power Company; The City of Colorado Springs, Colorado; The City and County of Denver, Colorado; Pan American Petroleum Company; Natural Gas Pipeline Company of America; Arkla; Oklahoma Illinois Gas Pipeline Company; The State Corporation Commission of the State of Kansas; The Public Utilities Commission of the State of Colorado; The Missouri Public Service Commission; The City of Trinidad, Colorado; and the Public Utilities Commission of the State of California. By Commission order issued April 29, 1964, all petitions to intervene except that of Oklahoma Illinois were granted. A prehearing conference was held on March 23, 1964, and the hearings in these proceedings began on May 5, 1964, and were concluded on July 30, 1964. Briefing was completed and the case fully submitted on November 6, 1964. On December 18, 1964, oral argument was held before the Examiner pursuant to the applicants' request.

The principal issue involved and to be resolved in these proceedings is which, if any, of the authorizations sought by the above-described applicants meet the requirements of the statute and are otherwise required by the public convenience and necessity under Section 7(e) of the Act. As a corollary to this issue it must be determined on a long-term basis and in conformity with the requirements of Section 7(e) which of the applicants will best meet the immediate and future natural gas requirements of Cities and its customers in this proceeding and which would best serve and protect the public interest. See *American Louisiana Pipe Line Company*, G–2306, *et al.*, 20 FPC 575, 579, 581.

Another issue, though unrelated to the primary issue, which must also be resolved in this proceeding, arises out of the prior proceedings in Docket No. G–20464 wherein the Presiding Examiner in his decision of February 27, 1962, found that Transwestern's unauthorized construction and operation of approximately 99 miles of pipeline attaching 79 wells in 11 fields constituted a violation of the Act within the purview of Section 21(a) of the Act, 15 U.S.C. 717. Pursuant to the Commission's order of April 30, 1962, *supra*, granting Transwestern's petition to reopen the said proceedings, Transwestern was given the opportunity to explain the construction of the field facilities not covered by the temporary certificate issued in that docket and to present evidence to show that there had been no violation of Section 7(c) of the Act.

The applications by Transwestern and Arkla, herein, on the one hand, and the competing application of CIG on the other, to furnish the gas service sought by Cities in its application in Docket No. CP64–131 in the instant proceedings are mutually exclusive. The Commission in such instance is necessarily called upon to rule in favor of one and against the other. *Kentucky Natural Gas Corporation* v. *F.P.C.*, 159 F. 2d 215, 218 (CA6–1947). Since the grant of one of the applications without a hearing to all applicants would result inevitably in the

deprivation of the right of the losing party of the opportunity which Congress chose to give him (*Midwestern Gas Transmission Co.* v. *F.P.C.*, 258 F. 2d 660, CADC–1958), the law requires as a matter of fairness that all parties be afforded a comparative hearing on the mutually exclusive aspects of their applications. *Ashbacker Radio Corp.* v. *F.P.C.*, 326 U.S. 327, 333.

Accordingly, a full comparative hearing was held herein at which all parties were given equal opportunity to present evidence and to cross-examine the witnesses of the other party. It must be kept in mind, in this connection, however, that in the event the evidence or the circumstances indicate that one of the parties has not met the required minimal requirements of public convenience and necessity, obviously such party's failure would render unnecessary further consideration of the kind necessary in a comparative hearing, since whatever the outcome of the comparison it would be necessary to reach the same conclusion. Consequently, elimination from consideration of those projects that fail to meet the minimal requirements of public convenience and necessity is sanctioned. Furthermore, in such event, those projects, so failing, need not be given a comparative evaluation with any other project and neither must a project that does meet the requirements be compared with those that do not. See *American Louisiana Pipe Line Company*, 20 FPC 575, 586.

The Staff, taking the position that Arkla's presentation "makes it impossible to realistically determine on what basis, if any, a certificate of public convenience and necessity could be issued to it", excludes Arkla's application from any comparative evaluation. There is ample support for the action taken by the Staff, and it is under no obligation to provide any missing link to a party's presentation. However, it may be that in this difficult and somewhat novel situation in which the Commission is attempting to exercise its responsibilities for the regulation of pipelines and the determination of the respective merits of competing applications, the interests of the industry, the consumer, and the general public require something more than the bare and frustrating assertion that an applicant, having the burden of proof, has in some manner failed adequately to sustain that burden, thus disqualifying it from comparative evaluation. Moreover, it may be borne in mind that in order to discharge the function of the Commission adequately it is not enough merely to deny projects that fall short of meeting a public need. We should also endeavor to mold and shape the defective proposals into a form that would satisfy needs of the public in conformity with the requirements of law. *Cf. Midwestern Gas Transmission Co.* v. *F.P.C.*, 258 F. 2d 660, 667 (CADC–1958). In view of these considerations, a full comparative analysis of all the competing applications and supporting evidence has been made herein notwithstanding the finding that one or more may have initially satisfied the usual requirements of public convenience and necessity.

In considering the relative merits of the conflicting proposals herein, the Commission is empowered to consider the favorable factors contained in one proposal of more or controlling importance in determining which of the various applications is to be certificated. *Kentucky Natural Gas Corporation* v. *Federal Power Commission, supra.* The best approach, it appears, in resolving this question is to consider initially the proposals separately in the light of the minimal conventional requirements of public convenience and necessity considered in certificate applications, including adequacy of gas supply, facilities, markets, financing, rates and economic feasibility. *Cf. Kansas Pipeline and Gas Company*, 2 FPC 29.

The Cities Project

The evidence adduced at the hearing supports Cities' alleged needs for an additional gas supply necessary to fulfill its future estimated requirements on

a long-term basis. Its need for additional gas supplies, it is estimated, will increase from 100,000 Mcf on an average day in 1965 to 200,000 Mcf in 1966 and 1967 and up to 286,000 Mcf in 1968, increasing to 336,000 Mcf in 1970. Cities has estimated that its present reserves are insufficient to handle the increased market requirements of its total system resulting from the normal load growth of a market area comprising the northeastern portion of Oklahoma, central and eastern Kansas, western Missouri, and small areas in Texas and southern Nebraska. Clearly, there is more than an adequate market for the additional volumes sought by Cities in these proceedings. Its estimates and need for additional gas are significantly supported by its largest customer, The Gas Service Company, purchasing approximately 80 percent by volume of its total jurisdictional sales. While no substantial evidence was adduced contradicting or impugning Cities' evidence establishing the need for the additional volumes of gas sought in the instant proceedings, the intervener, Municipal Group for Opposing Increase in Natural Gas Rates, *et al.*, joined in to some extent by the intervener Kansas State Commission, sought to establish that Cities' requirements could be adequately satisfied by its contracting for only 100,000 Mcf per day. The interveners' analysis was not convincing enough to support a finding that Cities had failed to demonstrate its present need for the total amount of gas sought in these proceedings.[7]

On the basis of a complete system-wide showing of the gas reserves presently attached to its system, Cities has clearly established the need for the gas supplies which it seeks to obtain through its contracts with Transwestern and Arkla in the instant proceedings. In this connection it is well to note that CIG's proposal in its competitive application is to supply Cities' total asserted need of 200,000 Mcf daily beginning in 1966.

Pursuant to its agreement with Cities, Transwestern is to sell and deliver 50,000 Mcf daily during 1964 and 1965, increasing the amount to 100,000 Mcf daily in 1966 and thereafter for the remainder of the 20-year term from the date of first delivery. The price to Cities is 20 cents per Mcf,[8] firm for a period of six years except for changes to reflect increases or decreases in Transwestern's purchased gas costs.

Arkla's contract with Cities provides for the sale and delivery of an average 50,000 Mcf per day until January 1, 1966, and thereafter of 100,000 Mcf per day for the remainder of the 20-year term of the contract. During 1964 and 1965 Cities has the right to receive as little as 37,500 Mcf per day and as much as 66,500 Mcf on any particular day or days, and on and after January 1, 1966, the daily minimum would rise to 75,000 Mcf and the daily maximum to 133,000 Mcf. The sales price is a flat 22.5 cents per Mcf which price is firm for the life of the contract except for increases in the weighted average price per Mcf paid by Arkla for gas purchased in the Arkoma area.

CIG's proposal is to sell Cities 100,000 Mcf daily in 1964, 1965, and 200,000 Mcf per day commencing January 1, 1966. The initial price proposed by CIG is 22½ cents per Mcf at 14.65 psia.

It is evident that the contractual proposals of Transwestern and Arkla, on the one hand, and the competitive proposal by CIG on the other, if supported by their respective reserve and deliverability studies made in these proceedings would

[7] However, note Cities' qualification to the effect that in the event both the projects of Arkla and Transwestern were not certificated "that it will accept 100,000 Mcf from either Arkla or Transwestern and arrange for the other required volumes from outside temporary sources until the remaining application of Arkla or Transwestern is certificated, rather than accept the proposal of Colorado Interstate."

[8] Cities and Transwestern will accept a condition requiring a two-part rate providing for an average 20 cents per Mcf rate on a 100 percent load factor basis.

constitute a showing of an adequate gas supply to support the certificate authorization sought by Cities in these proceedings.

The two-stage construction program of the facilities proposed by Cities in its application designed to enable it to receive and transport to market volumes of gas proposed to be purchased from Arkla and Transwestern would entail total estimated expenditures of $6,320,600, $4,108,000 or approximately 65 percent would be expended immediately and $2,212,600 or approximately 35 percent would be expended during 1965 in the second stage in order to meet its 200,000 Mcf additional requirements in 1966. The adequacy of the design, and reasonable cost, of the proposed facilities were amply supported by the testimony and exhibits adduced by Cities. Such testimony was not contested by any party to the proceeding and stands uncontroverted. Accordingly, it is found that the design of the proposed facilities is adequate and the cost estimates reasonable.[9]

Neither the reasonableness nor the adequacy of Cities' plan of financing proposed in the instant proceeding was challenged by any of the parties. Cities' plan of financing contemplates that to the extent funds are required from outside sources to finance its over-all 1964 and 1965 construction expenditures, including the $6,320,600 for the facilities proposed herein, such funds will be obtained initially through unsecured bank loans with one or more of the banks with whom the company currently maintains its banking relations. The loans would extend over a 3-year term, approximately, and bear interest at the then existing rate which is currently 4½ percent. The estimated cost of obtaining the bank loans in 1964 is nominal, approximately $15,000, with an additional nominal amount for the 1965 borrowing. At maturity, the bank loans would be converted into permanent financing, probably first mortgage pipeline bonds which would contain provisions for retirement through operation of an annual sinking fund over a 20-year period. The exhibit and testimony setting forth the pertinent financial data relating to Cities clearly demonstrates that the company's financial condition is such that its financing requirements can be negotiated under satisfactory terms and conditions.

From the foregoing it is clearly apparent that Cities has satisfied the requirements of public convenience and necessity with respect to supply, markets, need for and function of the proposed facilities, adequacy and reasonable cost thereof, and financial and economic feasibility. However, as will more fully hereinafter appear, because of the decision with respect to Arkla, authorization herein will temporarily be conditioned, in accordance with Cities' qualification referred to above, to the contract volumes provided for in the Transwestern contracts and the facilities connected with the receipt and transportation therewith.

Transwestern Project—Gas Supply and Markets

In its application in Docket No. CP64–104 herein, Transwestern proposes certification of a project to serve Cities, a new customer. The proposed service would be in addition to its present and virtually exclusive service to Pacific Lighting.

Transwestern's market for the proposed sale and transportation of the additional volumes of gas is established by the executed gas sales agreement with Cities. Pursuant to this agreement, Transwestern will sell and deliver to Cities, on a firm basis at 20 cents per Mcf[10] (at 14.73 psia), 50,000 Mcf daily through 1965 and 100,000 Mcf daily thereafter for the remaining years of the 20-year term from the date of initial delivery. Cities' needs and ability to take these volumes of additional gas have been established. Transwestern's evidentiary

[9] In view of Cities' position that it could not accept the CIG proposal no presentation as to the adequacy of design or reasonableness of cost of the facilities necessary for the receipt of the CIG gas was made in these proceedings.

[10] See footnote 8, *supra*.

presentation also sustains its burden, in accordance with the criteria of *Kansas Pipeline and Gas Company, et al.*, 2 FPC 29 (1939), of establishing possession of a supply of gas adequate to meet the demands of the proposed project in addition to those which it is reasonable to assume will be made upon it by Pacific Lighting, and that such proposed additional service will in no way jeopardize or affect its existing service to that purchaser. *Northern Natural Gas Co.*, 30 FPC 859, 863. *Panhandle Eastern Pipe Line* v. *F.P.C.*, 232 F. 2d 467, 471 (CA3–1956), cert. denied, 352 U.S. 891.

Transwestern's showing herein, considered in light of a realistic existing average day sales of 410,000 Mcf to Pacific Lighting, reflects a gas supply and reserves sufficient to meet the combined peak day and annual requirements of its presently certificated sales as well as the increased requirements anticipated in the proposed sale to Cities for a period of at least 15 years (Staff brief, p. 9).[11] Transwestern's lines extend into production areas which are conceded to be currently productive as well as potentially productive supply areas. The principal sources of supply, namely the Anadarko and Permian Basin areas, are producing areas which are by no means fully explored or developed and will apparently be a source of new supplies for many years in the future. Discovered but uncommitted reserves in these areas will undoubtedly be available for purchase by Transwestern.

It has been urged in these proceedings that Transwestern must sustain the burden of proving not only a satisfactory gas deliverability life in connection with presently certificated sales in addition to those sought in the instant proceeding but also the proposed increased sales sought in other pending dockets. Not only would such a burden be an unconscionable one to impose upon an applicant for a certificate of public convenience and necessity, since the certification of other sales in the future must necessarily be based upon pure conjecture, but the result of any such requirement might be a denial of otherwise eligible independent applications on the ground that reserves were not sufficient to support all pending applications, whether eventually certified or not. This reductio ad absurdum result could necessarily follow from adoption of any such proposition. Any future proposed expansion of Transwestern's markets will, of course, require a determination at the time of such proposal that Transwestern, as of that date, has gas reserves of an adequate deliverability life after considering its existing purchase patterns and the then available and dedicated reserves. It is neither required nor feasible to determine or prejudge in these proceedings the certification of any other proposed expansion of Transwestern's markets. *Cf. Northern Natural Gas Company*, 30 FPC 859, 862. Nor does the Commission's order of June 11, 1963 (29 FPC 1159), require any different result. The "impact if any" which Transwestern's proposed California sale may have on its proposed sale to Cities has not been ignored. Evidence was introduced concerning the impact of such sale upon the cost allocation between the two customers of Transwestern and it is the Examiner's view, adopting the Staff's interpretation, that "it is that impact which was the substance of the Commission's order."

Facilities and Financing

No serious question exists either as to the adequacy of the facilities proposed to be constructed by Transwestern under its proposed project or the reasonableness of the estimates of the cost of financing their construction. Because of the proximity of existing facilities in both Transwestern's and Cities' pipeline sys-

[11] A reserve and deliverability study (Exhibit 106) prepared by Transwestern in Docket No. CP64–91, but introduced in evidence by Pacific Lighting in these proceedings allegedly shows Transwestern's ability to serve the proposed deliveries of 640,000 Mcf per day to Pacific Lighting and 100,000 Mcf per day to Cities.

tems and the available capacity in both systems, a minimum of additional facilities and investment is required to accomplish the proposed sale and delivery of the 100,000 Mcf of gas daily to Cities. Those facilities, described *supra* in the description of Transwestern's application, are adequately designed to provide the service proposed and the total estimated cost thereof, to wit, $1,275,700, is reasonable. Transwestern proposes to defray the cost of these facilities from funds made available through company operations and no additional financing will be required. Because of the comparatively minor nature of the required facilities, as proposed, and concomitant low investment required, there is no question but that the proposed method of financing is feasible and reasonable.

Economic Feasibility

The record establishes the economic feasibility of the proposed project. As a result of the comparatively minimum additional facilities required to make delivery of the gas under the proposed sale to Cities, Transwestern's incremental transportation cost amounts to approximately ½ cent per Mcf. The 20-cent contract rate, based upon the incremental cost of service, including the average cost of purchased gas and the operating expenses, depreciation, taxes and return on investment as specifically attributable to the proposed Cities' service, will enable Transwestern to realize excess revenues of more than $1,000,000 for each of the three projected years 1966 through 1968. Furthermore, the proposed sale to Cities would permit greater utilization of Transwestern's existing facilities which in turn would result in the reduction of unit costs for transmission of gas through its line to all its customers. See *Transcontinental Gas Pipe Line Corp.*, Opinion No. 449, February 17, 1965, 33 FPC 237, *Northern Natural Gas Company*, 30 FPC 859, 873.

From the foregoing it would appear that Transwestern has sustained its burden of establishing that there is an adequate market for the expanded gas service; that its gas supply is adequate to support the expansion; that its proposed facilities are adequate to render the service proposed and are well designed; that the estimated cost of construction is reasonable; that the project can be reasonably financed and is economically feasible; that the proposed sales will lower Transwestern's unit costs to the ultimate benefit of its other customers;[12] and that it will derive a net profit from the projected Cities' sale after the deduction of the incremental cost of service specifically attributable thereto. Having established that it is able and willing to render the proposed service and having satisfied the usual requirements for the issuance of a certificate of public convenience and necessity under Section 7 of the Act, Transwestern would ordinarily be entitled to the certificate authorization it seeks in Docket No. CP64–104. *Cf. Northern Natural Gas Co.*, 15 FPC 1634 aff'd *sub nom.*, *National Coal Association* v. *F.P.C.*, 247 F. 2d 86 (CADC–1957).

The Staff, however, opposes Transwestern's certification basing its opposition on the ground that Transwestern's proposed rate to Cities is not in the public interest because such proposed rate is fundamentally based upon a method of cost allocation of joint use costs between Pacific Lighting and Cities which is unacceptable and not in the public interest. Adopting as "a more proper and realistic allocation of Transwestern's cost" the cost allocation method advocated by Pacific Lighting with minor changes based upon "the more realistic average daily and maximum daily volumes to Pacific Lighting," the Staff arrives at a rate of 23.44 cents per Mcf at 100 percent load factor as Transwestern's proper rate to Cities. Staff concludes that at this rate Transwestern will be able "to recover all of its costs," and "would be able to perform the service proposed." (Br. p. 16).

[12] This benefit is conceded by Transwestern's other customer, Pacific Lighting.

Furthermore, it is this rate that Staff adopts as a basis for a comparison with CIG's competitive application "to determine if its project is required by the public convenience and necessity."

Staff also takes the position that neither the six-year price moratorium between Transwestern and Cities nor its proposed one-part rate to Cities is in the public interest.

Pacific Lighting takes a somewhat ambivalent position toward the Transwestern proposal. Thus, while vigorously supporting its own proposed method of cost allocation, arriving at a 25.1 cent per Mcf rate to Cities as the rate necessary to cover Transwestern's costs in connection with the sale to Cities, and arguing that "Transwestern's cost allocations and proposed price moratorium are improper and discriminatory," it freely admits that the Transwestern-Cities project would provide a cost benefit of approximately $1,000,000 a year (Tr. p. 6721) to its southern California gas consumers and would also benefit those consumers indirectly by improving the health of Transwestern through providing relief from its gas purchase take-or-pay obligations." (Br. p. 4). Furthermore, asserting that Transwestern has established its ability to make the deliveries to Cities contemplated in the application in addition to the 640,000 Mcf daily allegedly required to be made to Pacific Lighting, it concludes that "while there may be some problem with rates and moratoriums * * * we certainly are not opposing the grant of the application." (Tr. p. 6723).

CIG also attacks the 20-cent rate to Cities alleging that it is below properly allocated costs and is unduly discriminatory and preferential. Using its cost allocation method, described as a "demand-commodity method," CIG arrives at an allocated cost to Cities of 27.18 cents per Mcf (at 14.65 psia). It is this rate which it uses as a basis for comparison in its competitive application.

We now turn our attention to the objections based upon the rate and the price moratorium contained in the Cities-Transwestern contract and the effect of the cost allocation method to be applied in determining whether such date is a proper one.

Since Transwestern and Cities have indicated that they have no objections to requiring that the sale between them be made under a two-part rate providing for an average 20 cents per Mcf rate on a 100 percent load factor basis, and the authorizations herein are to be conditioned to that effect, the objections based upon the one-part rate are deemed mooted.

There is no basis for the conclusion that the public interest requires any increase in the proposed contract rate or the elimination of the price moratorium in the said contract.

Taking into account the investment required by Transwestern for the new service to Cities and the loss of any return on the facilities whose capacity would not be fully utilized in the event this particular business was lost, it would require evidence of a kind not presented in this record to warrant a finding that the rate of return Transwestern is willing to accept from this sale is unreasonably low. On the contrary, the evidence supports the conclusion that the incremental revenue derived from the sale to Cities is more than the incremental cost involved in the additional facilities, and that the price which it will receive for the gas is sufficient to assure Transwestern of an excess over a reasonable allocation of the costs arising out of this transaction. *Cf. Northern Natural Gas Company*, 15 FPC 1634, aff'd 247 F. 2d 86. While it may be that the rate might not return what may be considered a reasonable rate of return, it cannot be said that a public utility may not itself agree by contract to a rate affording less than a fair return or that, if it does so, it is entitled to be relieved of its improvident bargain. *F.P.C.* v. *Sierra Pacific Power Company*, 350 U.S. 348, 354. The sole concern of the Commission in such circumstances would seem to be whether the rate

is so low as to adversely affect the public interest—as where it might impair the financial ability of the public utility to continue its service, cast upon other consumers an excessive burden, or be unduly discriminatory. *F.P.C.* v. *Sierra Pacific Power Company, supra.* With the purpose of the Act kept in mind it follows that a contract voluntarily entered into by the utility may not be said to be either unjust or unreasonable simply because it may prove to be not as profitable to the public utility as the Commission might desire in order to insure the financial stability of the company. In the instant proceedings there is no evidence which could support a finding that the proposed rate to Cities is so low as to have an adverse effect on the public interest. *Cf. F.P.C.* v. *Sierra, etc., supra.* Neither is there any evidence to support the conclusion that continued performance of the contract including the price moratorium would affect either the service to its other customers or deplete or adversely affect the company's revenues to the extent that recoupment would have to be made at the expense of such other customers.

It is not contended that the low rate is so burdensome as to interfere with Transwestern's ability to fulfill its public utility obligations. On the contrary, Transwestern's fortunes would appear to brighten as a result of the transaction. Its take-or-pay situation, which has been described as quite serious and had cast a pall over its operations, would be alleviated if not completely remedied as a result of the transaction; and its excess capacity would be utilized to a better degree resulting in a lesser unit cost of transmission. The result would redound not only to its own financial benefit but also to that of its other customer, Pacific Lighting. Its entire picture will, it appears, be nationally improved by Commission approval of the proposed project.

It has been agreed by Transwestern that no deficiency in its revenues resulting from the operation of the moratorium provision in its contract with Cities will be taken into account in computing Transwestern's cost of service to Pacific Lighting and no such deficiency will be used to support any increased rates in any rate increase application brought by Transwestern directed to Pacific Lighting. The condition to this effect which is being attached to Transwestern's authorization herein adequately protects Transwestern's jurisdictional customers from any costs attributable to the Cities' sale, pending any allocation to be made in any future rate case involving Transwestern. See *Mid-America Pipeline Company* v. *F.P.C.*, 330 F. 2d 226 (CADC–1964). The risk, if any, in the final analysis thus devolves upon Transwestern and its stockholders, and not upon its other customers.

Since the operation of the moratorium, as conditioned does not adversely affect Pacific Lighting and since it will receive the benefits of a more efficient utilization of the capacity of Transwestern's system as a result of the proposed sale to Cities, its objections to such moratorium and to the proposed sale on that score, appear to be ill founded. Furthermore, under such circumstances, Pacific Lighting cannot be deemed to be a victim of any undue discrimination because it is obtaining the protection to which the law entitles it. *F.P.C.* v. *Sierra, etc., supra.*

Cost Allocation

The straight line rate of 20.0 cents per Mcf Transwestern proposes to charge Cities for all gas delivered has been tested by the different cost allocation methods advocated by Transwestern, CIG, Pacific Lighting and the Staff of the Commission.[12] Generally speaking, the conflict among the parties as to an appropriate

[12] While the term "Cost Allocation" is generally applied to that process in which the total cost of service of a natural gas company is divided between the jurisdictional and nonjurisdictional customers, it is used herein to refer to the division of total costs between two jurisdictional customers.

rate level for the sale to Cities concerns the proper method of allocating, as between Pacific Lighting and Cities, the costs of service on the West Texas and Panhandle laterals and the branch lines extending therefrom to the gathering areas where gas is purchased from producers. There is no disagreement among the parties that the costs associated with the main line facilities extending westward from Roswell station to California are to be assessed in their entirety to Pacific Lighting.

Transwestern maintains that the total costs of facilities in the joint production area should be considered to be transmission costs and, as such, apportioned between the two customers on the basis of the respective miles of haul to each. Pacific Lighting and the Staff contend that the cost of many of these facilities are improperly included in the transmission function because they are costs incurred in the production and gathering process.

Pacific Lighting's proposed cost allocation method, accepted by the Staff is based upon a functional approach. Thus, Transwestern's facilities are categorized as performing within a "gas supply" or a "transmission" function. The "gas supply" costs are then volumetrically allocated, while "transmission" costs are allocated on a mileage basis weighted by an adjusting factor based upon the "relative capacity" of the various sizes of transmission lines, a procedure which would ascribe higher unit costs of transportation to smaller diameter lines.

The division into gas supply and transmission functions as applied by Pacific Lighting leaves certain of the lines, obviously transmission, out of the transmission category. Such a result is inescapable in this type of classification since there is no clearly defined criterion by which a facility can be classified as performing solely a gas supply function as opposed to a transmission function. This would be particularly true with respect to substantial branch lines. Furthermore, Pacific Lighting's introduction of a 2.6 exponent designed as a theoretical basis for weighting transmission costs to reflect varying sizes of pipe adds an additional uncertainty to the method advocated. In the absence of appropriate Commission precedent, no firm basis for the adoption of this complicated and highly theoretical method is manifested and CIG, in effect, apportions all the joint use cost between the two customers in proportion to each customer's peak and annual use responsibility without modification by the use of a miles factor.

There are further differences among the parties with respect to the classification of costs between the demand and commodity components of cost, the standards for which were initially developed by the Commission in *Atlantic Seaboard Corporation, et al.* (11 FPC 43), and *Northern Natural Gas Company* (11 FPC 123).

In analyzing the divergent methods of cost allocation advocated by the respective parties involved herein, it must be borne in mind that the basic problem to be resolved in the instant certificate proceedings under Section 7 of the Act does not require a final adoption of a cost allocation method which Transwestern must apply in apportioning costs between its jurisdictional customers in order to comply with the provisions of the Natural Gas Act that all rates and charges must be just and reasonable and that such rates and charges must not be unduly discriminating or preferential. Such determination is properly reserved for actions brought under Sections 4 and 5 of the Natural Gas Act, see *South Georgia Natural Gas Company*, 22 FPC 211, 214, cited with approval in *Northern Natural Gas Company*, 28 FPC 1155, 1163, and no reason appears for tying such essentially denominated rate matters to a certificate proceeding.

In any event the adoption of a cost allocation method for the restricted purposes of this proceeding does not and certainly is not intended to pre-empt or

preclude a different result in a proper proceeding where the necessary facts and circumstances are fully explored and established on the record. In any such proceeding, the Commission could adopt some compromise between the cost allocation formulae espoused by the various parties herein based upon the resolution of issues which were not and could not be fully tried on the merits in this certificate proceeding.

It is recognized that there are certain advantages and disadvantages with respect to each of the varying and conflicting allocation methods proposed in this case and that none of these methods is free from problems or difficulty. Arguments can be made for and against each of the methods suggested. Each of such methods has infirmities which in themselves do not condemn them as the improper method. Since the question of allocation of costs involving as it does judgment based upon a myriad of facts, is not an exact science and cannot be resolved by any slide rule method, the selection of the method to be used should be bottomed on fairness and the exercise of judgment. *Tennessee Gas Transmission Company*, 27 FPC 202, 207. As a guide, the Court in *Colorado Interstate Gas Company* v. *F.P.C.*, 209 F. 2d 717, 726, referring to the basis for such selection, suggested the following criteria, "It should not be so complex as to require long tedious studies involving speculations and assumptions but rather should be a method which can be expeditiously applied to facts quickly ascertainable."

For purposes of the instant certificate proceedings the Mcf mile approach which uses system-wide average costs and allocates such costs on the basis of mileage constitutes a generally reasonable method of cost allocation between Transwestern's jurisdictional customers, Cities and Pacific Lighting. Since in the Transwestern system the joint use facilities have no extreme variations in load factor or load density, the distance factor can, by the Mcf mile method, be applied directly to system-wide costs to provide an allocation which gives some reasonable effect to the increase in the cost of transmission on each arm of the joint use facilities without disregarding the fact that the facilities in each arm are parts of an integrated system. *Cf. Tennessee Gas Transmission Co.*, 27 FPC 202. The reasoning of the Commission in *Northern Natural Gas Company*, 14 FPC 11, affirmed 236 F. 2d 372, and cited with approval in *Tennessee Gas Transmission*, *supra*, p. 209, would appear to be peculiarly applicable in the instant case. Thus, the Commission there stated, "Since in our view of this record there are no such circumstances present to counterbalance the distance factor, we conclude that the distance of transmission required to effect delivery at the various points of sale by Northern reflects with reasonable accuracy the relative cost of providing service to its customers." 14 FPC at p. 24. The same principles, with slight variations, can be applied in the instant case in connection with the cost allocation suggested by Transwestern.

Thus, it is appropriate for the purpose of testing the propriety of the rate of 20 cents per Mcf Transwestern proposes to charges Cities, to consider as the cost of transmission facilities all the costs of the lines and compressor stations shown in Exhibit 62, Schedule G, pages 2 and 3, including the two major lateral lines as well as the branch lines extending therefrom to the producing areas. The testimony of record shows that these facilities do not include gathering lines in the producing areas used in collecting gas from various sources and bringing these supplies to a common entry point into the high pressure pipe line system. The extent of the gathering lines is not ascertainable with exact precision and is not required in this certificate hearing. The record is adequate to permit determination, within reasonable limits, of the cost of service functionalized in accordance with Commission practice. Exhibits 135 and 137 of Pacific Lighting, adopted by the Staff for its purposes, contain de-

tailed costs of the major lateral lines by pipe size. Using these unit costs of lines as developed from this source and projecting the cost data to other sized lines deemed to be transmission facilities and further relating other costs to such lines in proportion to the investment in the lines, it is concluded that the investment in transmission facilities classified as gas supply cost is approximately $33,287,900, leaving a balance of gas supply costs of $10,106,900 assignable to the production and gathering function. If the functional costs of service are classified in keeping with the *Seaboard* opinion, *supra*, and apportioned between the two customers with transmission costs modified to reflect the actual miles of haul, it is found that the costs properly assignable to the Cities' sale by Transwestern are 20.48 cents per Mcf at 14.73 psia. This price exceeds the proposed Transwestern rate by only 0.48 cents per Mcf, or 2½ percent; a negligible difference in a proceeding such as this where there is lacking the precise details of costing that would be appropriate in a proceeding under Section 4 or 5 of the Natural Gas Act.

Arkla's Project

As indicated, *supra*, Arkla in Docket No. CP64–125, the docket essentially involved in the comparative aspects of these proceedings, proposes to construct facilities required to accomplish the sale of an average of 50,000 Mcf of gas daily to Cities until December 31, 1965, and 100,000 Mcf daily thereafter at a unit price of 22.5 cents per Mcf. The presentation made by Arkla designed to support the established criteria for issuance of a certificate of public convenience and necessity is based upon what can be called an incremental basis. The Staff adopting the same view espoused by CIG in these proceedings contends "that Arkla's failure to present a full system-wide showing as to markets, supply, costs, revenues, and other system-wide data makes it impossible to realistically determine on what basis, if any, a certificate of public convenience and necessity could be issued to it." See br. p. 36. Arkla attempts to justify its admitted "incremental" approach on the ground that such approach satisfies the requirements of the Commission's Regulations, paragraph 157.14(a)(10), (11), (16) with respect to gas supply, data, markets, revenues, expenses and income. Furthermore, Arkla, while stating that it does not contend that the Staff has waived any failure to comply with the rules, alleges that it was never notified either of any deficiency in its application or in the supporting exhibits. It concludes that since its application was not deficient when tendered for filing, and is not now deficient, and having proved the facts set forth in its application it is entitled to certification.

Markets

Arkla's market for the sale and transportation of the additional volumes of gas involved in Docket No. CP64–125 is established by the contract between Cities and Arkla dated as of October 1, 1963. Pursuant to this agreement, Arkla will sell and deliver to Cities an annual average of 50,000 Mcf per day at a 75 percent minimum annual load factor through 1965 and an annual average of 10,000 Mcf per day at the same load factor for the remainder of the 20-year term of the contract. Cities' needs and ability to take these volumes of additional gas have been established.

Feasibility

No issue was raised either with respect to the engineering feasibility of the facilities to be constructed or to Arkla's ability to finance the proposed construction involved in Docket Nos. CP64–125 and CP62–219. The total cost of the facilities required by Arkla to effectuate the proposed sale to Cities and to bring Arkoma gas to its own Arkla-Tex system amounts to approximately

$26,000,000, including the $12,400,000 cost of the Arkoma facilities already constructed. $7,300,000 of this total amount is accounted for by the construction costs of the proposed 20-inch lateral from the Arkoma line to Jane, Missouri, for the Cities' sale for which authorization is sought in Docket No. CP64–125, and $7,020,750 for the additional facilities requested in Docket No. CP62–219. The financing will be obtained through short term bank loans and the subsequent issuance of first mortgage bonds. It is clear from the evidence adduced that Arkla can successfully finance said proposals and that the said facilities are feasible from an engineering standpoint, can be constructed at a reasonable cost and are sufficient to make the proposed deliveries to Cities.

Gas Supply

In order to satisfy Commission certification requirements relating to gas supply and deliverability, Arkla has presented an admittedly incremental showing. Data was presented and testimony submitted concerning deliverability and availability of gas reserves dedicated to Arkla in the Arkoma Basin area. It was indicated that all of the proposed deliveries to Cities will come from the Arkoma area. The Staff takes the position that such showing does not afford an adequate record to determine whether the sale to Cities will or will not jeopardize service to existing customers and that Arkla has failed to sustain its burden of proving that its present dedicated gas reserves and gas deliverability will enable it to perform the service proposed without jeopardizing existing service, and that therefore its application in Docket No. CP64–125 should be denied. (*Northern Natural Gas Company*, 30 FPC 859, 862, 863). While the Staff indicates that Arkla may have shown an incremental source of supply sufficient to meet the needs of the proposed sale to Cities it makes no attempt to analyze the validity of such incremental showing.[14] CIG, on the other hand, does attack the basis for the reserve estimates and questions their validity.

It is evident that the studies of Arkla and CIG to determine reserve estimates were in basic disagreement with respect to the values of various factors used in calculating gas reserves. It must be recognized that the very nature of the calculation and estimation involved as well as the subject matter of determining reserves defies not only the use of exact computations but even any agreement among equally qualified experts. Accordingly, the Examiner does not propose to determine the relative capabilities of the expert witnesses in this proceeding and rejects Arkla's conclusion that CIG's witnesses' professional judgment is suspect, while its own witnesses' testimony, because of alleged greater experience and greater knowledge of the particular area, must be adopted. However, it does appear that the testimony adduced in connection with the reserve estimates revealed merely a difference in techniques used by the various witnesses rather than any substantial miscalculation. While there seems to be substantial merit to both presentations, it is concluded that the Arkla presentation, though recognized as quite optimistic, based as it was upon generally accepted factors will be accepted for the purposes of this proceeding. Thus, as of March 1, 1964, Arkla indicated a total dedicated acreage of 1.4 million acres in the Arkoma Basin containing total claimed proven reserves of 1.4 trillion cubic feet. These alleged proven reserves, based on estimated annual deliveries of 36,668,000 Mcf to Cities and 34,862,000 Mcf to Arkla's system, result in the reserve life index of 20

[14] Upon oral argument Staff counsel did, however, assert that Arkla had increasing reserves on its hands and that while not knowing what the market needs of the Ark-La-Tex system were from the Arkoma Basin, that it would be to the benefit of the system's customers to accomplish a sale to Cities in order for Arkla to stay on top of the rapidly developing reserves. (Tr. 6708).

years and the deliverability life of 14 years for Arkla's requirements from the Arkoma pipeline system; that is, the sale to Cities and the indicated deliveries to the Arkla-Tex system to be made from that area.

While Arkla's estimates are undoubtedly colored by unduly optimistic forecasts there seems to be no reason to doubt that the daily quantities required for sale to Cities under the certificate sought in the instant proceedings could be produced as indicated, especially in view of the fact that the Arkoma Basin area was characterized as the newest, largest and most desirable developing source of gas in the entire mid-continent area. However, there is no basis upon which a determination could be made as to the adequacy of the reserves or deliverability based upon the requirements of the remainder of the Arkla-Tex system. Arkla has asserted that such showing is unnecessary.

Arkla's presentation admittedly an incremental showing with respect to gas supply is based upon the alleged requirement of "present Commission policy" as reflected in Order No. 279, 31 FPC 750, Section 2.61(c) of the Rules of Practice and Procedure. Furthermore, it is contended that such showing is directed to the regulatory discretion of the Commission under appropriate circumstances to accept an incremental showing as sufficient to support the incremental requirements for which authorization is sought in certificate proceedings citing *Tennessee Gas Transmission Company*, Docket No. CP64–165, May 26, 1964, 31 FPC 1290.

The basis for the incremental showing by Arkla must be rejected. There is no need to resolve the issue raised with respect to adequacy of gas supplies by a determination of theoretical concepts or broad aspects of the question of gas supply reserves. The issue can and should be resolved in accordance with the pragmatic approach adopted by the Commission in *Northern Natural Gas Company*, 30 FPC 859, 873. As restated the issue resolves itself into a determination as to whether Arkla has shown a sufficient gas supply potential to meet the additional gas requirements of the service proposed for Cities while at the same time not jeopardizing the supplies of the rest of its system. Since Arkla has not submitted any evidence establishing the current annual requirements of the Arkla-Tex system it becomes virtually impossible to ascertain whether its gas reserves are adequate to meet the anticipated requirements of its expanded markets as proposed without jeopardizing the rest of such system. Accordingly, notwithstanding any liberalization of deliverability standards, no basis appears for a finding that Arkla has satisfied the Commission's requirements.

Nor does Order No. 279, Section 2.61(c) of the Rules of Practice and Procedure cure the defect. The notice of the proposed rulemaking involved indicated quite clearly that the question of reserves remains an issue in each certificate proceeding. However, the adoption of the new procedure was designed to expedite completion of certificate cases by having the annual report incorporated by reference to satisfy the burden of proving the adequacy of reserves and deliverability. Furthermore, the notice indicated that the test for determining the adequacy of reserves would be a flexible one and the determination would be based on all the relevant facts concerning the particular company including the information furnished in the annual report (referring to Form 15). Not only was there no incorporation by reference of the Form 15 to satisfy the burden of proving the adequacy of reserves and deliverability in the instant proceedings but the said Form 15 was, in fact, not filed until September 2, 1964, or approximately a full month after the hearings in these proceedings were concluded. Certainly, the results sought to be achieved by the filing of the Form 15 could not redound to Arkla's benefit in this proceeding.

It appears, therefore, that contrary to Arkla's position taken herein, its gas supply showing falls far short of compliance with the most recent directives of

the Commission and constitutes a substantial failure in its proof of the prerequisites for the issuance of a certificate of public convenience and necessity. Furthermore, no adequate condition could be imposed requiring such compliance as a sine qua non for the issuance of such a certificate.

Notwithstanding the above conclusion common fairness requires consideration of Arkla's proposal on a comparative basis under the circumstances involved herein. Its Form FPC 15 was filed after the completion of these hearings in these proceedings. There apparently was no suggestion by Staff during the prehearing or hearing stage of these proceedings indicating that it would take the position that the lack of a system-wide showing of gas supply would be regarded by it as a fatal defect in Arkla's application excluding it from consideration on a comparative basis. If the Staff were going to rely on such position the better procedure, it seems, would have been to forewarn Arkla to give it the opportunity either to make such showing, or to take the calculated risk involved in relying on the type of presentation made. *Cf. American Louisiana Pipe Line Company, et al.* v. *F.P.C.*, 344 F. 2d 525 (CADC–1965). In any event, the consideration of Arkla's proposal on a comparative basis herein will facilitate conclusion of these proceedings in the event Arkla is given the opportunity to cure the defect by filing the required proof of an adequate gas supply as hereinafter directed.

Cost Presentation

The reasons for the infirmity of Arkla's incremental gas supply showing, which is herein deemed to be insufficient to satisfy the requirements of the Commission, cannot be said to apply to its incremental cost presentation.

Arkla's cost allocation presentation it claims, supports the rate levels proposed to be charged for the service to be rendered to Cities. Admittedly, this cost study is an incremental presentation based on the costs of gas purchased in the Arkoma Basin plus the costs of transmitting this gas to Arkla's Dunn compressor station, at which point the proposed Jane lateral extending northward to the Cities' line at the Arkansas-Missouri border, will connect with the existing Arkla line which carries gas in a southeasterly direction to the Hot Springs-Little Rock load centers. The Arkla cost study allocates the costs of gas from the Arkoma fields and the transportation cost to Dunn between Cities and the Arkla system; to the cost thus allocated to Cities there are added all the direct costs associated with the Jane lateral for the purpose of measuring the proposed rate to Cities.

The Staff does not agree with Arkla's incremental cost showing preferring instead a system-wide or rolled in cost method.[15] It is claimed that an "over-all" system cost of service is required for the integrated Arkla-Tex system, including the facilities requested here in Docket Nos. CP62–219 and CP64–125, which cost must then be allocated between Cities and the Arkla system.[16]

It is true that Section 157.14(a)(18)(i) and (ii) of the Commission's Regulations provides that an applicant seeking a certificate shall submit costs studies, including an "over-all" cost study and other data which support the rate for the proposed service. In this connection applicant is required to submit a statement which "* * * shall clearly show whether such (new) rate results from negotiation, cost-of-service determination, competitive factors or others * * *." Thus,

[15] It is well to note that neither the cost allocation study presented by Transwestern (Ex. 137) nor that introduced by CIG (Ex. 146) are true "system-wide" allocations. In each study the applicant segregated the cost of certain facilities deemed to be used exclusively for customers other than Cities, in a manner similar to that employed by Arkla.

[16] Staff would also assign the $7,300,000 cost of the Jane lateral directly to the Cities' sale.

an applicant is not bound to a "system-wide" cost determination in establishing a new rate schedule but will make various types of studies to determine the price at which gas will be sold under the specific conditions of time, place, volumes, etc., in the sale under consideration.

The Examiner concludes that the evidence and testimony of the Arkla witnesses which, in effect, was supported by Staff Exhibit 139, establishes the propriety of the incremental price proposed for the sale to Cities under the terms and conditions contained in the agreement between Arkla and Cities except as herein noted. It is further concluded that in the peculiar circumstances here presented a "system-wide" cost of service for the Arkla-Tex system would be of questionable value in making a determination of a proper rate level for the new type of service to be rendered. In the first place, Arkla is predominantly a distribution company differing from the usual pipe line company in many ways. It is composed of many discrete parts which apparently have their own separate gas supply sources. The main Arkla-Tex system has multiple sources of gas supply in the states of Texas, Louisiana, Oklahoma and Arkansas adjacent to load centers. Gas for this system is purchased at the wellhead and in the field from producers, at the tail gate of gasoline extraction plants, from pipelines, as city gate purchases, as well as bulk purchases for system supply; in addition, the company produces substantial quantities of gas from its own holdings. Until the time of this proposal, Arkla had but nominal jurisdictional loads all of which were field sales; the company was, and is, primarily in the business of retail distribution. Arkla, prior to this time, had no schedules of rates offering interstate gas to pipelines for resale. The rate now proposed is not a generally applicable rate for similar service from any point on the system but rather a rate designed under consideration of the fact the Arkoma Basin has been tapped for general system supply, as authorized by this Commission at Docket No. CP62-219, and there is, it is claimed, available from this source sufficient quantities of gas above company requirements to make the sale to Cities.

Under such circumstances, the problems involved in making an appropriate "system-wide" cost study are formidable and of such magnitude and complexity as to make such cost study of questionable value or worth in a certificate proceeding of this nature. Apparently, there has never been a detailed cost study of the facilities and operations of the Arkla-Tex system presented before this Commission. Certainly, this certificate proceeding is not the best forum for making such a detailed study.

The more reasonable approach under the subsisting facts is to determine whether or not the terms and price relating to the proposed sale to Cities are such that public convenience and necessity are served by the proposal without any concomitant burden thereby being placed upon the consumers served by Arkla.

The following table establishes Arkla's margin-rate over cost of 1.10 cents per Mcf:

TRANSWESTERN PIPELINE COMPANY, ET AL., DOCKET NO. G-20464, ET AL. ALLOCATION OF COST OF ARKOMA FACILITIES OF ARKANSAS LOUISIANA GAS COMPANY (14.73 PSIA) DERIVED FROM EXHIBITS 73 AND 74

Arkoma facilities only—gross investment:	*Amount*
Line "O"	$9,320,900
Compressors	2,919,800
Gathering facilities	6,508,100
Total	18,748,800

Jane lateral—gross investment	$7,289,100
Gross investment	26,037,900
Depreciation:	
Joint facilities—3d year	1,629,000
Jane lateral	765,300
Net investment—joint facilities	17,119,800
Net investment—Jane lateral	6,523,800
Total net investment[1]	23,643,600
Deliveries at Dunn for Cities—Mcf per year	36,668,000
Deliveries at Dunn for Arkla—Mcf per year	34,862,000
Total	71,530,000
Deliveries to Jane for Cities—Mcf per year	36,302,000
Fixed costs on joint facilities[2]	$2,568,000.0000
Fixed costs per Mcf delivered to Dunn	.0359
Fixed costs on Jane lateral[2]	978,570.0000
Fixed costs per Mcf on Jane lateral	.0269
Unit cost per Mcf at Dunn adjusted for losses	.0363
Fixed cost on Jane lateral	.0269
Unit cost per Mcf—produced and purchased gas	.1508
Total unit cost to Cities per Mcf	.2140
Rate to Cities	.2250
Margin-rate over cost	.0110

[1] Working capital assumed to be offset by Federal Income Tax advance collections.

[2] The figure 15.0% closely approximates the amounts calculated from Arkla's Ex 74, Schedule 1, which shows 3d year figures—Return—6.34%; Income Taxes—3.60%; Depreciation and Operating Expenses 4.79% or a total of 14.73%.

Thus, the costs per year of the Arkoma facilities including Dunn allocable to the Cities' sale equal 3.63 cents per Mcf calculated on the basis of annual deliveries at Dunn of 36,668,000 Mcf and 34,862,000 to Cities and to the Arkla system, respectively. The annual costs of the Jane lateral, wholly assignable to Cities, amount to 2.69 cents per Mcf. The resultant costs allocable to Cities, exclusive of purchased gas costs, total 6.32 cents per Mcf. Arkla assigned a cost to the Cities' sale of 15.0 cents per Mcf for gas purchased in the Arkoma Basin, while Staff in Exhibit No. 139 used a cost of 15.23 cents for produced and purchased gas for the Arkla system as a whole, and we have used a cost of 15.08 cents per Mcf as a result of the calculations made in the accompanying table.[17] Using any of the foregoing figures the proposed rate price of 22.5 cents per Mcf is more than sufficient to recover the allocable costs of the proposed service. It seems clear that even though there is a question as to Arkla's incremental cost allocation method a proper two-part rate averaging the contract price at 100 percent load factor can be designed.

[17] It seems reasonable to conclude that the cost of gas for this sale should more properly be based on the costs of purchased and produced gas for the Arkla-Tex system. Since this approach would eliminate certain of the high-cost, city gate purchases for isolated systems, and thus lower the costs for the sale to Cities it appears that the figures used in the above calculation prove to be more than reasonable under the circumstances.

In addition to the authorization sought in Docket No. CP64–125, Arkla seeks authorization to amend its certificate in Docket No. CP62–219 in order to increase the size and capacity of its Arkoma line. The increased capacity is allegedly required to enable Arkla to meet its obligations to handle the increased volumes of gas which it has contracted to purchase from producers in the Arkoma area. The facilities sought are required in order to permit Arkla to perform the service to Cities proposed in Docket No. CP64–125. However, Arkla contends that the facilities are absolutely essential to the proper operation of its system whether or not the proposed sale to Cities is authorized herein.

While there appears to be no serious question in connection with either the financing, or feasibility, of the facilities, or with the fact that increased volumes have been contracted for in the area in question, no showing has been made, absent the proposed sale to Cities, for the need, market-wise, for the requested increase in pipeline capacity. No such showing was made apparently because no alternative for the additional sales, absent the proposed Cities' sales, had been contemplated. In the absence of such showing it is impossible to determine whether the requested increased capacity would be required by the public convenience and necessity.

It is Staff's position "that should Arkla's application in Docket No. CP64–125 be denied the Commission should postpone action on Arkla's motion to amend its certificate in Docket No. CP62–219 until such motion is supplemented with a deliverability and market showing justifying that the requested increased capacity of its Arkoma line is in the public interest." (Br. p. 35.) In view of the determination made herein with respect to the reserve showing and deliverability required of Arkla in Docket No. CP64–125, it appears that if the showing to be made therein satisfies the requirements of public convenience and necessity, the authorization of the sale to Cities would be sufficient to support the application to amend in Docket No. CP62–219. In any event, however, it appears that the interests of all parties concerned would be served if, the procedure adopted with respect to its reserve and deliverability showing in Docket No. CP64–125 be adopted herein and Arkla be given the opportunity to file proof of the required market showing and deliverability in Docket No. CP62–219 with the Commission making known such desire and stating fully the nature of the evidence it wishes to present.

CIG's Application

Gas Supply

In support of its gas supply presentation CIG introduced into evidence copies of all its gas purchase contracts (Exhibit 99) and a system-wide showing of its total gas reserves and availability (Exhibit 97). The evidence adduced indicates total system reserves of 6,643,975 MMcf at 14.73 psia, resulting in an 18-year total reserve life index based on its estimated 1966 requirements of 369,078,589 Mcf, including the proposed sale of 200,000 Mcf daily to Cities. CIG has further demonstrated that such total system gas reserves are sufficient to meet its proposed service to Cities without jeopardizing the reasonable annual and peak day demands of existing customers. *Northern Natural Gas Company*, 30 FPC 859. Furthermore, CIG has in accordance with previous Commission standards established that there is sufficient deliverability to meet its projected requirements including the proposed sale to Cities for a period of 13 years commencing January 1, 1964. See *Midwestern Gas Transmission Company, et al.*, 21 FPC 653; *Northern Natural Gas Company*, 22 FPC 164.

The Staff takes the position that the above showing meets the requirements of deliverability life based upon a showing of total reserves as required by Section 157.14(11) of the Regulations. The evidence supporting the attacks upon

CIG's showing of adequate gas supply as referred to above is not substantial enough to require any finding to the contrary.

Facilities and Engineering Feasibility

CIG's proposed facilities including the 24-inch line to Blackwell, the point of proposed delivery to Cities, is capable of delivering an average volume of 200,000 Mcf and a maximum volume of 214,000 Mcf per day at the pressures required by Cities. Notwithstanding the attempts to attack the adequacy of design of the facilities or of the related gathering systems, it is found that the facilities are adequate and can deliver the volumes as proposed. Furthermore, it is found that CIG is able to finance the facilities proposed to serve Cities as well as its Rocky Mountain customers.

Economic Feasibility and Market

CIG's testimony adduced at the hearing including the exhibits concerning revenues, expenses, operating income, cost of service, and allocation of proposed rate, establishes that CIG would earn its rate of return from revenues computed using its presently effective rates and the proposed rate to Cities of 22.5 cents per Mcf at a 100 percent load factor. The operational year of 1966 used by CIG for cost-of-service purposes is found to be in accord with the requirements of Section 157.14(18)(ii)(a) of the Commission's Regulations for determining the proposed rates to Cities since it reflects the use of the first full year of proposed operations to determine a rate in a certificate proceeding.

In support of its market showings CIG relies upon Cities' demonstration of its need for the volumes of gas, the sale of which CIG seeks authorization in these proceedings. In support of its demonstration CIG cites *Kansas Pipe Line & Gas Company*, 2 FPC 29, 45, as authority for the proposition that the absence of a contract with Cities to serve the volumes sought herein does not militate against issuance of a certificate to it. The Staff, apparently adopting this view, concludes that Cities has on the record established a reasonable market demand on its system requiring an additional supply of gas amounting to 200,000 Mcf per day and that CIG's proposal to sell and deliver gas to Cities should be certificated.

While both CIG and the Staff apparently take the position that Cities' presentation of the need for the volumes sought to be authorized herein is sufficient to satisfy CIG's market showing neither makes mention of the fact that Cities has in no uncertain terms stated that it will not and cannot accept the CIG proposal and that the absence of the requisite market accordingly constitutes a fatal defect in CIG's presentation. See *Midwestern Gas Transmission Company*, 22 FPC 775, 794.

While there may be some question as to whether Cities' apparently adamant position might prove to be as irrevocable as indicated, it does appear that it was incumbent upon CIG to make some showing that there existed in the territory proposed to be served customers who can reasonably be expected to use the additional volumes of natural gas during the period in question. See *Kansas Pipe Line & Gas Company*, 2 FPC 29, 45. The record, however, is entirely barren of any evidence indicating that on the basis of experience in similar territory or otherwise there are reasonable grounds for anticipating that any such customers will be attached to CIG's proposed facilities.

Furthermore, CIG's proposal, relying as it does solely upon the proposed sale to Cities could not be certificated in these proceedings without imposing a condition in Cities' certificate compelling Cities to enlarge its facilities in order to receive the volumes of gas which CIG proposes to deliver at Cities' Blackwell station and to transport such gas to the market areas on Cities' system where they are needed. The construction of such facilities would allegedly entail expenditures estimated

at approximately $7,677,500, or $1,831,400 more than the estimated total of $5,846,100 for the combined facilities required to accomplish the same results under the combined Arkla-Transwestern proposal.[18] Not only would this requirement necessitate the investment of capital associated with the proposed construction of the additional facilities but would also define the extent of the investment. The decision on matters of such nature are generally reserved for management; *Central West Utility Company* v. *F.P.C.*, 247 F. 2d 306, 311; *Panhandle Eastern Pipe Line Company* v. *F.P.C.*, 204 F. 2d 675; and the authority of the Commission to order the development of such a project is more than doubtful. *Michigan Consolidated Gas Company* v. *F.P.C.*, 246 F. 2d 904, 910.

While the Commission may in a proper case substitute its judgment for that of management where the public interest requires, no sufficient showing has been made herein requiring the exercise of such judgment in connection either with the desirability or feasibility of the additional facilities which would be required by Cities. *Cf. Natural Gas Pipeline Company of America, et al.*, 16 FPC 80, 83. Thus, Cities' position to the effect that it would not, and could not under its application in these proceedings, accept the CIG proposal, while not altogether disqualifying CIG cannot be totally disregarded. Needless to say, without the proposed sale to Cities the CIG project being constructed solely for that purpose could not and would not be economically feasible.

Failing to adduce any evidence supporting any possible alternative to the proposed sale to Cities, CIG must be found to have failed to sustain its burden of establishing that its proposal is either practical or economical and that the authorization of the construction of the facilities sought in these proceedings are required by the public interest and convenience. *Cf. Panhandle Eastern Pipe Line Company*, Docket No. CP64–18, initial decision May 20, 1964, modified and adopted, order of the Commission July 24, 1964, 32 FPC 349.

In addition to the facilities proposed to be constructed in connection with the proposed Cities' sale CIG also proposes abandonment of its existing Colorado Springs to Denver 20-inch pipeline and the replacement thereof with a modern pipeline system. It was amply demonstrated, and there is no evidence to the contrary, that the 20-inch line between Colorado Springs and Denver, Colorado, has become obsolete and is hazardous to operate. The proposed replacement would not only allegedly eliminate the potential hazard but would also result in more efficient and economical operation. Accordingly, that portion of CIG's application requiring authorization for abandonment of its existing 20-inch line between Colorado Springs and Denver and the replacement thereof by a 58.9-mile new high pressure line should be granted.

Notwithstanding the conclusion contained above to the effect that CIG has failed to establish the minimal requirements for certification of its proposed project, its application has not been foreclosed from consideration in connection with the other applications since the existence of a more desirable alternative is one of the factors entering into the determination of whether the other proposals would serve the public convenience and necessity. While it may be true that the Commission would not compel Cities to enter into a contract with CIG in the circumstances herein involved, it must be recognized that if it were determined that the CIG project reflected a more desirable alternative in serving the public convenience and necessity, the Commission could reject the other proposals after consideration of their merits in connection with such alternative proposal. *Cf. City of Pittsburgh* v. *F.P.C.*, 237 F. 2d 741, 751. Accordingly, comparative consideration of the CIG proposal along with the other proposals is required

[18] These figures are based on delivery of 200,000 Mcfd. If CIG were to deliver the 233,000 Mcfd proposed under the combined Arkla Transwestern proposals, the difference in costs would rise to $4,111,400.

in order to determine whether the public convenience and necessity requires certification of such other proposals.

Comparative Aspects of the Various Proposals

The objective to be achieved in this consolidated comparative certificate proceeding requires the assessment of the various proposals against the backdrop of public convenience and necessity, keeping in mind the salient fact, the overriding consideration that the consumer is entitled to the lowest possible reasonable rates consistent with the maintenance of adequate service. *The Atlantic Refining Co.* v. *Public Service Commission of New York*, 360 U.S. 378. In realizing this objective, however, we must not overlook the fact that of prime importance to the parties involved herein is the adoption of the most desirable, soundest, most economical and enduring solution to the urgent present and long-term supply problem posed by Cities' application. *Natural Gas Pipeline Company of America, et al.*, 16 FPC 80, 82. As a corollary proposition, it is also incumbent upon us to determine whether such problem can be reasonably and adequately solved by any program more in the public interest than that here proposed by Cities itself. In connection with the resolution of these propositions considerable weight should be given to the effect of initial contracts which have been freely negotiated between willing sellers and buyers in a competitive market and which may well reflect the value of the gas in the particular market and under the circumstances of the particular transaction more accurately than any other evidence which may be adduced. *Trunkline Gas Company, et al.*, 21 FPC 704, 717, affirmed 281 F. 2d 42.

Of prime importance in determining the relative merits of the competing systems is the consideration of the costs involved, and whether the granting of certificates authorizing the various projects at the rates and terms involved would be in the public interest since it is fundamental that all other factors being equal the public interest would not be served in this case if the price to be paid by Cities to one applicant is in excess of that which it would pay if it obtained its gas supply from another. *Cf. Kentucky Natural Gas Corporation* v. *F.P.C.*, 4 FPC 1043, aff'd 159 F. 2d 215. In this connection it might be significant to note that Gas Service Company, Cities' largest customer, receiving approximately 97 percent of its gas supply from Cities and purchasing approximately 80 percent by volume of Cities' total jurisdictional sales and accordingly rightfully concerned over Cities paying the lowest over-all price for the gas involved, urges certification of the Arkla-Transwestern proposal on the ground, among others, that " by any standard of measurement the Arkla-Transwestern projects provide the lowest over-all cost of gas to Cities." (Gas Service Brief, p. 10). An examination of the cost to Cities of the respective proposed sales bears out Gas Service's conclusion.

In analyzing the various costs involved, it must be kept in mind that in order to be realistic and meaningful such analysis not only must take into consideration the proposed rate and the cost of transporting the gas from the proposed delivery points to the points of distribution but also the actual heating value of the gas. It is generally agreed that the value of natural gas to the consumer varies directly with its heat content measured in Btu's and the thermal unit cost of transporting natural gas varies inversely with such Btu content. The transportation cost will inevitably be affected by such Btu content as well as other factors and the utilization of high Btu content gas results in a saving with respect to the transportation cost of heat energy per Mcf. See *Sunray DX Oil Company*, etc., Docket No. G–4281, *et al.*, decision of Examiner, 33 FPC at 1240.

A significant comparison of the cost of the respective sales to Cities, and eventually to the ultimate consumer, can be gleaned from the following table:

Comparison of cost for proposed sales to Cities Service Gas Co., Docket No. G–20464, et al.

	CIG				Transwestern				Arkla			
	Contract rate		Cost of service		Contract rate		Cost of service		Contract rate		Cost of service	
1. Cost per Mcf at 100% L.F., 14.65 psia...cents	22.50		[1] 22.46		[2] 19.89		[3] 20.37		22.50		[4] 22.56	
2. Guaranteed minimum thermal content of gas, Btu per cubic foot	963		963		1,012		1,012		975		975	
3. Delivered thermal content of gas, Btu per cubic foot		980		980		1,103		1,103		992		992
4. Cost per million Btu at 100% L.F.....cents	23.36	22.96	23.32	22.92	19.65	18.03	20.13	18.47	23.08	22.68	23.14	22.74
5. Cost of transporting gas from proposed delivery points to Cities' Grabham and Saginaw stations,[5] per million Btu...cents	[6] 2.04	2.00	2.04	2.00	3.01	2.76	3.01	2.76	1.24	1.22	1.24	1.22
6. Cost at 100% L.F. at Cities' Grabham and Saginaw stations,[5] per million Btu...cents	25.40	24.96	25.36	24.92	22.66	20.79	23.14	21.23	24.32	23.90	24.38	23.96

[1] Exhibit 101.
[2] Contract rate 20 cents per Mcf at 14.73 psia.
[3] As determined by Examiner, see *supra*, p. 683, adjusted to 14.65 psia.
[4] Staff exhibit 139.
[5] Transwestern's deliveries to Grabham and Arkla's deliveries to Saginaw stations.
[6] Exhibit 127: Cities' Reply Br., p. 19.

The cost-wise superiority of the Arkla-Transwestern proposal is clearly evident from an analysis of the above table whatever standard might be applied. Thus, the average price of 21.20 cents proposed in the applications of Arkla and Transwestern is 1.30 cents per Mcf less than that proposed by CIG. On the basis of proposed deliveries of 200,000 Mcf in 1966 and thereafter, the difference in cost between the two projects amounts to $2,600 a day or $949,000 a year.[19]

Taking into consideration the cost to Cities of transporting gas from the various delivery points to the locations on Cities' system for distribution to its major market areas and the minimum contract heating value of the gas, such difference in cost amounts to 1.91 cents per Mcf or $3,820 a day and $1,394,300 a year on a 200,000 Mcf daily basis.[20]

A realistic comparison of relative costs must place great stress upon the cost of the actual heat units delivered at the common points of the purchaser's system. If the proper weight is given to such factor, the combined Arkla-Transwestern cost would amount to 2.61 cents per Mcf less than that of CIG or $5,220 per day and $1,905,300 a year.[21]

In the face of the substantial over-all cost savings involved in the combined Arkla-Transwestern project as compared to the CIG project no adequate showing has been made upon which CIG's alternative project could be deemed to be in the public interest.

It is significant to note, moreover, that the lower over-all cost of gas to Cities provided by the Arkla-Transwestern projects, or for the 100,000 Mcf per day by Transwestern alone, is applicable whether the basis used be the contract price or the computed cost of service.

Another element, that must be included in connection with the cost considerations herein, involves the differences in initial capital investment required by Cities for facilities to move the proposed supplies of gas from the respective receiving points to its Grabham and Saginaw compressor stations.[22] Thus, the evidence indicates that Cities will require a total estimated capital investment of $5,846,100 in connection with the combined Arkla-Transwestern project while the CIG project will require a higher investment of $7,677,500 or a difference of $1,831,400. There is no justification in the record for requiring this increased investment.

In connection with the cost and investment involved in, and required by, the respective proposals, consideration should also be given to the nature and extent of the facilities which would be justified in satisfying Cities' needs. It appears that the CIG project goes to unsupportable extremes in size and cost to provide a competitive alternative for the Arkla-Transwestern proposal. Thus, cost of the facilities required by its project, including among other things the construc-

[19] The difference in cost when limiting the comparison to Transwestern's deliveries of 100,000 Mcf per day and an equal amount from CIG amounts to $2,610 a day and $952,650 a year.

[20] The comparable figures if only Transwestern's deliveries are compared to CIG's are 2.74 cents per Mcf or $2,740 a day and $1,000,100 per year computed on a 100,000 Mcf daily basis.

[21] If Transwestern's project alone is considered the difference would amount to 4.17 cents per Mcf or $4,170 per day and $1,522,050 a year.

[22] Notwithstanding CIG's attack upon using these stations as the key stations, using the previous Trans-Cities' proposal as a basis, the evidence in this proceeding indicates that Cities considered them as the key points on its system for supplying the increased market requirements in the greater Kansas City area and on the Joplin Springfield Southern Trunk System. In any event, in deciding this case we need only be concerned with the parties' proposals in their present form. *Natural Gas Pipeline Company of America*, 16 FPC 80, 82. There is no reason to doubt the management determination by Cities with respect to the key position of the Grabham and Saginaw stations as compared to the Blackwell delivery point.

tion of 275 miles of a new 24-inch transmission line and additional compressor stations as well as increasing already installed horsepower at other stations amounts to approximately $34,700,000. Contrasted with CIG's proposed major construction and expenditures is the total of approximately $15,000,000 required by the combined Arkla-Transwestern proposed project, consisting of $1,275,700 for the construction of a 10.8-mile extension of Transwestern's existing 12-inch line and other minor facilities and approximately $14,000,000 for Arkla's construction of a 103-mile, 20-inch transmission line and the enlargement and extension of facilities already certificated in CP62–219 in the Arkoma Basin area. The relative size and cost of the CIG project, more than double the combined cost of the Arkla-Transwestern project, strongly militates against its authorization in this comparative setting.

Gas Supply

While the evidence favoring the claimed superiority of the gas supply of the combined Arkla-Transwestern project over the CIG project is not entirely convincing, some weight should be given Cities' conclusion that its gas supply needs will be more adequately satisfied if the responsibility remains more directly in its own hands and in accordance with the contracts which it has negotiated with Arkla and Transwestern. Its judgment is to the effect that the Arkoma Basin area, the proposed source of the gas supply from Arkla, is the only new, reliable and active source of development of gas in eastern Oklahoma, and the most important new gas supply area in the entire mid-continent region. Cities will, in fact, be able to obtain substantial additional supplies from that area in the future, if the optimistic forecasts are fulfilled, to meet the increasing demands of its system.[22] Since Arkla's facilities are already in this area, it is in a most favorable position to acquire the uncommitted reserves in and adjacent to the Arkoma area which it appears are of sufficient magnitude to support Cities' optimistic forecast.

Transwestern's gas supply coming from potentially highly productive areas in western Oklahoma and the Texas Panhandle also provides a fresh source for Cities' needs. In contrast to these apparently fresh and new sources of supply, the supply area on which CIG primarily relies to supply its proposed sale to Cities, and from which the gas would physically come, is the West Panhandle area of Texas. While CIG takes the position that its "reserves and deliverability have the test of time and experience, whereas the reserve and deliverability estimates of Arkla and Transwestern, being largely applicable to new gas supply areas where experience is limited, are far less certain", (Brief p. 57) Cities seizes on the same factors as support for its conclusion that "there is nothing alluring about CIG's gas supply insofar as the West Panhandle field is concerned." Evidence adduced indicates that in excess of 60 percent of the original recoverable reserves in the field have been depleted; and that there is "no great chance for discovery of substantial volumes of gas overlying the West Panhandle field." (Tr. 4839). Furthermore, it appears that the proposed CIG pipeline would be tapping reserves from a field which already services Cities. The competitive position thus arising therein between Cities and CIG would certainly not redound to Cities' or its customers' benefit.

In this connection, neither the Kansas Commission nor the Municipal interveners have shown that a superior alternative gas supply is available to Cities on the basis of which it could meet either part or all of its alleged existing market requirements of an additional 200,000 Mcf per day.

[22] The contract between Cities and Arkla, Exhibit 72, Part 1, provides in part for negotiations in good faith for the purchase of the additional volumes.

It is further contended that Cities' customers are entitled to the benefits of the use of the unused capacity in Cities' 26-inch Oklahoma-Hugoton main pipeline and that the Arkla-Transwestern project provides for full utilization of that existing line resulting in more inexpensive and economic transportation of gas from source of supply to Cities' customers. On the other hand, the CIG proposal would require what is essentially a long duplicative 24-inch line to move the gas from the Panhandle field to Blackwell, resulting in a continuation of the excess capacity in the Cities' 26-inch main Oklahoma-Hugoton line without adding a new source of supply to the Cities' system.

In view of all the circumstances it is concluded that Cities' long-range over-all gas supply problem will be more adequately and satisfactorily solved, and the interests of its entire system and those of its customers would be better served under the Arkla-Transwestern project than under the CIG proposal. The fact that Cities will be able to obtain its gas requirements for the market area involved from Transwestern and Arkla with comparatively minor expenditures instead of by long pipeline from the competing pipeline, with attendant additional capital expenditures involved, from an area not as favorably situated, could justify a ruling in granting the certificate of public convenience to the former even though both are otherwise qualified applicants. *Cf. Kentucky Natural Gas Corp.* v. *F.P.C.*, 2 FPC 1043, affirmed 159 F. 2d 215 (CA6–1947).

Flexibility

Under the contracts with Transwestern and Arkla, a delivery of a maximum daily volume of 233,000 Mcf to Cities is proposed. Commencing in 1966 under the Transwestern contract (Exhibit 64) Cities is entitled to receive up to 100,000 Mcf per day at a price of 20 cents per Mcf at 14.73 psia. It may also purchase as little as an average of 90,000 Mcf per day at the same price. Under the Arkla contract, Exhibit No. 72, part 1, Cities, beginning in 1966, has an obligation to purchase an annual daily volume of 100,000 Mcf per day at a price of 22.5 cents per Mcf at 14.65 psia. Furthermore, Cities, as the occasion warrants, may purchase as little as 75,000 Mcf on any day or days and may purchase as much as 133,000 Mcf on any day or days. Cities stresses that this option affords it flexibility in its gas purchases which will at least in part constitute a valuable consideration to Cities and its customers, particularly during the six cold weather months each year. Under the CIG project, CIG is obligated to deliver 200,000 Mcf per day and could not physically provide service to Cities of a peak load of 233,000 Mcf per day unless additional construction not proposed in these proceedings were authorized. While CIG contends that its facilities are so designed that they can be readily and easily expanded to meet increasing market requirements of Cities not only in 1967 but in later years, and testimony indicated that CIG was willing to negotiate for greater annual flexibility, the speculative aspects of such negotiations cannot, of course, be evaluated or resolved in these proceedings. Finally, it is well to note that the make-up provisions are more favorable to Cities under the Transwestern-Arkla contracts than under the CIG proposal. Thus, under the Transwestern contract Cities has the right to receive gas paid for but not taken during a five-year make-up period; under the Arkla contract during a two-year make-up period; and under the CIG proposal only a one-year make-up period is provided.

Rate Stability

There can be no question that considerations of rate stability are entitled to great weight in determining the relative effects of competitive applications upon the public convenience and necessity.

It is claimed by Cities, in the instant proceedings, supported by Gas Service Company, that the Arkla-Transwestern project provides greater rate stability

than that afforded by CIG's proposal. Thus, Arkla's 22.5 cents per Mcf price, firm for the life of the contract except for increases above 15 cents in Arkla's gas purchase costs in the Arkoma Basin area, is predicated on the 15 cents per Mcf price,[24] contained in Arkla's existing contracts for gas purchased in the Arkoma area; and Transwestern's contract price of 20 cents per Mcf is predicated on average purchase gas costs of 16.7 cents per Mcf (Exhibit 64). Transwestern's sales contract provides for continuance of said rate for the first six contract years except for increases or decreases in purchased gas costs. The propriety of these rates is assailed on the grounds of discrimination and improper methods of cost allocation. With respect to the former the conclusion is unsupported by any substantial evidence and the condition attached with respect to the rate moratorium has the effect of eliminating the chance of injury to Transwestern's other customers. With respect to the cost allocation question, the Examiner has adopted a cost allocation formula which establishes the propriety of the rates. In an adequate proceeding either or both of these conclusions can adequately be tested. In any event, it is Cities' uncontradicted conclusion that "the fact that both the Arkla and Transwestern contract prices are predicated on current area ceiling gas purchase costs is the most important single factor requiring the conclusion that Cities can expect substantial price stability under these contracts." Brief, p. 35.

In contrast, it is claimed, Cities can expect substantial price instability under the CIG proposal. Not only is CIG's initial price of 22.5 cents to Cities at 100 percent load factor subject to increase to 22.95 cents per Mcf at the minimum annual load factor of 90 percent and to 27.55 cents per Mcf at a 75 percent load factor, but the effect of any increase in the price of CIG's company-owned gas would inevitably proportionately increase the cost of the gas component in its cost of service, increasing the costs allocated to the Oklahoma line and Cities' share thereof. While CIG cavalierly dismisses this possibility as "pure and undiluted speculation", apppraisal must be given the fact that the inclusion of substantial quantities of gas at prices less than 4½ cents per Mcf (the lowest cost gas on CIG's system), results in a low average cost of gas component in CIG's cost of service. If for any reason, whether the result of any Area Rate Proceedings now pending with respect to pipeline-owned gas in the area under question in AR64–1, or by purchase of new gas to replace existing but diminishing low cost supply, or otherwise, CIG's company-owned gas becomes priced at a figure higher than 4½ cents per Mcf at the wellhead, the effect upon CIG's cost of service and ultimately upon the purchase price to Cities could be considerable. It is calculated that for each one-cent increase there would be a corresponding $\frac{1}{10}$ of a cent increase allocated to the Oklahoma line. While it is true that Cities' cost of gas would also increase in the event of future increases in Transwestern's and Arkla's gas purchase costs the possibility of the latter increases are less remote than those of CIG. In any event, since our present inquiry is into the relative cost of gas to Cities of alternative proposals, *cf. City of Pittsburgh* v. *F.P.C.*, 237 F. 2d 741, 753, the distinct possibility of an additional allowance to CIG on its West Panhandle field production, coupled with its expressed intention to recover any increased allowance to the extent that is permitted to do so, would, it seem, justify a Cities' management decision determining the comparative superiority of the Arkla-Transwestern proposals in this proceeding.

In view of the conclusions reached above with respect to the essential elements of cost of gas, investment required, gas supply, flexibility and rate stability, and on the basis of the record compiled herein, it is concluded that the combined

[24] The applicable area initial price contained in the Commission's Statement of General Policy No. 61–1, as amended.

Arkla-Transwestern project, and that of Transwestern's alone to provide 100,000 Mcf per day to Cities, are decisively superior to that of CIG in satisfying the requirements of public convenience and necessity. Accordingly, it is found that the public interest would best be served by certification of Transwestern's portion of the proposed project as applied for in Docket No. CP64–104, notwithstanding the rejection of Arkla's applications for its portion of the project. This solution of the comparative aspects of this proceeding appears to be a practical one especially in view of Cities' representation that it will accept 100,000 Mcf per day from either Arkla or Transwestern and will make arrangements for the required additional 100,000 Mcf per day from outside temporary services until the remaining application is certificated.

Miscellaneous Dockets

Certain dockets, G–20464, CP60–49, CP61–63, CP61–243 and CP62–160, concerning transactions involving Transwestern have been consolidated in the instant proceedings. Because they were not directly involved in the consideration of the comparative merits of the competing applications in these proceedings, they have been treated independently without reference to the proposed sale to Cities.

In the lead docket No. G–20464, the Presiding Examiner in the initial proceeding denied Transwestern's application for a certificate of public convenience and necessity, finding that Transwestern had failed to make the required market and economic feasibility showing to support the issuance of a certificate. Furthermore, the Examiner found that Transwestern had violated the Act by the unauthorized construction of jurisdictional facilities. While such decision was pending before the Commission, Transwestern filed a petition requesting that the proceedings be reopened for the purpose of taking additional evidence. Such evidence was designed to support the contention that material changes had occurred in Transwestern's market situation which removed any question as to the sufficiency of its markets and the economic feasibility of the facilities proposed. In addition, Transwestern also sought to adduce evidence to show that its construction of the field facilities involved did not constitute a willful violation of Section 7(c) of the Natural Gas Act. Thereafter, on February 26, 1963, Transwestern filed a second amendment to its application seeking authorization for the construction of the facilities, the unauthorized construction of which was the basis for the Presiding Examiner's finding of willful violation of the Act. Transwestern admits having constructed the unauthorized facilities. It contends, however, that the construction either involved exempted gathering facilities as that term is used in Section 1(b) of the Act and thus exempt from Commission jurisdiction, or that assuming that some type of certificate authorization was required for the construction of the facilities, Transwestern's conduct did not constitute a willful and knowing violation of the Act within the meaning of Section 21(a) thereof. In support of this latter contention, Transwestern did submit evidence to establish that in meetings with the Commission Staff, they were advised that additional certificate authorization was not required for the construction of the connections to any well in the field into which they had a previously certificated supply line and that they relied on that advice.

The Staff takes a rather novel position in connection with this alleged violation. Thus, while going to great lengths to establish that the unauthorized activities involved clearly constituted a violation of Section 7(c) of the Act; and that Transwestern did not, or has not, obtained certificate authorization to engage in the transportation of natural gas in interstate commerce from the additional wells, Staff concludes that it concurs "in Transwestern's asserted inability to have willfully and knowingly violated the Act by its uncertificated engagement in transportation in interstate commerce." (Brief, p. 29).

The Examiner agrees with the conclusion of Staff that Transwestern has violated Section 7(c) of the Act, at least with respect to the construction of the connecting lines involved for which authorization is sought in the second amendment to its application in Docket No. G–20464. Not only were the facilities designed for, and engaged in, the transportation of gas in interstate commerce, as alleged by the Staff, but the connecting lines having the size capacity and function of those built by Transwestern should properly be regarded as jurisdictional facilities. See *National Coal Association* v. *F.P.C.*, 247 F. 2d 86. However, the Examiner cannot agree with Staff's startling rationale for its conclusion, to wit, that Transwestern "conclusively lacks the ability to have knowingly violated the Act." Notwithstanding this conclusion, however, the evidence tends to support Transwestern's position to the effect that its previous conduct, including its seeking of and dependence upon, Commission Staff advice; its consistent record in securing certificate authorization prior to construction of facilities; and its filing of the second amendment to the application in Docket No. G–20464, fails to show any proclivity for violating the Act. Accordingly, under the facts presented, it is found that Transwestern's unauthorized construction and operation of the facilities involved, which Transwestern strongly alleges were undertaken in good faith, and which constituted the violation complained of, does not warrant the imposition of sanctions.

It must be emphasized, however, that unauthorized construction of facilities is of a serious concern since it may materially hamper the performance of important Commission duties such as allocation of capacity and determination of the need for proposed capacity. Accordingly, Transwestern is cautioned to follow procedures for determination of Commission jurisdiction over all construction plans which arguably could require certification under the Rules of Practice and Procedure, or otherwise. Failure to do so could result in the imposition of appropriate sanctions in the event an unauthorized construction is later determined to be jurisdictional. *Cf. Northern Natural Gas Co.*, 28 FPC 1155, 1166.

The facilities for which authorization is sought herein, in addition to those sought in Docket No. G–20464, are included in miscellaneous Docket Nos. CP60–49, CP61–63, CP61–243 and CP62–160 (a budget-type application). Permanent authorization was granted in Docket No. CP60–50 and authorization is sought herein to conform the previous authorization with the facilities as actually installed. A certificate was previously issued in the budget-type application in Docket No. CP61–168 and an amendment is sought to increase the amount of authorization. The facilities involved in all the foregoing miscellaneous dockets, including Docket No. G–20464, have been constructed and have been placed in service. On the basis of evidence submitted in these proceedings, it is concluded that the facilities for which authorization is sought are used and required to transport the currently required volumes to Transwestern's customers, exclusive of the proposed sale to Cities in Docket No. CP64–104. Transwestern has established that its maximum daily demand obligation has increased to 410,000 Mcf per day (FPC order issued December 16, 1963, Docket No. CP64–34, 30 FPC 1520). It cannot deliver its certificated 410,000 Mcf per day maximum demand quantities without the capacity provided by the facilities involved in these miscellaneous dockets. Furthermore, Transwestern has established additional markets supporting the permanent certification of the facilities previously constructed under these miscellaneous dockets as well as the other elements of public convenience and necessity. No substantial evidence was adduced to the contrary. Staff recommends certification thereof. Accordingly, it is concluded that certificates of public convenience and necessity should be issued granting the authorizations sought by Transwestern in Docket Nos. G–20464, CP60–49, CP60–50, CP61–63, CP61–168, CP61–243, and CP62–160.

By order dated March 4, 1964, *supra*,[25] the Commission also consolidated the producer applications in Docket Nos. CI61–169, CI61–193, CI61–375, CI61–438, CI61–715, CI61–936,[26] CI61–1774,[27] G–18201, and CI61–497, for hearing in this proceeding. Each of these applicants were granted a temporary certificate, conditioned at the 17.0 cents per Mcf rate.

The applications and rate schedules of the respective producer applicants, with the exception of Petro-Associates, Inc. (Operator), Docket No. CI61–936, were made a part of the record as items by reference. As indicated in the order of the Commission, dated March 4, *supra*, certification in these dockets depends upon permanent certification in Docket Nos. G–20464, CP61–168, and CP62–160, and on the producers' initial prices. All the producer applicants, except Petro-Associates in Docket No. CI61–936, have indicated willingness to accept the initial price of 17 cents per Mcf at 14.65 psia, in accordance with the Federal Power Commission's Statement of General Policy No. 61–1, as amended, for jurisdictional sales in Texas Railroad Commission District No. 10. Since it has been determined herein that the certification of the applications in Docket Nos. G–20464, CP61–168, and CP62–160 are required by the public convenience and necessity the producer applicants consolidated in these proceedings, except Petro-Associates, Inc., in Docket No. CI61–936, should be granted permanent certificates subject to the conditions hereinafter imposed.

ADDITIONAL FINDINGS AND CONCLUSIONS

The following findings are made upon consideration of the record in these proceedings, the evidence adduced, and the briefs filed, and constitute a summary of and are deemed to be supplementary to those hereinabove stated:

(1) CIG, Cities, Arkla, and Transwestern are all "natural-gas companies" within the meaning of the Natural Gas Act; and the proposed construction and operation of the facilities by each, as more fully described in their applications as amended and supplemented, as well as CIG's proposed abandonment of its existing Colorado Springs to Denver 20-inch pipeline, are subject to the jurisdiction of the Federal Power Commission under Section 7 of the Natural Gas Act.

(2) All the sales and transportation of natural gas proposed herein will, if authorized, be made in interstate commerce for resale for ultimate public consumption, subject to the jurisdiction of the Commission; and such sales and transportation are subject to the provisions of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Cities is able and willing to do the acts and to perform the service proposed in Docket No. CP64–131 and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the facilities proposed by Cities in Docket No. CP64–131 are required by the public convenience and necessity and a certificate therefor as hereinafter ordered and conditioned should be issued, temporarily limited, however, to the facilities required in connection with the proposed sale of 100,000 Mcf per day from Transwestern.

(5) Transwestern is able and willing to do the acts and to perform the service proposed in its application in Docket No. CP64–104, and to conform to the provisions of the Natural Gas Act and requirements, rules and regulations of the Commission promulgated thereunder.

(6) The construction and operation of the facilities proposed by Transwestern in its application in Docket No. CP64–104 and the sale of natural gas by means

[25] As supplemented on application for rehearing.
[26] Withdrawal of application has been requested.
[27] H&Y Oil Company, successor to, and substituted for, Schafer Oil Corp.

thereof at the rate proposed by Transwestern are required by the public convenience and necessity, provided, however, that Transwestern file its 20-cent per Mcf contract rate as a two-part rate reflecting demand and commodity charges acceptable to the Commission.

(7) The moratorium provision in Transwestern's contract with Cities is not contrary to the public interest provided, however, Transwestern's certificate be conditioned to the effect that no deficiency in Transwestern's revenues resulting from the operation of the moratorium provision in Transwestern's contract with Cities should be taken into account in computing Transwestern's cost of service to Pacific Lighting Gas Supply Company and no such deficiency should be used to support any increased rates in any rate increase application brought by Transwestern directed to Pacific Lighting Gas Supply Company.

(8) A certificate of public convenience and necessity, conditioned as suggested herein, should be issued to Transwestern in Docket No. CP64–104 authorizing the construction and operation of the facilities described therein and authorizing its proposed sale of 100,000 Mcf per day to Cities.

(9) Public convenience and necessity require that the general terms and conditions set forth in Paragraphs (a), (b), (c) and (e) of Section 157.20 of the Commission's Regulations under the Natural Gas Act should attach to the certificates issued hereunder to Cities and Transwestern and to the exercise of the rights granted thereunder.

(10) The application of Arkla in Docket No. CP64–125 should be denied without prejudice because the applicant has not met the statutory burden imposed by the Natural Gas Act of proving that it is able to do the acts and to perform the services it proposes more particularly with respect to the adequacy of its gas supply necessary for the proposed service to Cities without jeopardizing service to its existing customers. This finding is made without prejudice in order to enable Arkla to file a statement with the Commission making known its desire to present further evidence in support of the gas supply showing as hereinafter provided.

(11) Arkla's motion to amend its certificate issued in Docket No. CP62–219 is denied at this time without prejudice to its supplementing the application with a deliverability and market showing justifying that the public convenience and necessity requires the requested increased capacity of its Arkoma line.

(12) On a comparative basis the application of CIG is less advantageous to Cities, its customers and their ultimate consumers than are the competing proposals of Transwestern in Docket No. CP64–104 and of Arkla in Docket No. CP64–125 or in comparison with Transwestern's application alone in Docket No. CP64–104.

(13) CIG's application in Docket No. CP63–344 (Phase Two), insofar as it requests certificate authorization to construct and operate facilities necessary to render its proposed service to Cities, has not been shown to be in the public interest and should be denied.

(14) The public convenience and necessity require the abandonment by CIG of its Colorado Springs to Denver 20-inch line and the construction and operation of the replacement thereof, as well as the construction and operation of the additional compressor facilities required to complete its Rocky Mountain expansion program as proposed in its application, as amended.

(15) The facilities heretofore installed and operated by Transwestern under Docket Nos. G–20464, CP60–49, CP61–63, CP61–243 and CP62–160 as reflected by the record in these proceedings is required by the public convenience and necessity and certificates of public convenience and necessity should be issued covering such facilities.

(16) Permanent certificates of public convenience and necessity in Docket Nos. CP60–50 and CP61–168 should be granted.

(17) Transwestern was not guilty of willfully and knowingly violating the Natural Gas Act by the construction and operation of the facilities not described in its original application in Docket No. G–20464.

(18) The public convenience and necessity requires that the general terms and conditions set forth in Paragraphs (a), (b), (c) and (e) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, including the Rules of Practice and Procedure, should attach to the issuance of permanent certificates of public convenience and necessity to Transwestern in its applications consolidated in this proceeding and to the exercise of the rights granted thereunder.

(19) Each of the producer applicants in Docket Nos. CI61–169, CI61–193, CI61–375, CI61–438, CI61–715, CI61–497 and CI61–1774 and G–18201 are engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption, subject to the jurisdiction of the Commission, and is a "natural-gas company" within the meaning of the Natural Gas Act.

(20) The proposed producer sales are required by the public convenience and necessity subject, however, to conditions which will prohibit a total initial price in excess of 17 cents per Mcf at 14.65 psia until such price may be lawfully changed in the manner provided in the Natural Gas Act; and subject, further, to the ultimate disposition in the rulemaking proceedings in Docket Nos. R–199 and R–200.

ORDER

WHEREFORE, *it is ordered*, subject to review by the Commission on appeal or review by the Commission on its own motion as provided by its Rules of Practice and Procedure, that:

(A) Certificates of public convenience and necessity are hereby issued to Cities in Docket No. CP64–131 and to Transwestern in Docket No. CP64–104 for the sale of 100,000 Mcf per day of natural gas in interstate commerce for resale together with the construction and operation of the facilities necessary therefor, as proposed in their respective applications.

(B) The certificate of public convenience and necessity issued to Transwestern in Docket No. CP64–104 is hereby conditioned, however, as follows: (1) if there are any deficiencies in Transwestern's revenues during the first six years of operation under the Cities' contract (other than deficiencies resulting from increases in the cost of purchased gas), no such deficiencies will be taken into account in computing Transwestern's cost of service to Pacific Lighting Gas Supply Company, nor should any such deficiencies be used to support increased rates in any rate increase application by Transwestern directed to Pacific Lighting Gas Supply Company, and (2) Transwestern shall file its 20-cent contract price as a two-part rate reflecting demand and commodity charges acceptable to the Commission.

(C) The application by CIG for authorization for abandonment of its Colorado Springs to Denver 20-inch line and for the construction and operation of the replacement thereof; and for the construction and operation of the additional compressor facilities required to complete its Rocky Mountain expansion program, as proposed in its application herein is hereby granted. Except as herein otherwise provided the application by CIG in Docket No. CP63–344 (Phase Two) is in all other respects denied.

(D) The application of Arkla in Docket No. CP64–125 is denied, without prejudice, however, to the applicant's presentation of further evidence in support of an adequate gas supply to meet its present market in addition to the proposed sale to Cities. If it so desires, it shall within twenty days from the date of this order file a statement with the Commission making known such desire and stating fully the nature of the evidence it wishes to present. Any such statement shall be served on the other participants not later than the time of filing and they may answer it within ten days of service.

(E) No action is taken on Arkla's motion to amend its certificate issued in Docket No. CP62-219 until this motion be supplemented with a deliverability and market showing justifying that the public convenience and necessity requires the requested increased capacity of its Arkoma line or until a certificate approving the authorization in Docket No. CP64-125 or its successor or equivalent substitute is obtained.

(F) Certificates of public convenience and necessity are hereby issued for the facilities installed and operated by Transwestern for the transportation of natural gas in interstate commerce in Docket Nos. G-20464, CP60-49, CP61-63, CP61-243 and CP62-160.

(G) Certificates of public convenience and necessity are hereby granted to Transwestern in the applications as amended in Docket Nos. CP60-50 and CP61-168.

(H) Certificates of public convenience and necessity are hereby issued to the producer applicants in Docket Nos. CI61-169; CI61-193; CI61-375; CI61-438; CI61-715; CI61-1774; CI61-497 and G-18201, subject to the condition, however, that the total initial price, including all reimbursements and charges shall not exceed 17 cents per Mcf at 14.65 psia, from the date of issuance of the certificate until such price may be lawfully changed in the manner provided by the Natural Gas Act.

(I) The general terms and conditions set forth in Section 157.20 of the Commission's Regulations under the Natural Gas Act shall attach to the certificates issued herein to Transwestern and to Cities and the facilities hereby authorized shall be constructed and placed in actual operation as provided by subparagraph (b) of Section 157.20 of the Commission's Regulations within four months from the date on which the Commission's order issues.

MAX L. KANE,
Presiding Examiner.

INITIAL DECISION

OF THE PRESIDING EXAMINER UPON APPLICATION FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY PURSUANT TO SECTION 7(C) OF THE NATURAL GAS ACT

(Issued February 27, 1962)

RENDELMAN, *Presiding Examiner:* Pursuant to Section 7(c) of the Natural Gas Act, on December 18, 1959, Transwestern Pipeline Company (Transwestern) filed an application[1] for a certificate of public convenience and necessity authorizing the construction and operation of field facilities for the purpose of gathering into its existing certificated main pipeline system natural gas which it agreed to purchase from various independent producers under 32 separate contracts in the Panhandle area of Texas, Oklahoma and Kansas and in Eddy County, New Mexico. These facilities, which would enable Transwestern to connect an additional 518,000,000 Mcf of gas, included 265 miles of 4-inch to 12-inch pipelines, 8040 horsepower additional compression in three new stations, and metering and dehydration facilities, at an estimated cost of $9,458,568. On July 8, 1960, the Commission granted a temporary certificate authorizing construction and operation of the proposed facilities. Thereafter, by order dated June 15, 1961, the Commission issued a "notice of application and date of hearing" setting this matter for public hearing to commence on July 25, 1961. Petitions to intervene were filed by the California Public Utilities Commission (PUC) and Pacific Lighting Gas Supply Company (Gas Supply) and its affiliates Southern Counties Gas Company of California and Southern California Gas Company. By order of

[1] As amended on June 20th and February 9, 1960, and as further modified by a letter from Transwestern to the Commission dated February 11, 1960.

July 20, 1961, the Commission allowed the proposed interventions but denied a motion by PUC to consolidate the various producer certificate applications in this proceeding.

In the interim between the date respondent filed its certificate application, and completion, under the authority granted in the temporary certificate, of the facilities proposed therein, additional wells were drilled on leases previously dedicated to Transwestern. Allegedly by reason of the fact that it could effect substantial savings thereby and without, at the time, observing the formality of applying for authorization therefor from the Commission as required by Section 7(c) of the Natural Gas Act, respondent constructed some 99 additional miles of field lines to connect these newly drilled wells, thereby acquiring additional reserves totalling approximately 419,000,000 Mcf covered by 39 additional contracts for a total of 937,000,000 Mcf to be connected under the entire project. The presently estimated costs of these additional facilities is $4,057,516, or a total of $13,516,074 for the entire project.

On July 25, 1961, immediately preceding the hearing, Transwestern filed an amendment to the pending application to include the aforementioned additional facilities. Thereafter, during the course of the hearing, counsel for Transwestern moved to conform its certificate application to the testimony in the record with respect to these additional well-connection facilities and additional producer contracts. Testimony at the hearing was limited to that of the witnesses presented by Transwestern, and the hearing was concluded on September 7, 1961. Neither the interveners nor the Staff presented any evidence.

It was not until August 7, 1961, after both the facilities temporarily certificated and the unauthorized facilities were substantially completed and in operation, that application was made to the Commission to amend the temporary certificate so as to include the additional construction. By letter dated September 21, 1961, the Commission denied the application on the ground that inasmuch as the facilities had already been constructed prior to the application, and were actually in operation, no showing of any existing emergency had been made and Section 157.17 of the Commission's Regulations was therefore inapplicable.

Pursuant to Commission Opinion No. 328, dated August 10, 1959, 22 FPC 391, as amended by orders issued September 23, 1959, 22 FPC 542, and September 29, 1959, 22 FPC 574, respectively, a certificate of public convenience and necessity was issued to Transwestern authorizing the construction and operation of a new 30-inch pipeline from the Panhandle-Hugoton and the West-Texas-Permian Basin areas in Texas to the California-Arizona borderline near Topock, Arizona, in order to furnish a supply of gas to the Pacific Lighting Gas Supply Company, for resale to its affiliated companies, Southern Gas Company of California and Southern California Gas Company, and distribution to the gas-consuming public in the 14 counties served by them in Southern California. The issuance of the certificate was based, among other factors, on a showing of "minimum deliverability of 308,000 Mcf per day for 13 years." The purchase agreement between Transwestern and Gas Supply provides for a daily take of 300,000 Mcf with permitted variances therefrom of 91 percent to 115 percent, or a variation of 273,000 to 345,000 Mcf per day, with a contractual makeup period of five years for quantities of gas below the daily minumum not taken but paid for.[2] Also,

[2] The agreement as originally written contained a 100 percent minimum bill provision with a 10-year contractual makeup period. In Opinion No. 328, the Commission reduced the minimum bill to 75 percent and ordered revision of the 100 percent take-or-pay provisions in Transwestern's contracts with its respective producers to conform therewith. On rehearing, the Commission in the amendment of September 23, 1959 raised the 75 percent minimum bill provision to 91 percent in the agreement between Transwestern and Gas Supply, and eliminated the 75 percent take-or-pay provisions from the producer contracts. The effect thereof was to reinstate the original 100 percent take-or-pay provisions.

commencing November 1, 1963, Gas Supply will be required to take an additional 50,000 Mcf per day. Firm deliveries to Gas Supply commenced on October 1, 1960.

Section 7(e) of the Natural Gas Act states that

> * * * a certificate shall be issued to any qualified applicant therefor * * * if it is found * * * that the proposed service, sale, operation, construction, extension, or acquisition, to the extent authorized by the certificate, is or will be required by the present or future public convenience and necessity; otherwise such application shall be denied.

The Commission has held that "public convenience and necessity" as used therein encompasses such factors as gas supply, facilities, markets, financial ability, economic feasibility, and proper initial prices. *American Louisiana Pipe Line Company*, 20 FPC 575; *Midwestern Gas Transmission Company*, 22 FPC 575. With the exception of markets and economic feasibility, respondent has substantially complied with the aforementioned requisites constituting public convenience and necessity. As to markets and economic feasibility, on the basis of the present record in this case, Transwestern has not made a sufficient showing to warrant the issuance of a certificate of public convenience and necessity.

At the time Transwestern's original certificate was issued Gas Supply was Transwestern's only jurisdictional customer. As of the present writing, this fact remains unaltered. There is testimony in the record to the effect that new markets will be sought and are anticipated, but as of this date such prospective markets remain undeveloped, and Transwestern has filed no application with the Commission for authority to make any additional jurisdictional sales. There is thus no reason to conclude that Transwestern will acquire any new markets within the immediately foreseeable future. The record further shows that despite the daily contract quantity of 300,000 Mcf, Gas Supply's take since the pipeline was put into operation to the time of the hearing herein has averaged only 265,000 Mcf per day, somewhat below the minimum billing of 273,000 Mcf per day. Moreover, it appears that in August of 1961, Gas Supply filed a rate increase application with the California Public Utilities Commission in which it estimated that its purchases from Transwestern would not average over 300,000 Mcf per day for the calendar year 1962.

It is to be noted that in the instant application Transwestern does not seek to increase the capacity of its certificated main pipeline system. It is alleged by Transwestern that the sole purpose of the additional facilities to be constructed and operated under the instant application is for implementation of its existing supply of gas in order to maintain its present deliveries. There is nothing in the record, however, to indicate that its present supply of gas is not sufficient to serve that purpose. This conclusion is confirmed by the testimony of Transwestern's president to the effect that without the reserves to be connected by the facilities proposed herein, Transwestern still has sufficient reserves to meet its contract requirements, and that it is not anticipated that Gas Supply's take from Transwestern will be increased within the next year or two. The Commission also so found in Opinion No. 328 issued in the original certificate proceeding, wherein it stated

> Considering only those reserves committed to it under the contracts which are part of these proceedings, the record shows a minimum deliverability of 308,000 Mcf per day for 13 years.

The Commission did point out therein, as urged by Transwestern in its brief in this case, that it was reasonable to conclude from the evidence in that record that Transwestern's reserves would be steadily increased. Acting accordingly, Transwestern has acquired the additional gas reserves covered by the contracts

concerned in this proceeding, as assumed by the Commission, but insofar as its present sales, or sales in the immediate future are concerned, no showing has been made in the record in this case of the necessity for the additional gas which the facilities proposed herein would make available. It is to Transwestern's advantage, of course, to have these reserves at hand should the necessity therefor arise in the future, but it does not appear from the evidence that the facilities to connect these reserves, which Transwestern presently seeks to have authorized, are necessary at this time or will be within the reasonably foreseeable future.

Transwestern argues that in the initial certificate proceedings the Staff questioned the sufficiency of Transwestern's reserves and opposed the issuance of the certificate for that reason, whereas in the instant proceedings the Staff takes the apparently contradictory position that additional gas reserves are unnecessary to enable Transwestern to fulfill its contract obligation to Gas Supply. The apparent inconsistency is dissipated, however, when it is considered that the Staff's initial position was based on Transwestern's broad market presentation in that proceeding wherein it was anticipated that the Southern California market would be greatly expanded. On the basis of the evidence, or lack thereof, herein, it does not appear as of the date of this writing that the Southern California market has developed to the extent originally so optimistically anticipated.[2] This was admitted by Transwestern's president in his testimony and is further reflected by the fact that during the past year deliveries to Pacific Lighting have averaged approximately 8,000 Mcf per day less than the minimum billing. Moreover, it is to be noted that in August 1960, Pacific Lighting declined Transwestern's offer to supply an additional 150,000 Mcf per day.

As a matter of economic feasibility, Transwestern's present situation with respect to the 100 percent take-or-pay provisions in its producer contracts, both in the original certificate proceedings and in the 75 contracts concerned in this proceeding, does nothing to support the present application and, in fact, presents ample reason for denial thereof. As a result of the failure of the California market to develop as anticipated, Transwestern presently finds itself in a position where at the end of its first year of operation it will be obligated to pay its producers for gas which it could not take and did not receive. There is testimony in the record to the effect that Transwestern is presently conducting negotiations with its producers which would avoid such payments by reducing the required "takes" or by extending the makeup period, but there is nothing to indicate that any definitive agreement has been reached. Such tenuous representations present no basis to suppose that Transwestern will not in fact be required to comply with the present take-or-pay provisions in its producer contracts.

As testified by Transwestern's manager of gas purchases, the additional daily contract quantity which Transwestern could be obliged to take under the contracts concerned in this proceeding is approximately 208,000 Mcf. If a certificate of public convenience and necessity were issued herein, Transwestern under the terms of its producer contracts, would immediately be required to take this additional contract daily quantity into its pipeline system by reason of the fact that

[2] Also to be considered is the effect on the future market in Southern California of El Paso Natural Gas Company's presently pending application before the Commission for a certificate of public convenience and necessity for its Rock Springs project, which if authorized would bring a large additional supply of gas to the area. Additionally proposed and presently pending before the California PUC is the joint Tennessee Gas Transmission Company–Pemex project whereby gas would be brought to Southern California for the purpose of supplying the Southern California Edison Company, presently one of the largest customers of Gas Supply's affiliate. Inasmuch as Southern California Edison's annual expenditure for gas is approximately $26,000,000 the effect on Transwestern of the loss of Southern California Edison as a customer of Gas Supply's affiliate would be, to say the least, substantial.

the proposed facilities are completely installed and operating. At the present rate of its sales to Pacific Lighting, with no immediate prospect of any increased demand for gas, and in the absence of any showing of new markets, it is obvious that Transwestern could soon find itself in a position where it will be obligated to pay for the entire contract daily quantity of 208,000 Mcf without ever having actually received the first Mcf thereof, inasmuch as its present supply is more than ample to support the even less than minimum contract daily quantity taken by its only customer. Transwestern could reduce its take from its other suppliers and take reduced quantities of gas from its new producers but the end result would be the same. Inasmuch as Transwestern's contracts with its producers in this proceedings are conditioned upon the issuance of a permanent certificate, denial of the application therefor will act to relieve Transwestern of this obligation. Transwestern calls attention to the fact that commencing November 1, 1963, Gas Supply will be required to take an additional 50,000 Mcf per day but under the present state of affairs the relief afforded thereby would be minimal.

In Opinion No. 328, in the original certificate proceeding, the Commission discussed the effect of gas paid for but not received as follows. [4]

> The rationale of our realining the Transwestern minimum bill with the concurrent adjustment in its commodity charge and the realinement of the take-or-pay provisions in Transwestern's supply contracts is basically the requirement that payment be made for services rendered. Ratepayers of Gas Supply ought not to be called upon to supply a constant flow of dollars to Transwestern for a variable supply of gas from it, which dollars Transwestern in turn must pass on to the producers with still more cash supplied by extra-revenue sources. The producers have not shown a need for a constant income independent of their sales or the price proposed. Absent good and sufficient reason shown, it is not in the public interest to permit an accumulation of gas paid for but not taken, and as yet unproduced, for which money has already exchanged hands.

The circumstances surrounding this application fall squarely within the purview of the language hereinabove quoted. If for no other reason in accordance with the policy expressed therein, the issuance of a certificate of public convenience and necessity in this case would not be in the public interest.

Another serious issue in this proceeding concerns the unauthorized construction, and present operation without the approval of the Commission, of about 99 miles of pipeline by which Transwestern attached reserves totalling approximately 419,000,000 Mcf covered by 39 additional contracts. This is in addition to the 265 miles of pipeline covered by the original application and authorized under the temporary certificate issued by the Commission on July 8, 1960.

It appears from the record that such unauthorized construction and operation clearly violates Section 7(c) of the Natural Gas Act, and under the circumstances herein constitutes a willful violation within the meaning of Section 21(a) thereof. Transwestern apparently does not dispute the illegality of its unauthorized act but states in supposed justification therefor that it was able to realize substantial savings by accomplishing such construction while its crews, equipment, and inspectors were in the field in the process of constructing the facilities originally proposed. However, this explanation is hardly sufficient to condone such a willful and knowledgeable transgression. It is elementary that the certificates, both permanent and temporary, discussed in Section 7 of the Natural Gas Act are issued in the interest of *public* convenience and necessity. Under the circumstances herein, it appears that the only convenience served by

[4] 22 FPC 391, 395.

Transwestern was its own; the necessity, or lack thereof, for these unauthorized facilities has hereinbefore been discussed.

In a similar situation, *Mississippi River Fuel Corporation*, 9 FPC 198, the Commission found that it was under a duty to transmit, in accordance with Section 20(a) of the Natural Gas Act, evidence of the apparent violations to the Attorney General of the United States for his consideration as to whether, in his discretion, criminal proceedings should be instituted. Accordingly, the attention of the Commission is hereby directed to the aforementioned violation of Section 7(c) of the Natural Gas Act for its determination as to the further course to be followed herein.

As hereinbefore noted, the circumstances in this case are to some extent unique in that the instant application for a permanent certificate of public convenience and necessity includes facilities which have already been completed and are presently in service under the temporary authorization previously issued. Counsel for Transwestern makes the point that if denied a permanent certificate of public convenience and necessity, Transwestern would be in a position where it would have no authority to operate the facilities, yet under Section 7(b) of the Natural Gas Act it could not discontinue operation thereof without authorization granted by the Commission. As stated by counsel, Transwestern would find itself in a position where it "could not abandon the facilities it has already constructed except pursuant to Commission authorization under Section 7(b) of the Natural Gas Act; yet it would have no authority—either permanent or temporary—to operate such facilities." Such point, however, is not well taken, in that Section 7(b) cannot logically be construed so as to apply to the instant situation. The temporary certificate issued herein, as does any temporary certificate issued by the Commission, states that issuance thereof "is without prejudice to such final disposition of the application for certificate as the record may require." Construction under a temporary certificate thus is a risk advisedly undertaken by the applicant. As expressed by the Commission in connection with the issuance of a temporary certificate in *Mississippi River Fuel Corporation*, 9 FPC 219, 222,

> This action should not be considered as providing any assurance that, after hearing, a permanent certificate will be issued to applicant for the acquisition, construction and operation of facilities not heretofore authorized in this docket. Such acquisition and construction, if undertaken by applicant under the authority hereinafter granted, must be solely at applicant's risk.

In the consideration of its decision the Commission should therefore not take cognizance of, or be influenced by, the fact that facilities authorized under a temporary certificate have been completed and placed in operation, where on the record subsequently made at the hearing it appears that issuance of a permanent certificate would not be in the public interest. Insofar as the Commission is concerned, it is as though such facilities had never been constructed.

Denial of the application for a permanent certificate herein leaves Transwestern in the same position as the many natural gas companies previously before the Commission whose applications for permanent certificates of public convenience and necessity were similarly denied but which did not undertake construction or operation of the proposed facilities prior to the final determination of the Commission. It would, indeed, then, constitute an idle exercise to require Transwestern to apply for the discontinuance of facilities which, insofar as the Commission is concerned, do not officially exist. Moreover, inasmuch as denial of a permanent certificate herein will not result in curtailment of the supply of gas or services furnished to Gas Supply, no abandonment is involved and no application under Section 7(b) of the Act is therefore necessary. *Tarpon Oil Corporation* and *J. C. Trahan, Drilling Contractor, Inc., Operator, et al.*, Docket No. CI60-582, *et al.*,

issued October 30, 1961, 26 FPC 635; *Peoples Gulf Coast Natural Gas Pipeline Company* and *Texas Illinois Natural Gas Pipeline Company*, Docket No. G–19963, 22 FPC 1013; *cf.*, *Coastal Transmission Corporation, et al.*, Docket No. G–18338, *et al.*, issued November 2, 1961, 26 FPC 677.

In the letter-order of September 21, 1961, denying Transwestern's request to amend the temporary certificate so as to include those facilities constructed without authorization, the Commission specifically directed that operation thereof not be discontinued "without permission of the Commission issued pursuant to the provisions of the Natural Gas Act." In view of this specific direction by the Commission, denial of the permanent certificate herein could leave Transwestern in the position where it would be engaged in the illegal operation of facilities from which it could not desist without approval of the Commission. While this anomolous situation is a creature of the applicant's own creation, it is recognized in the interest of practicality, if nothing else, that such a condition should not persist. It is therefore found that continued operation of the unauthorized facilities is not in the public interest, and Transwestern is hereby directed to discontinue the operation thereof.

Transwestern decries the presumably wasteful results which would follow the denial of a permanent certificate herein. It is conceded that insofar as jurisdictional sales in the immediate future are concerned, the completed facilities proposed by this application may lie fallow, but if Transwestern is correct in its prognostication as to the future development of the Southern California market, the construction of these facilities will not have been in vain. Transwestern will not be foreclosed from renewing this application at some future date if it can, by substantial evidence, demonstrate a need for the gas made available by connection of these facilities either by reason of the fruition of the Southern California market or the development of additional jurisdictional sales. The Commission apparently issued the temporary certificate herein based on Transwestern's sworn representation that an emergency existed by reason of the alleged substantial savings that could be realized if these intended additional facilities could be constructed while its construction crews were still in the field laying its heretofore certificated main pipeline system.[5] In conjunction therewith the Commission undoubtedly also weighed the evidence adduced by Transwestern in the original certificate proceedings with respect to the expanded market it anticipated would develop shortly thereafter. That such market has not so developed is not the fault of the parties. However, the issuance of a permanent certificate based on the present status of the Southern California market as shown in these proceedings is not warranted.

After conclusion of the hearing and the filing of briefs, the Presiding Examiner received a letter dated February 5, 1962, from Transwestern requesting that official notice be taken of the application filed by El Paso Natural Gas Company (not a party to this proceeding) in Docket No. CP62–154, the telegram filed by Southern California Gas Company and Southern Counties Gas Company of California in support of the application, and the petition to intervene filed by Transwestern in that proceedings. Objection thereto was asserted by Gas Supply by letter dated February 12, 1962.

The documents referred to in the foregoing paragraph are merely pleadings in the proceedings to which they relate and any official notice given thereto herein would be limited merely to recognition of the fact that such documents had been filed with the Commission in Docket No. CP62–154. No inferences or con-

[5] This was the same ground upon which Transwestern applied for amendment of the temporary certificate to include the additional 99 miles of pipeline constructed without authorization.

clusions could be drawn as to the truth or falsity of the statements contained therein, or the effect thereof on the issues in this proceeding without the testimony of a competent witness who could be tested by cross-examination.

Accordingly, the objection of Gas Supply to Transwestern's request that the items referred to in Transwestern's aforementioned letter of February 5, 1962, be considered as evidence in this proceedings, is sustained.

ADDITIONAL FINDINGS AND CONCLUSIONS

Upon consideration of the record and briefs filed in these proceedings, it is found and concluded, in addition to the findings and conclusions heretofore stated that:

(1) Transwestern Pipeline Company, a corporation organized and existing under the laws of the State of Delaware, is engaged in the transportation and sale of natural gas in interstate commerce for resale and ultimate public consumption subject to the jurisdiction of the Commission, and is a "natural-gas company" within the meaning of the Natural Gas Act.

(2) The facilities concerned in this application for a certificate of public convenience and necessity are proposed for use in the transportation and sale of natural gas in interstate commerce subject to the jurisdiction of the Commission, together with the construction and operation thereof, and are subject to the requirements of Section 7 of the Natural Gas Act.

(3) The present public convenience and necessity does not require the issuance of a permanent certificate authorizing the construction and operation of the facilities proposed herein, nor does it appear that the issuance thereof will be so required within the reasonably foreseeable future.

(4) Certain of the facilities, concerned herein, as hereinbefore discussed, were constructed and are presently in service, without the prior authorization of the Commission. Such construction and operation is contrary to the provisions of Section 7(c) of the Natural Gas Act, and constitutes a willful violation within the meaning of Section 21(a) thereof.

(5) Continued operation of the unauthorized facilities referred to in the preceding paragraph is not in the public interest.

ORDER

WHEREFORE, *it is ordered*, subject to review by the Commission, as follows:

(A) That Transwestern's application for a certificate of public convenience and necessity for the construction and operation of the facilities proposed therein be denied without prejudice to renewal thereof at such time as it can demonstrate a need therefor.

(B) That Transwestern discontinue the operation of those facilities not authorized by the temporary certificate heretofore issued by the Commission on July 8, 1960.

MARTIN E. RENDELMAN,
Presiding Examiner.

Before Commissioners: L. J. O'Connor, Jr., Acting Chairman; Charles R. Ross and Carl E. Bagge.

ALABAMA POWER COMPANY, PROJECT NO. 2407

ORDER APPROVING REVISED PROJECT EXHIBIT AND FIXING ANNUAL LAND CHARGE

(Issued September 1, 1965)

On March 26, 1965, Alabama Power Company, licensee for Project No. 2407, filed for Commission approval revised Exhibit K, Sheet 4 (FPC No. 2407-14) pursuant to Article 31 of the license, showing two islands comprising 9.41 acres of public lands of the United States within the project boundary. The lands were not shown on the exhibit originally filed and, therefore, no annual charge for the occupancy of the lands was fixed in Article 30 of the license for the project which should be modified to include a charge for such occupancy. The license for the project was issued on January 14, 1965, and made effective as of April 1, 1962, 33 FPC 71.

The Commission finds:

Revised Exhibit K, Sheet 4 (FPC No. 2407-14) conforms to the Commission's rules and regulations and should be approved as part of the license for the project.

The Commission orders:

(A) The exhibit designated in the finding above is hereby approved as part of the license for Project No. 2407.

(B) Article 30 of the license is hereby modified to read as follows:

Article 30. The licensee shall pay to the United States the following annual charges, effective as of April 1, 1962:

(i) For the purpose of reimbursing the United States for the costs of administration of Part I of the Act, a reasonable annual charge as determined by the Commission in accordance with the provisions of its regulations in effect from time to time. The authorized installed capacity for such purpose is 42,700 horsepower.

(ii) For the purpose of recompensing the United States for the use, occupancy, and enjoyment of its lands, $22.58.

(C) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this order. In acknowledgment of the acceptance of this order, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr. and Carl E. Bagge.

J. R. FRANKEL, ET AL. (SUCCESSORS TO BERKSHIRE OIL COMPANY, SUCCESSOR TO R. R. FRANKEL), DOCKET NOS. G–17671, G–19948 AND RI60–334

ORDER ACCEPTING OFFER OF SETTLEMENT, REQUIRING REFUNDS, TERMINATING PROCEEDINGS AND TERMINATING PROCEEDING IN PART

(Issued September 1, 1965)

On June 9, 1965, J. R. Frankel, *et al.* (Frankel), submitted an offer of settlement in these proceedings pursuant to Section 1.18(e) of the Commission's Rules of Practice and Procedure. The predecessors of Frankel filed proposed increased rates which were suspended by order of the Commission for the statutory period, and made effective by motion, subject to refund. The sale involved is a sale presently being made by Continental Oil Company (Continental) to Gas Gathering Corporation (Gas Gathering) which in turn resells the gas to Transcontinental Gas Pipe Line Corporation (Transco). Continental succeeded to Frankel's interest on November 2, 1961, and was thereafter made a co-respondent in Docket No. RI60–334. The sale is made in the Happytown Field, St. Martin Parish, Louisiana, at a presently effective rate of 21.05¢ per Mcf of natural gas at 15.025 psia.

Frankel proposes a settlement rate at the applicable increased rate ceiling of 15.75¢ per Mcf of natural gas at 15.025 psia, and to make refunds for the period it collected rates subject to refund in accordance with the Grigsby refund formula set forth in our order in *Jack W. Grigsby (Operator), et al.*, Docket No. RI61–96, *et al.*, issued August 6, 1964, 32 FPC 529. The amount of the refunds will be approximately $96,400 exclusive of interest. Additionally, Frankel proposes that the proceedings in Docket Nos. G–17671 and G–19948 be terminated, and that Docket No. RI60–334 be terminated as to its interest since Continental is responsible for any refunds that may be required in that proceeding since November 2, 1961.

We believe that Frankel's settlement proposal, as hereinafter conditioned, is in the public interest and shall approve the same. However, we desire to make it clear that acceptance of Frankel's offer of settlement shall not be construed as prejudicing any findings or order of the Commission in any future proceeding involving Frankel's rates and rate schedules. Additionally, for all of the reasons set forth in *Humble Oil & Refining Company*, Docket No. G–9287, *et al.*, 32 FPC 49, we shall require Frankel to deposit the refund monies in a special escrow account pending further order of the Commission.

The Commission finds:

The proposed settlement of the above-designated proceedings, on the basis described herein, as more fully set forth in the offer of settlement filed with the Commission by Frankel on June 9, 1965, as supplemented, is consistent with the Statement of General Policy No. 61–1, as amended, 18 CFR 2.56, and approval thereof as made effective and hereinafter ordered is in the public interest and is appropriate to carry out the provisions of the Natural Gas Act.

The Commission orders:

(A) The offer of settlement filed with the Commission by Frankel on June 9, 1965, is approved in accordance with the provisions of this order.

(B) Frankel shall compute the difference between the rates collected subject to refund in Docket Nos. G–19948 and RI60–334 and the settlement rate for sales

to Gas Gathering prior to November 2, 1961 in accordance with the following percentages: 25% in the year 1960, and 70% in the year 1961 prior to the assignment to Continental, with applicable interest to the date of this order, and shall within 45 days from the date of issuance of this order submit a report to the Commission, with a copy to Gas Gathering, setting out the amount of refunds (showing separately the principal and applicable interest) the bases used for such determination, the period covered, and ten days thereafter a letter from Gas Gathering agreeing to the correctness of such amounts.

(C) Frankel shall retain the amounts shown in the report required under paragraph (B) above, subject to further order of the Commission directing the disposition of those amounts.

(D) Frankel shall deposit the retained refunds in a special escrow account, and shall tender for filing on or before October 15, 1965, an executed Escrow Agreement, conditioned as set out below, accompanied by certificate showing service of a copy thereof upon Gas Gathering. Unless notified to the contrary by the Secretary within 30 days from the date of filing thereof, the Escrow Agreement shall be deemed to be satisfactory and to have been accepted for filing. The Escrow Agreement shall be entered into between Frankel and any bank or trust company used as a depositor for funds of the United States Government and the agreement shall be conditioned as follows:

(1) Frankel, the bank or trust company, and the successors and assigns of each, shall be held and formally bound unto the Federal Power Commission for the use and benefit of those entitled thereto, with respect to all amounts and the interest thereon deposited in a special escrow account, subject to such agreement, and such bank or trust company shall be bound to pay over to such person or persons as may be identified and designated by final order of the Commission and in such manner as may be therein specified, all or any portion of such deposits and the interest thereon.

(2) The bank or trust company may invest and reinvest such deposits in any short-term indebtedness of the United States or any agency thereof or in any form of obligation guaranteed by the United States which is, respectively, payable within 120 days as the said bank or trust company in the exercise of its sound discretion may select.

(3) Such bank or trust company shall be liable only for such interest as the invested funds described in Paragraph (2) above will earn and no other interest may be collected from it.

(4) Such bank or trust company shall be entitled to such compensation as is fair, reasonable and customary for its services as such, which compensation shall be paid out of the escrow account to such bank or trust company. Said bank or trust company shall likewise be entitled to reimbursement for its reasonable expenses necessarily incurred in the administration of this escrow account, which reimbursement shall be made out of the escrow account.

(5) Such bank or trust company shall report to the Secretary quarterly, certifying the amount deposited in the bank or trust company for the quarterly period.

(E) Upon notification by the Secretary of the Commission that Frankel has complied with the terms and conditions of this order, the proceedings in Docket Nos. G–17671 and G–19448 shall terminate, and the proceeding in Docket No. RI60–334 shall terminate only insofar as it pertains to Frankel and its predecessors, all without further order of the Commission.

(F) The acceptance by Commission of Frankel's offer of settlement is without prejudice to any findings or determinations that may be made in any proceeding now pending, or hereafter instituted by or against Frankel and is without

prejudice to claims or contentions which may be made by Frankel, the Commission staff, or any affected party hereto, in any proceeding.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., David S. Black and Carl E. Bagge.

ICE HARBOR PROJECT, SNAKE RIVER, COLUMBIA RIVER BASIN, WASHINGTON, DOCKET NO. E-7235

ALLOCATION OF COSTS

(Issued September 1, 1965)

The Congress, by the River and Harbor Act of March 2, 1945, Public Law No. 14, 79th Congress, 1st Session (59 Stat. 10), authorized the construction by the Corps of Engineers, Department of the Army, of the Ice Harbor Project on the Snake River for the purposes of navigation, power development, and irrigation.

The enabling act cited above provides that surplus electric energy generated at the project shall be delivered to the Secretary of the Interior for disposition in accordance with existing laws relating to the disposition of power at the Bonneville Dam. Section 6 of the Bonneville Act of August 20, 1937, Public Law 329, 75th Congress, 1st Session (50 Stat. 731), provides that rate schedules for the sale of Bonneville power shall be prepared by the Administrator and become effective upon confirmation and approval by the Federal Power Commission. Section 7 of the Bonneville Act states in part:

> * * * Rate schedules shall be based upon an allocation of costs made by the Federal Power Commission. In computing the cost of electric energy developed from water power created as an incident to and a byproduct of the construction of the Bonneville project, the Federal Power Commission may allocate to the costs of electric facilities such a share of the cost of facilities having joint value for the production of electric energy and other purposes as the power development may fairly bear as compared with such other purposes.

The Ice Harbor project consists of a dam, navigation lock, hydroelectric power plant, and appurtenant structures, including facilities for passing anadromous fish. The present power installation consists of three units rated at 90,000 kilowatts each, making a total rated capacity of 270,000 kilowatts. Three skeleton powerhouse bays are available for future installation of three additional units of the same size.

In allocating the costs of a multiple-purpose project, each purpose should bear at least its separable cost (the incremental cost of including the purpose in the project) and no purpose should be charged with cost in excess of benefits. Within these limits each purpose should share equitably in the savings resulting from multiple-purpose development. These principles are based on, and are consistent with, sound procedures of project formulation.

The separable costs-remaining benefits method of cost allocation fulfills the above objectives. This method of cost allocation was developed through interagency effort. As set forth in the May 1958 report on "Proposed Practices for Economic Analysis of River Basin Projects" (sometimes referred to as "The Green Book"), the method is summarized as follows:

> Briefly, it provides for: (1) assigning to each purpose its separable costs; i.e., the added costs of including the purpose in the project; and (2)

assigning to each purpose a share of the residual or remaining joint costs in proportion to the remaining benefits; i.e., the benefits (as limited by alternative costs) less the separable costs. Thus, the method provides for an equitable sharing among the purposes in the savings resulting from multiple-purpose development.

By agreement reached in 1954 among the Departments of the Army and the Interior and the Federal Power Commission, the separable costs-remaining benefits method of cost allocation was adopted as preferable for general use. That method has been used by the Commission in other cost allocation reports, and it is used herein to allocate the costs of the Ice Harbor project.

The Commission's staff has analyzed all available data relating to the Ice Harbor project, has conferred with representatives of the Corps of Engineers and the Bonneville Power Administration, and has reviewed comments of the Assistant Secretary of the Interior and Acting Chief of Engineers with respect to the Ice Harbor allocation problem. In its comments and suggestions, the Department of the Interior took virtually the same position as it did regarding the allocation of costs for the McNary Project (Docket No. E–6383, order issued March 5, 1965, 33 FPC 411). On the basis of these studies, the Commission's Bureau of Power has prepared and submitted a report, dated July 30, 1965 on "Allocation of Costs to Power Development, Ice Harbor Project, Columbia River, Washington."

The Commission having considered the matters hereinabove recited, the report of the Commission's Bureau of Power, the comments received from the Secretary of the Interior and the Acting Chief of Engineers, and other pertinent data relating to the Ice Harbor project together with the provisions of applicable statutes, *finds:*

(1) The federal interest rate of 2.5 percent, applicable during the period of construction of the Ice Harbor Project, as determined under the provisions of paragraph 15 of the Bureau of the Budget's Circular No. A–47, dated December 31, 1952, is reasonable and appropriate for use in allocating the costs of the Ice Harbor project.

(2) The total actual investment cost of Ice Harbor project to June 30, 1964 is $132,580,100 exclusive of specific recreation cost totaling $641,587 to June 30, 1964 and preauthorization study cost of $150,000.

(3) Inasmuch as irrigation development will not be benefited by the Ice Harbor project until some unknown future date, there should be no allocation of project costs to irrigation, at least for the present. Inasmuch as recreation is not an authorized project purpose, only the specific costs of recreation facilities should be allocated to recreation. Thus, the allocation of joint-use costs should be restricted to power and navigation.

(4) The use of the "Separable Costs-Remaining Benefits" method of cost allocation, as developed through federal inter-agency effort and set forth in the May 1958 report of the Inter-Agency Committee on Water Resources, entitled "Proposed Practices for Economic Analysis of River Basin Projects", is reasonable and appropriate in determining the allocation to power development of Ice Harbor project costs.

Upon consideration of the above findings and the report of the Bureau of Power dated July 30, 1965, copy of which is attached hereto, *infra*, p. 716, and in the light of the provisions of the Bonneville Act and the River and Harbor Act of 1945, the Commission makes the following determination with respect to the allocation of Ice Harbor project costs to power development.

(A) The allocation of joint-use costs of the Ice Harbor project, including construction costs, interest during construction, and operation and maintenance expenses, is 21.4 percent to navigation and 78.6 percent to power.

(B) Applying the percentages set forth in paragraph (A) above to the joint-use actual investment cost to June 30, 1964 results in allocating $39,649,800 of the total project investment cost to navigation, and $92,930,300 to power.

Commissioner Black adheres to the views expressed in the separate concurring statement accompanying the Allocation of Costs issued March 5, 1965 in Docket No. E-6383, McNary Project, 33 FPC 411 at 413.

ALLOCATION OF COSTS TO POWER DEVELOPMENT, ICE HARBOR PROJECT, SNAKE RIVER, COLUMBIA RIVER BASIN, WASHINGTON

Introduction

The River and Harbor Act of March 2, 1945, Public Law No. 14, 79th Congress, 1st Session (59 Stat. 10), authorized the construction by the Corps of Engineers, Department of the Army, of the Ice Harbor project among other projects on the Snake River, Columbia River Basin, Washington. Section 2 of that Act, provided with regard to the Snake River projects, the following:

> Snake River, Oregon, Washington, and Idaho: The construction of such dams as are necessary, and open channel improvement for purposes of providing slack water navigation and irrigation in accordance with the plan submitted in House Document No. 704, Seventy-Fifth Congress, with such modifications as do not change the requirement to provide slack water navigation as the Secretary of War (Army) may find advisable after consultation with the Secretary of the Interior and such other agencies as may be concerned: Provided, that surplus electric energy generated at the dams authorized in this item shall be delivered to the Secretary of the Interior for disposition in accordance with existing laws relating to the disposition of power at Bonneville Dam.

Thus, the project has been authorized for navigation, power development, and irrigation. The project has been constructed and is now in operation.

The Bonneville Act of August 20, 1937, Public Law No. 329, 75th Congress, 1st Session (50 Stat. 731), cited in the enabling Act, includes the following significant provisions:

> Sec. 6. Schedules of rates and charges for electric energy produced at the Bonneville project and sold to purchasers as in this Act provided shall be prepared by the (Bonneville) administrator and become effective upon confirmation and approval thereof by the Federal Power Commission * * *
>
> Sec. 7. * * * Rate schedules shall be based upon an allocation of costs made by the Federal Power Commission. In computing the cost of electric energy developed from water power created as an incident to and a by-product of the construction of the Bonneville project, the Federal Power Commission may allocate to the costs of electric facilities such a share of the cost of facilities having joint value for the production of electric energy and other purposes as the power development may fairly bear as compared with such other purposes.

It will be noted from the above that schedules of rates and charges for the sale of Ice Harbor power must be confirmed and approved by the Commission before becoming effective; and that such schedules shall be based upon an allocation of costs made by the Commission.

Costs and other data needed in the allocation of costs for the Ice Harbor project have now been furnished to the Commission by the Corps of Engineers. This report derives an allocation of the Ice Harbor project costs.

The Columbia River Basin

The Ice Harbor project is located at river mile 9.7 on the Snake River, a tributary of the Columbia River, in the State of Washington, at the head of slack water of the McNary Reservoir.

The Columbia River rises in Columbia Lake, British Columbia, and flows first in a northwesterly and then in a southerly direction for 460 miles to the International Boundary near Trail, British Columbia. Below the boundary, the river flows in a general southerly direction across the eastern end of Washington and, from a point about 15 miles below the mouth of the Snake River, flows westerly to the Pacific Ocean, forming the boundary between Washington and Oregon. The river distance from the International Boundary to the Pacific Ocean is 750 miles, and the fall in this reach is about 1,288 feet. Only about 10 feet of this fall is below the Bonneville Dam (mile 145.3) which is the head of tidewater.

The Columbia River drains an area of 259,000 square miles, of which 220,000 square miles are in the United States. Its principal tributaries in Canada are the Kootenay and Pend Oreille Rivers; and in the United States the Snake, Williamette, Cowlitz, Spokane, Deschutes, Lewis, Yakima, Okanogan, Wenatchee, Chelan, and John Day Rivers.

The Snake River Basin

The Snake River drains an area of 109,000 square miles in the United States principally in the States of Oregon and Idaho. Principal tributaries of the Snake River are the Clearwater, Salmon, Grand Ronde, Boise, and Payette Rivers.

Plate 1 shows the location of the Ice Harbor project in relation to other existing and planned projects in the lower Columbia River Basin. Plate 2 shows a profile of the lower Columbia and Snake Rivers.

The Ice Harbor Project

The Ice Harbor project structures include the hydroelectric power plant, navigation lock, gated spillway, non-overflow sections of the dam, and facilities for the passage of anadromous fish. The overall length of the combined structures is about 2,700 feet. Plate 3 shows the project plan and typical sections of the spillway, powerhouse, and lock.

The reservoir created by the dam extends up the Snake River 32 miles to a point near Matthews, Washington, and to the site of lower Monumental Dam presently under construction. The maximum normal level of the reservoir is at elevation 440 feet above mean sea level. A drawdown of three feet to elevation 437 provides 24,860 acre-feet of storage which is used as daily and weekly pondage for power purposes.

The present power installation consists of three units rated at 90,000 kilowatts each, making a total rated capacity of 270,000 kilowatts. Three skeleton powerhouse bays are available for the future installation of three additional units of the same size. The units are designed to carry overload up to 15 percent of the rated capacity. All of the turbines are automatic adjustable blade propeller-type wheels. The powerhouse will total 671 feet in length including the bays for future expansion, and its maximum height from the draft tube foundation to intake deck is 217 feet.

The lock chamber has clear horizontal dimensions of 86 feet by 675 feet. The maximum lift above the McNary pool is 105 feet.

Two fish ladders, 16 and 24 feet wide, have been provided along the north and south shore, respectively, for passing anadromous fish. In addition, an attraction water system and channel for the fish are located along the downstream face of the powerhouse and immediately above the draft tubes.

Principal data for the Ice Harbor project are shown in Table 1, attached.

Power at Ice Harbor

Ice Harbor is essentially a "run-of-river" power project and as such its power output is dependent on unregulated natural streamflows of the Snake River tributary area immediately above the dam and upon water releases from reservoirs at other projects upstream. The Snake River at Ice Harbor Dam, with an estimated average discharge of 49,200 cubic feet per second, has an annual streamflow pattern of low flows during the fall and winter and high flows during late spring and summer. This regular pattern of natural runoff is and will be modified somewhat by flow regulation by the Brownlee and Dworshak reservoirs and several other storage projects on the upper Snake River and its tributaries, which are completed or under construction, and by the High Mountain Sheep project when this site is developed.

When inflows are in excess of the hydraulic capacity of the power plant for extended periods, the reservoir level at the dam is maintained at elevation 440. At such times the water required for power production is passed through the powerhouse and the balance is discharged over the spillway. During the annual fall and winter low streamflow season, usually from September to April each year, the 24,860 acre-feet of pondage is used in operating the power plant to supply peak power load demands and otherwise make effective use of the plant capacity.

The Ice Harbor project is an important unit in the Federal Columbia River power system. Information supplied by the Bonneville Power Administration shows that as of June 30, 1963, that system had a total installed capacity of 6.5 million kilowatts. The nominal prime power, or average output of the system during the critical period, would be approximately 4.2 million kilowatts. Ice Harbor's contribution to this nominal prime power would be about 150,000 kilowatts. Completion of the planned future storage projects in the Snake River Basin would increase the existing regulatory storage capacity from 1.0 to 5.2 million acre-feet. The nominal prime power at Ice Harbor would then be about 200,000 kilowatts when the upstream storage projects are developed.

Under current development conditions, the annual generation at Ice Harbor averages about 2.0 billion kilowatt-hours. The additional storage capacity indicated above would increase the annual generation.

The following tabulation shows the actual in-service date of each power unit of the Ice Harbor project:

In-Service Dates of Generating Units at Ice Harbor

Unit number	Cumulative rating (kw)	Date in-service
1	90,000	[1] Dec. 18, 1961
2	180,000	Feb. 27, 1962
3	270,000	Feb. 8, 1962

[1] During load rejection tests on Jan. 4, 1962, the linkage mechanism in Unit No. 1 failed and the turbine was extensively damaged. The unit was restored to service on Feb. 28, 1963.

Navigation

The Ice Harbor project is an essential unit in the slack water navigation system of the lower Columbia and lower Snake Rivers. The lock was completed and all navigation features, including the slack water pools, were available for full usage in October 1962. The in-service date for navigation facilities was assumed, therefore, to be November 1, 1962.

Irrigation

Although irrigation was a part of the Ice Harbor plan as it was authorized, there are no specific project features or costs for this purpose. Benefits will accrue to potential irrigation projects above the Ice Harbor pool through savings in pumping costs and plant investment due to lower pumping heads. However, at the present time, there is no indication that irrigation will become a purpose of this project in the foreseeable future. Since the project is not providing an irrigation function, an allocation of project costs to irrigation is not warranted at this time.

Recreation and Fish and Wildlife

Recreation has not been authorized as a project purpose at Ice Harbor. Some recreation facilities have been provided, however, and during 1963 and 1964, the number of visitor-days totaled about 163,000 and 193,000, respectively, for the reservoir. Planned specific facilities of recreation, such as parks and camps, are estimated to cost $656,200, and substantially all of these facilities had been provided as of June 30, 1964. In this report, such costs, and only such costs, are assigned to recreation.

The fish passage facilities at Ice Harbor were provided to preserve the fish runs and not for fishery enhancement. Therefore, the costs of those facilities are considered as joint-use costs to be allocated between the purposes of power and navigation.

The staff carefully considered whether recreation at Ice Harbor warrants inclusion in the cost allocation as a purpose to which both specific and a portion of joint-use costs may be allocated. A review of the legislative history of the Ice Harbor project shows clearly that the Commission has authority to allocate costs only to the purposes for which the project was authorized. These are stated to be slack water navigation and irrigation, with power generation clearly defined in the project document and its marketing disposition defined in the law. These purposes have not been modified by Congress.

Project Benefits

Power benefits creditable to the Ice Harbor project have been estimated on the basis of unit values of $18.24 per kilowatt-year of dependable capacity and 3.39 mills per kilowatt-hour of energy, both measured at market centers in the Pacific Northwest. These values were based on economic conditions current as of about 1957. To obtain net benefits at the point of generation, the at-market benefits were adjusted for annual transmission costs of $3.48 per kilowatt of plant machine capability (overload) and average system transmission losses of 4.5 percent for capacity and 3.5 percent for energy. The values of power were derived from detailed studies, made by the Commission's staff, of the then current cost of alternative power sources in the Pacific Northwest area. The studies indicated that the above unit values were approximately equivalent to the cost of power from a non-federal publicly-owned steam-electric plant.

As previously noted, the project's contribution to the system output would increase as more upstream storage is added to the system. Proper evaluation of the Ice Harbor project benefits requires crediting part of the project output to upstream storage. For purposes of determining power benefits for this cost allocation, it is assumed that the current contribution to the system of 150,000 kilowatts of continuous power, utilized at 70 percent annual load factor, would provide 214,300 kilowatts of dependable capacity creditable to at-site facilities. Similarly, the present average annual generation of 2 billion kilowatt-hours would be credited to the project. Applying the above unit power values to these outputs and making adjustments for transmission losses, and transmission costs of $1,080,500, the estimated average annual power benefits on this basis would be $9,195,100.

A portion of the estimated transportation savings accruing as a result of the navigation system on the lower Columbia and Snake Rivers is creditable to the Ice Harbor project. As estimated by the Corps of Engineers, the total average annual navigation benefits of the system amount to $17,376,000 and the portion creditable to Ice Harbor is $1,840,000.

Method of Allocation

In allocating the costs of a multiple-purpose project, each purpose should bear at least its separable cost (the incremental cost of including the purpose in the project) and no purpose should be charged with costs in excess of benefits. within these limits each purpose should share equitably in the savings resulting from multiple-purpose development. These principles are based on, and are consistent with, sound procedures of project formulation.

The separable costs-remaining benefits method of cost allocation fulfills the above objectives. This method of cost allocation was developed through interagency effort. As set forth in the May 1958 report on "Proposed Practices for Economic Analysis of River Basin Projects" (the Green Book), the method is summarized as follows:

> Briefly, it provides for: (1) assigning to each purpose its separable costs; i.e., the added costs of including the purpose in the project; and (2) assigning to each purpose a share of the residual or remaining joint costs in proportion to the remaining benefits; i.e., the benefits (as limited by alternative costs) less the separable costs. Thus, the method provides for an equitable sharing among the purposes in the savings resulting from multiple-purpose development.

By agreement reached in 1954 among the Departments of the Army and the Interior and the Federal Power Commission, the separable costs-remaining benefits method of cost allocation was adopted as preferable for general use. That method has been used by the Commission in other cost allocation reports, and it is used herein to allocate the costs of the Ice Harbor project.

Detailed procedures may differ in the allocation of joint-use costs by the separable costs-remaining benefits method. Prior to the Commission's allocation of costs of the McNary project on March 5, 1965, the general practice had been to derive separate sets of percentage allocations for construction costs and for operation and maintenance costs. In the McNary cost allocation it was concluded that a single set of percentage allocations should be derived for application to all costs of joint-use facilities. The single set of percentages represents a weighted composite average of the ones that would be derived separately for construction costs and for operation and maintenance expenses. Thus, the overall results are the same. The single percentage procedure has also been adopted

in this report. The allocation percentages are shown to the nearest tenth of one percent.

Project Costs

Information on Ice Harbor project costs was furnished to the Commission by the Corps of Engineers in a report on Cost Allocation Studies, Design Memorandum No. 28, dated June 21, 1961, and in subsequent correspondence. As of June 30, 1964, the project was 99.5 percent complete and the cost of construction work to that date totaled $123,800,700 exclusive of the cost of specific recreation facilities. An additional amount of $605,600 was estimated to complete the project after that date. The total estimated costs have been used to make the cost allocation and these costs by principal features are summarized below:

Summary of Estimated Construction Costs—Ice Harbor Project

Item	*Project costs*
Joint-Use Facilities:	
Lands and damages	$795,300
Relocations	24,559,600
Reservoir preparation	426,900
Dams	15,666,000
Fish facilities	11,867,200
Roads and railroads	1,111,100
Buildings, grounds, and utilities	634,000
Permanent operating equipment	307,700
Total joint-use facilities	55,367,800
Navigation Facilities:	
Lock	18,056,800
Channels	7,629,500
Total navigation facilities	25,686,300
Power Facilities:	
Power plant	43,352,200
Total construction costs	[1] 124,406,300

[1] Exclusive of specific recreation costs of $656,200 and preauthorization study costs of $150,000. It is the policy of the Corps of Engineers not to charge preauthorization costs against any project, so the Ice Harbor project fiscal records exclude such costs.

The estimated annual costs of operation and maintenance and major replacements are shown in the following tabulation:

Operation, Maintenance and Major Replacements—Ice Harbor Project

Item	Operation and maintenance	Annual equivalent replacement costs
Power facilities	$175,700	$290,000
Navigation facilities	80,500	43,000
Joint-use facilities	152,200	111,000
Total project	408,400	444,000

Alternative Projects

Cost estimates have been made by the Corps of Engineers of alternative single-purpose power and navigation projects which would produce the same benefits for each purpose as the multiple-purpose project. These estimates are used in the allocation of costs as limitations on the benefits for each project purpose. The estimated cost of the power-only project was based on the cost of the multiple-purpose project with the navigation lock replaced by an earth and rock embankment section of the dam. The estimated cost of the navigation-only project was based on the cost of the multiple-purpose project with the power plant removed and the power intake section of the dam replaced by an earth and rock embankment. The following tabulation summarizes estimated construction cost, investment, and annual charges for the alternative single-purpose power and navigation projects.

Estimated Costs of Alternative Single-Purpose Projects

Item	Power-only project	Navigation-only project
Construction cost	$103,416,800	$76,582,800
Interest during construction	6,679,900	3,974,400
Investment	110,096,700	80,557,200
Annual charges:		
Interest and amortization	3,882,000	2,840,400
Operation and maintenance	320,700	184,300
Replacements	398,000	121,000
Total	4,600,700	3,145,700

Project Investment

In deriving the project investment, an interest rate of 2½ percent was used in computing interest during construction. That was the prevailing rate for water resources projects of the Corps of Engineers when construction of the Ice Harbor project was initiated. Interest during construction was computed as simple interest on expenditures from June 1, 1945, the date appropriated construction funds were available, to the in-service dates.

Table 2 shows the computation of interest during construction on the specific navigation and specific power facilities. Charges to interest during construction were stopped on one-third of the total construction cost of the specific power facilities at the end of the month in which each generating unit was placed in service. Similar charges on expenditures for navigation facilities ceased on November 1, 1962, the in-service date of such facilities.

In order to compute interest during construction on expenditures for joint-use facilities in a similar manner, it is necessary to know what portion of such costs is to be assigned to each of the purposes of navigation and power. A trial allocation was made, as shown in Table 3, using an approximate interest during construction amount of $3,750,000. The resulting division of the gross investment in joint-use facilities, 21.4 percent to navigation and 78.6 percent to power, was then used to determine the portion of in-service joint-use construction costs assignable to navigation and power. Table 4 shows the computation of interest during construction on joint-use facilities. The total computed differs from the estimate used in the trial allocation by about 0.2 percent.

The following tabulation shows the estimated total construction costs, the computed interest during construction, and estimated total investment costs.

Estimated Ice Harbor Investment Costs [1]

	Construction cost	Interest during construction	Investment
Power facilities	$43,352,200	$3,567,800	$46,920,000
Navigation facilities	25,686,300	1,467,800	27,154,100
Joint-use facilities	55,367,800	3,743,800	59,111,600
Total project	124,406,300	8,779,400	133,185,700

[1] Exclusive of the cost of preauthorization studies and recreational facilities.

The allocation of total annual costs is shown below:

Allocation of Annual Costs—Ice Harbor Project

	In thousands of dollars		
	Navigation	Power	Total
1. Benefits	1,840.0	9,195.1	11,035.1
2. Alternative costs	3,145.7	4,600.7	7,746.4
3. Benefits limited by alternative costs	1,840.0	4,600.7	6,440.7
4. Separable costs	947.8	2,402.8	3,350.6
5. Remaining benefits (3)−(4)	892.2	2,197.9	3,090.1
(a) Remaining benefits in percent	28.9	71.1	100
Allocated residual costs [in proportion to 5(a)]	634.6	1,563.3	2,197.9
7. Total allocation (4)+(6)	1,582.4	3,966.1	5,548.5
8. Annual costs, specific facilities	1,081.0	2,120.1	3,201.1
9. Annual costs, joint-use facilities (7)−(8)	501.4	1,846.0	2,347.4
(1) Allocation in percent	21.4	78.6	100

Summary

On the basis of the preceding allocation, the distribution of joint-use costs of the Ice Harbor project should be made retroactively and prospectively, 21.4 percent to navigation and 78.6 percent to hydroelectric power. These percentages should be applied to the following costs relating to joint-use facilities: construction costs, interest during construction, investments, replacements and retirements, and operation and maintenance.

With the application of the above percentages, the allocation of actual construction costs, interest during construction, and investment to June 30, 1964, would be as follows:

Allocation of Costs—Ice Harbor Project; June 30, 1964

(In thousands of dollars)

	Navigation	Power	Total
Construction costs:			
Specific facilities	25,649.2	43,330.6	68,979.8
Joint-use facilities	11,731.6	43,089.3	54,820.9
Total	37,380.8	86,419.9	123,800.7
Interest during construction:			
Specific facilities	1,467.8	3,567.8	5,035.6
Joint-use facilities	801.2	2,942.6	3,743.8
Total	2,269.0	6,510.4	8,779.4
Project investment:			
Specific facilities	27,117.0	46,898.4	74,015.4
Joint-use facilities	12,532.8	46,031.9	58,564.7
Total	39,649.8	92,930.3	[1] 132,580.1

[1] Exclusive of actual specific recreation costs totaling $641,587 to June 30, 1964, and preauthorization study costs of $150,000.

Annual Charges—Ice Harbor Project

Annual charges for the project include interest at 2½ percent; amortization of investment costs over a 50-year period; operation and maintenance; and replacements. These charges are summarized below, using average annual operation, maintenance, and replacement costs as estimated by the Corps of Engineers.

Ice Harbor Project Annual Charges

Item	Interest and amortization	Operation and maintenance	Annual replacements	Total annual charges
Power facilities	$1,654,400	$175,700	$290,000	$2,120,100
Navigation facilities	957,500	80,500	43,000	1,081,000
Joint-use facilities	2,084,200	152,200	111,000	2,347,400
Total project; annual charges	4,696,100	408,400	444,000	5,548,500

Allocation of Costs

In addition to benefits, project costs, and alternative costs, it is necessary in making the allocation to have the separable costs for each project purpose. Since recreation is to be assigned only its specific costs, separable costs must be derived for only the purposes of power and navigation. The difference between the annual costs of the multiple-purpose project and the single-purpose navigation project represents the annual separable power cost. Similarly, the difference between the annual costs of the multiple-purpose project and the single purpose power project represents the annual separable navigation cost. These computations of the separable costs are shown below.

Estimates of Separable Annual Costs

Multiple purpose project costs	Alternative project costs		Separable costs	
	Power only	Navigation only	Power	Navigation
$5,548,500	$4,600,700			$947,800
5,548,500		$3,145,700	$2,402,800	

Each purpose is allocated its separable cost plus a portion of the residual cost. The latter cost is the difference between the annual cost of the multiple-purpose project, $5,548,500, and the sum of the separable costs, $3,350,000, or $2,197,000.

TABLE 1

Principal Data—Ice Harbor Project

River mile, Snake River	9.7
Drainage area, sq. mi	109,000
Principal purposes	Power and Navigation
Flows, cfs:	
Mean annual	49,200
Spillway capacity at normal pool	682,500
Elevations, ft. msl:	
Top of dam	453
Max. water surface	446.4
Top of gates, closed	444
Crest of spillway	391
Normal pool	440
Minimum power pool	437
Normal tailwater (McNary pool)	340
Reservoir (Normal pool):	
Length, miles	32
Shoreline, miles	56
Area, acres	8,370
Pondage in 3 ft. drawdown, acre-feet	24,860
Dam (Length, ft.):	
Spillway	610
Non-overflow concrete sections	743
Right embankment	627
Lock:	
Net width, ft	86
Net length, ft	675
Max. lift above McNary pool, ft.:	105
Powerhouse:	
Length, ft	671
Width, ft	261
No. of generating units, Initial	3
No. of generating units, Ultimate	6
Turbine ratings at 80 ft. head, hp	143,000
Generator ratings, nameplate, kw	90,000
Overload capability of generators, kw	103,500
Fish passage facilities:	
No. of ladders	2
North shore width, ft	24
South shore width, ft	16

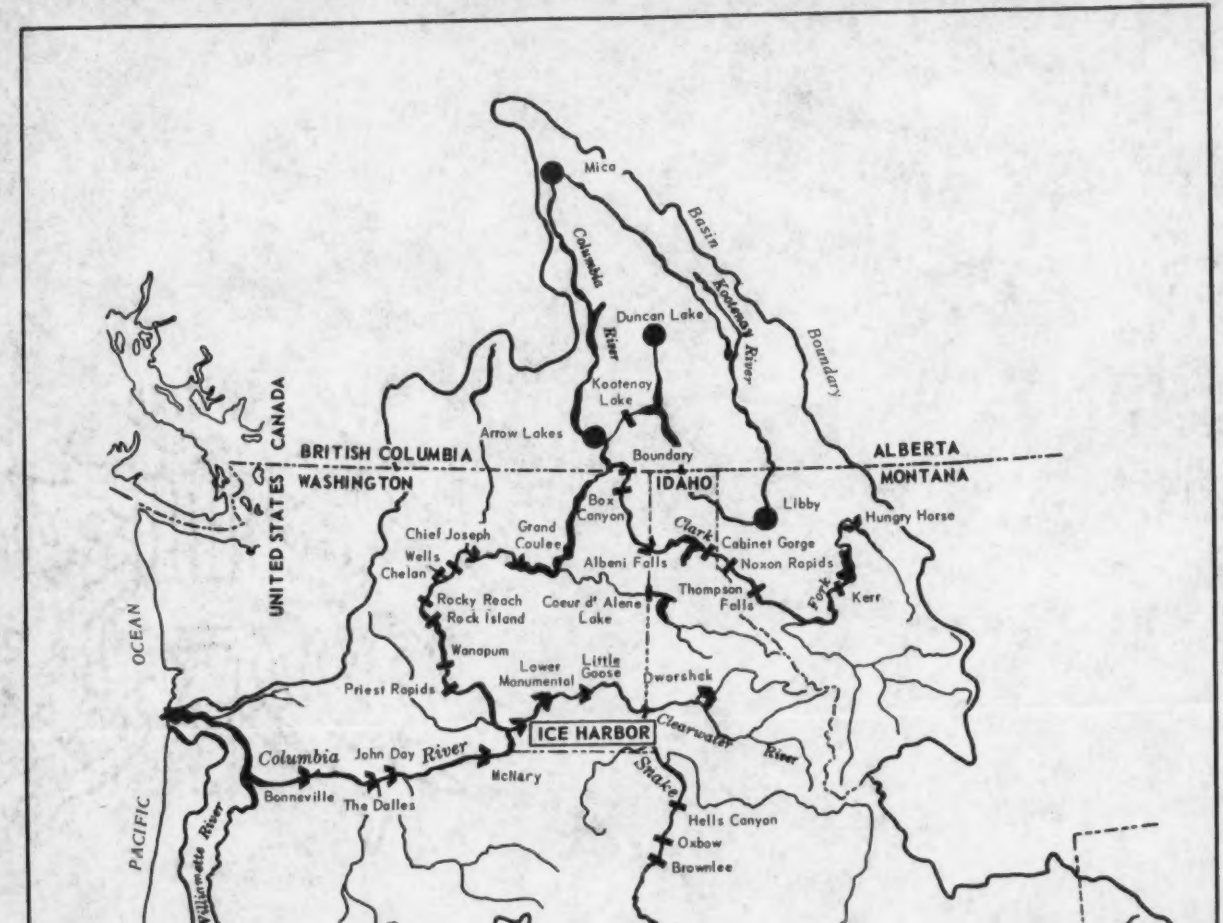
TABLE 2

Interest During Construction—Specific Facilities

	Specific construction costs				Interest during period [1]
	During period	Cumulative at beginning of period	In-service at beginning of period	Interest bearing at beginning of period	
NAVIGATION FACILITIES					
June 1945 through—					
Fiscal year 1961	$21,478,900	$0	$0	$0	$650,558
Fiscal year 1962	3,923,200	21,478,900	0	21,478,900	605,457
July 1 to Oct. 31, 1962	500	25,402,100	0	25,402,100	211,781
Nov. 1, 1962, to June 30, 1963	212,100	25,402,600	25,686,300	0	0
July 1, 1963 to completion [2]	71,600	25,614,700	25,686,300	0	0
Total	25,686,300				1,467,796
POWER FACILITIES					
June 1945 through fiscal year 1961	$42,280,900	$0	$0	$0	$2,920,618
July 1 to Dec. 31, 1961	283,300	42,280,900	0	0	529,698
January 1962	61,200	42,564,200	14,450,700	28,113,500	58,634
February 1962	133,600	42,625,400	14,450,700	28,174,700	58,836
March 1 to June 30, 1962	248,300	42,759,000	43,352,200	0	0
Fiscal year 1963	180,500	43,007,300		0	0
July 1, 1963 to completion [2]	164,400	43,187,800			
Total	43,352,200				3,567,786

[1] Interest through fiscal year 1962 for navigation and through fiscal year 1961 for power taken from financial records of Corps of Engineers. For subsequent periods, interest is computed monthly on the interest bearing amount at beginning of month plus one-half the cost during month.

[2] Estimated.


Mica
Columbia River
Basin
Kootenay River
Boundary
Duncan Lake
Kootenay Lake
Arrow Lakes
BRITISH COLUMBIA
WASHINGTON
IDAHO
ALBERTA
MONTANA
UNITED STATES
CANADA
Boundary
Box Canyon
Libby
Hungry Horse
Chief Joseph
Wells
Chelan
Grand Coulee
Albeni Falls
Clark Fork
Cabinet Gorge
Noxon Rapids
Kerr
Thompson Falls
Rocky Reach
Rock Island
Coeur d' Alene Lake
Wanapum
Priest Rapids
Lower Monumental
Little Goose
Dworshak
ICE HARBOR
Clearwater River
Snake
Columbia
John Day River
McNary
Bonneville
The Dalles
Hells Canyon
Oxbow
Brownlee
OCEAN
PACIFIC
Willamette River

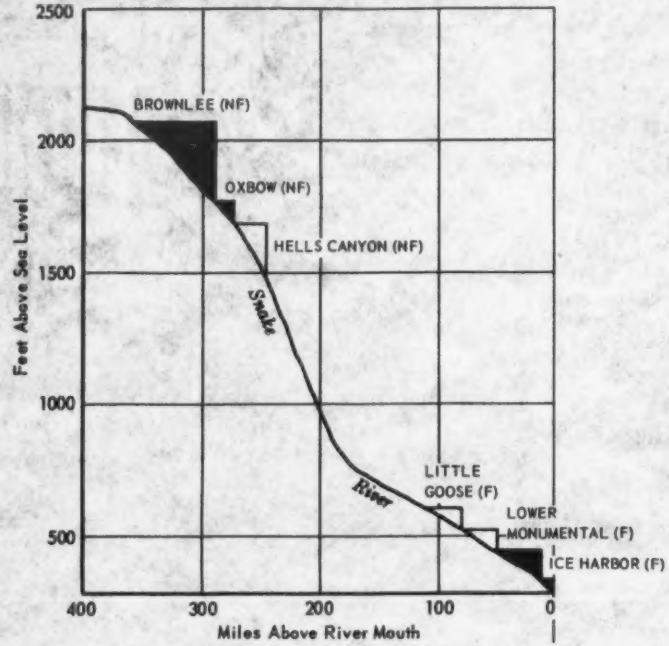
LEGEND

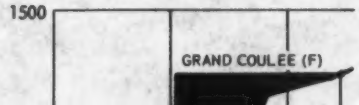
Principal Projects - Existing and Under Construction

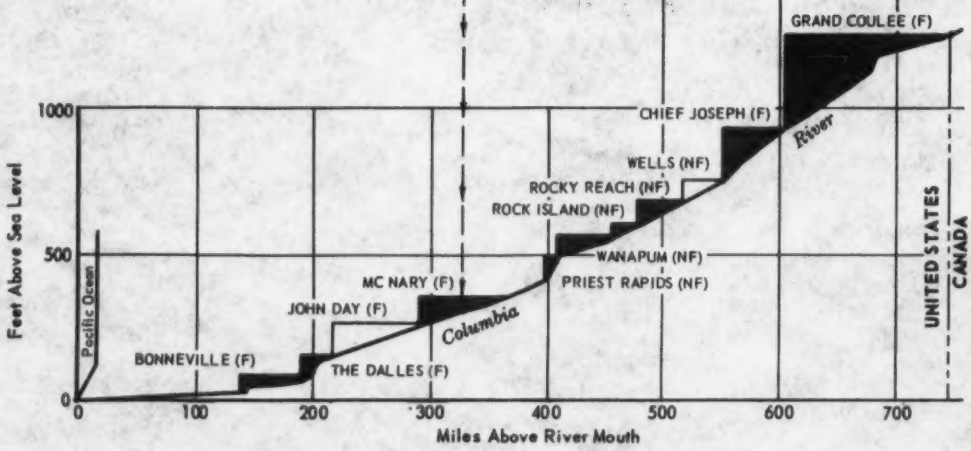
Federal Project
Non-Federal Project
Treaty Reservoirs

COLUMBIA RIVER BASIN

Federal Power Commission
Bureau of Power
APRIL 1965


2500
2000
1500
1000
500
Feet Above Sea Level
BROWNLEE (NF)
OXBOW (NF)
HELLS CANYON (NF)
Snake
River
LITTLE
GOOSE (F)
LOWER
MONUMENTAL (F)
ICE HARBOR (F)
400
300
200
100
0
Miles Above River Mouth


1500
GRAND COULEE (F)



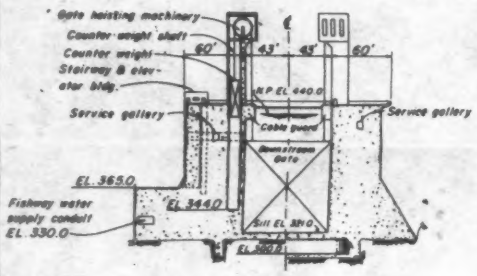
LEGEND

Existing	
Under Construction	
Federal Project	(F)
Non-Federal Project	(NF)

PROFILE OF LOWER COLUMBIA AND SNAKE RIVERS

Federal Power Commission
Bureau of Power
APRIL 1965

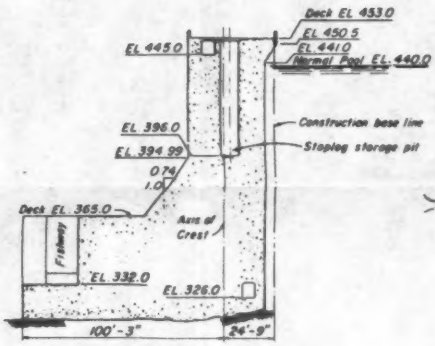
CORPS OF ENGINEERS



SECTION THRU
NAVIGATION LOCK

SCALE IN FEET

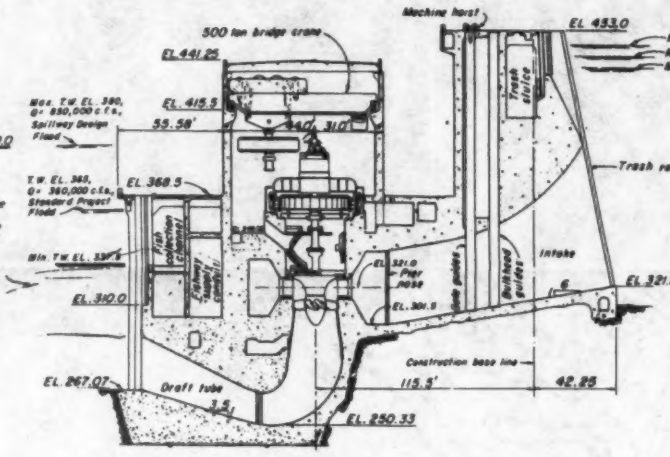
80 0 80 160 240



TYPICAL NORTH
NON-OVERFLOW SECTION

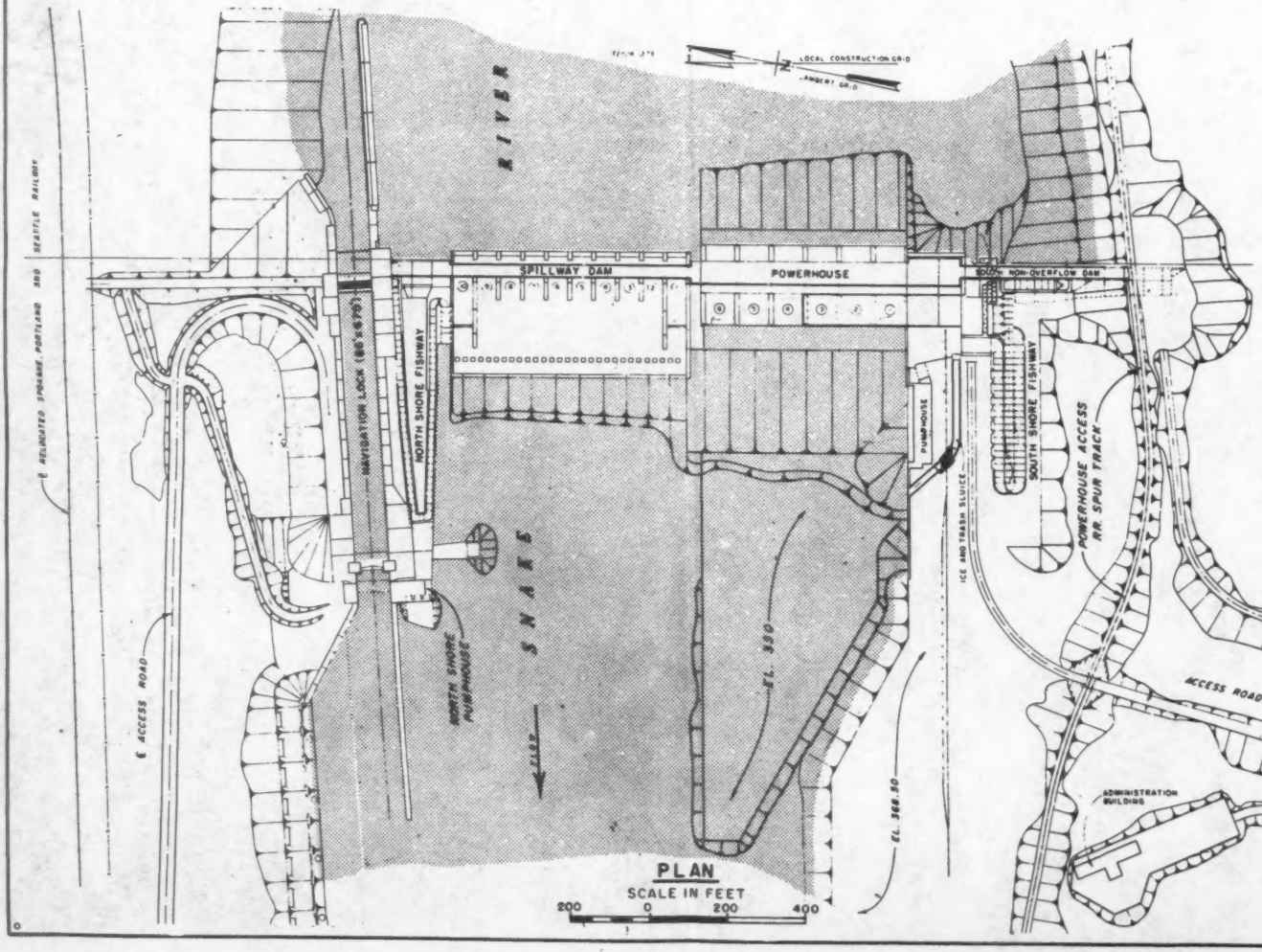
SCALE IN FEET

40 0 40 80 120



SECTION THRU ℄ MAIN UNIT-POWERHOUSE

(NOT TO SCALE)

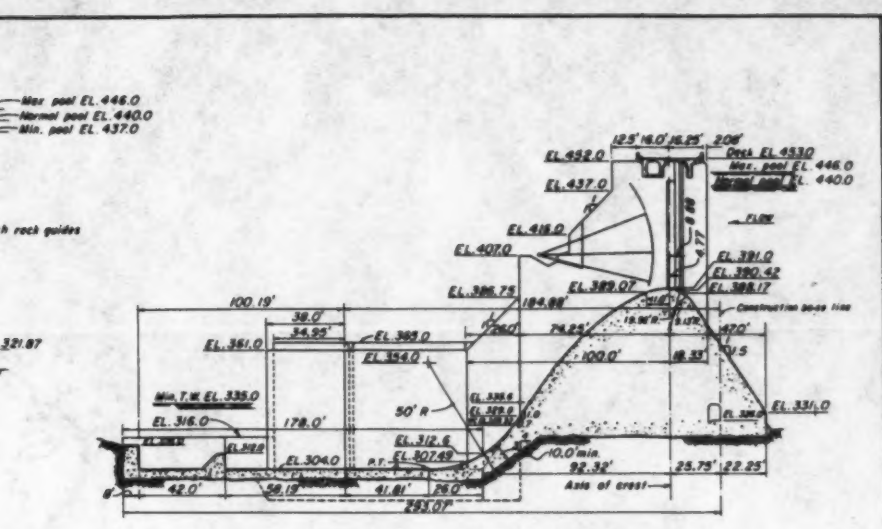


PLAN

SCALE IN FEET

200 0 200 400

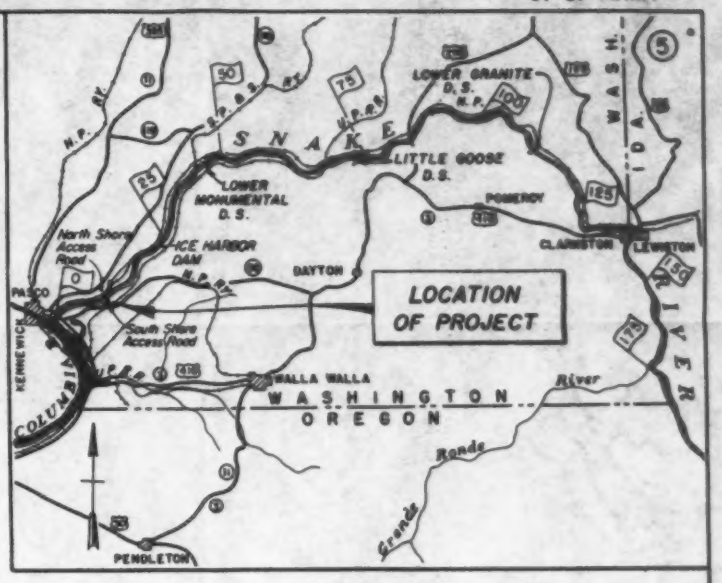
U. S. ARMY



TYPICAL SPILLWAY SECTION

SCALE IN FEET

40 0 40 80 120



VICINITY MAP

SCALE IN MILES

10 0 10 20 30

RESERVOIR PLAN

SCALE IN MILES

2 0 2 4 6

River Miles shown are from mouth of Snake River

SNAKE RIVER

OREGON, WASHINGTON AND IDAHO

ICE HARBOR LOCK AND DAM

U. S. ARMY ENGINEER DISTRICT, WALLA WALLA

REVISED TO 30 JUNE 1960

TABLE 3

Trial Allocation Data and Computation

(Costs and Benefits in $1,000)

A. Cost Data for Trial Allocation

	Multiple-purpose project				Alternative single-purpose projects	
	Specific		Joint-use	Total	Navigation only	Power only
	Navigation	Power				
Construction Cost	25,686.3	43,352.2	55,367.8	124,406.3	76,582.8	103,416.8
Interest during construction	1,467.8	3,567.8	3,750.0	8,785.6	3,974.4	6,679.9
Investment	27,154.1	46,920.0	59,117.8	133,191.9	80,557.2	110,096.7
Annual Charges:						
Interest (2.5 percent)	678.9	1,173.0	1,477.9	3,329.8	2,013.9	2,752.4
Amortization (1.026 percent)	278.6	481.4	606.5	1,366.5	826.5	1,129.6
Operation and maintenance	80.5	175.7	152.2	408.4	184.3	320.7
Replacements	43.0	290.0	111.0	444.0	121.0	398.0
Total	1,081.0	2,120.1	2,347.6	5,548.7	3,145.7	4,600.7

B. Trial Allocation

	Navigation	Power	Total
1. Benefits	1,840.0	9,195.1	11,035.1
2. Alternative costs	3,145.7	4,600.7	7,746.4
3. Benefits limited by alternative costs	1,840.0	4,600.7	6,440.7
4. Separable costs	948.0	2,403.0	3,351.0
5. Remaining benefits (3)–(4)	892.0	2,197.7	3,089.7
(a) Remaining benefits in percent	28.9	71.1	100.0
6. Allocated residual costs	634.5	1,563.2	2,197.7
7. Total allocation	1,582.5	3,966.2	5,548.7
8. Annual cost, specific facilities	1,081.0	2,120.1	3,201.1
9. Annual costs, joint-use facilities	501.5	1,846.1	2,347.6
(a) Allocation in percent	21.4	78.6	100.0

TABLE 4

Interest During Construction on Joint-Use Facilities [1]

	During period	Construction cost in joint use			Interest during period [3]
		Cumulative at beginning of period	In-service at beginning of period [2]	Interest bearing at beginning of period	
Prior to June 30, 1961	$48,960,800	$0	$0	$0	$2,796,110
July 1 to December 31, 1961	2,542,200	48,960,800	0	48,960,800	631,854
January 1962	517,800	51,503,000	14,506,400	36,996,600	77,616
February 1962	476,400	52,020,800	14,506,400	37,514,400	78,651
March 1962	230,800	52,497,200	43,519,200	8,978,000	18,945
April 1962	215,200	52,728,000	43,519,200	9,208,800	19,409
May 1962	13,600	52,943,200	43,519,200	9,424,000	19,647
June 1962	45,600	52,956,800	43,519,200	9,437,600	19,709
July 1962	136,400	53,002,400	43,519,200	9,483,200	19,899
August 1962	236,800	53,138,800	43,519,200	9,619,600	20,287
September 1962	137,900	53,375,600	43,519,200	9,856,400	20,678
October 1962	147,000	53,513,500	43,519,200	9,994,300	20,975
November 1, 1962 to June 30, 1963	605,400	53,660,500	55,367,800	0	0
July 1, 1963 to completion	1,101,900	54,265,900	55,367,800	0	0
Total	55,367,800				3,743,780

[1] Based on 21.4 percent to navigation and 78.6 percent to power.

[2] Associated with navigation=21.4 percent×$55,367,800=$11,848,700. Associated with power=[$55,367,800 −$11,848,700]÷3=$14,506,400.

[3] Interest through calendar year 1961 taken from financial records. For subsequent periods, interest is computed monthly on the interest bearing amount at the beginning of the period plus one half of the costs during the month.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

K–B COMPRESSION COMPANY, INC. (OPERATOR), DOCKET NO. RI60–247

ORDER RELEASING REFUNDS

(Issued September 1, 1965)

The Commission by order issued September 4, 1964,[1] approved K–B's offer of settlement of a pending rate proceeding and ordered K–B to retain the refund to its customer, Lone Star Gas Company, pending further order. This retention was directed in keeping with our policy expressed in the order approving the Humble settlement[2] wherein we stated that it is "our duty to insure that the ultimate consumers of gas actually receive all of the benefits of our rate regulation to which they may be entitled," and that we were taking action "to assure that, within the limits of our jurisdictional reach, the refunds to be ordered actually flow to those parties legally and equitably entitled thereto."

Review of the flow-through obligations of K–B's pipeline customer shows that Lone Star is obligated to flow-through the jurisdictional portion of the refund in this proceeding. All of the other pipelines in the resale chain are similarly obligated to flow-through all significant jurisdictional amounts. Accordingly, we hereinafter provide that K–B shall release the refund for flow-through in accordance with the applicable Commission settlement orders.

The Commission orders:

(A) K–B shall release and pay over to Lone Star within 30 days of this order the total amount assigned to Lone Star as specified in K–B's refund report filed October 19, 1964, together with the earnings on this amount while held in trust from September 4, 1964, to the date of this order.

(B) Each pipeline company subject to the jurisdiction of this Commission which receives a flow-through of refunds as a result of this order shall flow-through such refunds and submit a report thereof in accordance with the applicable Commission orders governing its flow-through obligations.

(C) Where any pipeline subject to the jurisdiction of this Commission receives a refund as a result of this order and, contrary to our conclusion that the jurisdictional portion thereof will flow-through to its customers, claims the right to retain such amounts that pipeline shall report to the Commission within 10 days of the date of this order, the basis of such claim and, when the amount is received, that pipeline shall retain the amount in dispute subject to our further order.

(D) The amounts ordered to be retained pursuant to paragraph (C) shall be retained in accordance with the methods set forth in paragraph (j) in the Commission's "Order Releasing Refunds in Part" issued April 21, 1965, in *Humble Oil & Refining Company*, Docket No. G–9287, *et al.*, 32 FPC 830. The party retaining such amounts shall report to the Commission the manner in which the amounts are retained within 30 days of receipt.

[1] "Order Approving Offer of Settlement," *K–B Compression Co., Inc., (Operator)*, Docket No. RI60–247, 32 FPC 706.

[2] "Order Conditionally Approving Rate Settlement Proposal, Severing and Terminating Proceedings and Prescribing Refunds," *Humble Oil & Refining Co.*, Docket No. G–9287, *et al.*, issued July 8, 1964, 32 FPC 49.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

CRISP COUNTY POWER COMMISSION v. GEORGIA POWER COMPANY, DOCKET NO. E-7120

ORDER DENYING MOTION TO DISMISS AND PROVIDING FOR HEARING

(Issued September 2, 1965)

On August 8, 1963, Crisp County Power Commission (Crisp County), Cordele, Georgia, filed with the Federal Power Commission a complaint against Georgia Power Company (Georgia Power), Atlanta, Georgia, requesting the Commission to order, pursuant to Section 202(b) of the Federal Power Act, that Georgia Power establish interconnection with and interchange power and energy with Crisp County under terms and conditions to be prescribed by the Commission.

On September 9, 1963, Georgia Power filed with the Commission an Answer and Motion to Dismiss the Complaint filed by Crisp County. The motion to dismiss contended that Crisp County is not a "person" within the meaning of Section 202(b) of the Federal Power Act. On September 30, 1963, Crisp County filed an Answer to Georgia Power's motion to dismiss, and on October 11, 1963, Georgia Power filed a supplemental brief in support of the motion to dismiss. This Commission in its past decisions has indicated that municipalities are "persons" for purposes of complaint and invocation of the consumer protective provisions of Part II of the Federal Power Act. *Shrewsbury Municipal Light Department* v. *New England Power Company*, Order Fixing Date of Hearing; Denying Motion to Dismiss, issued May 2, 1963, Docket No. E-7021, 32 FPC 472-A. The Commission's Opinion Nos. 438 and 438-A were upheld by the Court of Appeals, *New England Power Co.* v. *F.P.C.*, 349 F. 2d 258, CA1 #6434, decided July 21, 1965. Although the court did not reach the question of whether a municipality which generates electricity is a "person" under § 202(b), there is nothing in the legislative history to indicate that any distinction was intended in the Act between municipalities with generating facilities and municipalities without generating facilities insofar as their ability to secure interconnection with investor-owned utilities to provide service to the municipal power distributor consistent with Section 202(b). All the consumer safeguard provisions of Part II of the Power Act can be invoked to regulate a public utility on the complaint of a municipality. *United States* v. *Public Utilities Commission of California*, 345 U.S. 295, 312-313, 316 (1953). It is true that this case indicates (p. 313 at footnote 23) that Congress intended to preclude the Commission from requiring any investor-owned company to wheel power from a federal or state or municipally owned generating system to a customer of such system. But nothing of this nature is contemplated by Crisp County's complaint, nor does the fact that the appropriate terms of any such interconnection may reflect the value of the generating capacity Crisp County can supply to the interconnected system in any way bring the present matter within the ambit of the type of situation Congress was concerned with in limiting the scope of Commission authority under Section 202(b). In short, it is clear that Crisp County is a "person" within the meaning of that term as it appears in Section 202(b), and there is nothing in the Act or its legislative history which stands in the way of our granting it the relief requested if it is necessary or appropriate in the public interest and otherwise consistent with the Section's standards. It is therefore appropriate to deny Georgia Power's Motion to Dismiss.

As a result of informal conferences among representatives of Crisp County, Georgia Power and the Commission's staff for purposes of clarification of the issues and agreement as to service of prepared testimony, the following schedule has been recommended for Commission consideration:

September 15, 1965	Service of direct testimony and exhibits by Crisp County.
October 15, 1965	Service of testimony and exhibits by Georgia Power.
November 3, 1965	Service of testimony and exhibits by Commission Staff and intervenors.
November 15, 1965	Service of testimony and exhibits by Georgia Power in reply to Staff and intervenors, and by Crisp County in reply to Georgia Power, Staff and intervenors.
November 30, 1965	Commencement of hearing.

The Commission further finds:

It is necessary and appropriate for the purposes of the Federal Power Act that a public hearing be ordered respecting the issues presented under Section 202 of the Act and in the Complaint and the Answer.

The Commission orders:

(A) Georgia Power's motion to dismiss the complaint of Crisp County is hereby denied.

(B) Pursuant to the authority contained in the Federal Power Act, particularly Sections 202, 308 and 309 thereof, a public hearing shall be held commencing on November 30, 1965, at 10:00 a.m. (EST) in a hearing room of the Federal Power Commission, 441 G Street, N.W., Washington, D.C., respecting the issues presented under Section 202 of the Act and in the Complaint and the Answer.

(C) The schedule for the service of testimony and exhibits as set forth in the recital above is hereby adopted.

(D) Notices of intervention and petitions to intervene may be filed with the Federal Power Commission, Washington, D.C. 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.37) on or before September 15, 1965.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr. and Carl E. Bagge.

HOME GAS COMPANY, DOCKET NO. RP65-61

ORDER ACCEPTING REVISED TARIFF SHEETS FOR FILING, CONDITIONALLY ACCEPTING TWO REVISED TARIFF SHEETS, AND APPROVING REFUNDS

(Issued September 2, 1965)

Home Gas Company (Home) on June 28, 1965, tendered for filing certain revised tariff sheets to its FPC Gas Tariff, Third Revised Volume No. 1.[1] The proposed change in rates would make effective as of January 1, 1965, a reduction in the commodity component of Home's jurisdictional rates of 0.38 cent per Mcf or approximately $82,721 annually, based on actual and estimated sales for the year 1965.

[1] Fifteenth Revised Sheet Nos. 7 and 12, Sixth Revised Sheet No. 18, and Sixteenth Revised Sheet No. 22.

The proposed rate filing, which we have docketed as above, reflects the reduction in the Federal income tax rate for corporations to 48 percent, which became effective January 1, 1965, and the flow-through of the rate reduction by Home's supplier The Manufacturers Light and Heat Company, which also became effective January 1, 1965.[2] Home will commence billing at the lower rates beginning with the first billing month after receiving Commission approval and will make refunds for the period January 1, 1965, through the billing month immediately preceding the first month billed under the rates accepted for filing herein.

Among the revised tariffs tendered for filing are Fifteenth Revised Sheet No. 12 and Sixth Revised Sheet No. 18 which set forth the charges applicable to Home's partial requirements customers (Rate Schedules CDS–EPR and CDS–PR). The only change proposed in the EPR and PR Schedules is a reduction equal to rate reduction in Rate Schedule CDS–1, so that the three schedules will continue to have identical rate levels. The lawfulness of Home's EPR and PR Schedules is now under consideration; respectively in Home's Docket No. RP63–8 and in the consolidated proceedings, *Atlantic Seaboard Corp.*, Docket No. G–16401, *et al.* in which Home is one of the respondents. We are therefore accepting Fifteenth Revised Sheet No. 12 and Sixth Revised Sheet No. 18 conditionally subject to the outcome of proceedings in Docket Nos. G–16401 and RP63–8.

The proposed filing is not intended to change or otherwise affect the existing obligations of Home relating to refunds and rate reductions.

Home requests the waiver of the notice requirements of the Commission's Regulations as may be necessary to permit the tendered tariff sheets to become effective as of January 1, 1965, as proposed. The Commission issued notice of the filing on July 9, 1965. No protests or objections to Home's proposed reduced rates have been received.

The Commission finds:

(1) Good cause exists for waiving the notice requirements of Section 154 of the Commission's Regulations under the Natural Gas Act and for permitting the revised tariff sheets specified above to become effective as of January 1, 1965.

(2) The proposed revised tariff sheets and the rate reductions as proposed by Home are proper and in the public interest in carrying out the provisions of the Natural Gas Act, and such tariff sheets should be accepted for filing to be effective subject to the conditions of this order.

The Commission orders:

(A) The notice requirement of Section 154 of the Commission's Regulations under the Natural Gas Act is hereby waived and the revised tariff sheets specifically described hereinabove are accepted for filing to be effective as of January 1, 1965.

(B) Fifteenth Revised Sheet No. 12 and Sixth Revised Sheet No. 18 which are accepted for filing in paragraph (A) above, shall be subject to the provisions of any orders of the Commission which have been issued and which hereafter may be issued in the proceedings in Docket Nos. G–16401, *et al.* and RP63–8.

(C) This order shall not be construed to change or otherwise affect the existing obligations of Home relating to refunds and rate reductions under orders heretofore issued by the Commission in proceedings involving Home; and, further, this order is without prejudice to any findings or orders which have been made or which may hereafter be made by the Commission and is without prejudice to any claims or contentions which may be made by the Commission, Home,

[2] The rate reduction was approved in Docket No. RP65–50 by order issued August 2, 1965.

the Commission staff, or any other party affected by this order, in any proceedings now pending or hereafter instituted by or against Home or any other persons or parties affected by this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

TEXAS EASTERN TRANSMISSION CORPORATION, DOCKET NO. RP65–59; THE PHILADELPHIA GAS WORKS DIVISION OF UNITED GAS IMPROVEMENT COMPANY v. TEXAS EASTERN TRANSMISSION CORPORATION, DOCKET NO. RP65–52

ORDER ON MOTIONS FOR CLARIFICATION

(Issued September 2, 1965)

The Commission by order issued July 21, 1965, 34 FPC 98, conditionally approved a rate reduction proposal submitted by Texas Eastern Transmission Corporation in a letter of intent dated June 1, 1965, in Docket No. RP65–59, and dismissed the complaint proceedings in Docket No. RP65–52. In the letter of intent Texas Eastern proposed a reduction in its jurisdictional rates of approximately $3,500,000 annually, to be effective June 1, 1965, and undertook certain obligations to make refunds and rate reductions subject to specified conditions.

On August 6, 1965, the Public Service Commission of the State of New York filed a motion requesting the Commission to clarify the aforementioned order, or in the alternative, to consider its document as filed a conditional notice of intervention, objection, and application for rehearing. On August 12, 1965, a joint "Application for Clarification or Rehearing" of the order was filed by The Brooklyn Union Gas Company, Long Island Lighting Company, and The Philadelphia Gas Works Division of The United Gas Improvement Company, distributor customers of Texas Eastern.

The requests for clarification complain principally of claimed ambiguities in the order and Article V of Texas Eastern's proposal regarding Texas Eastern's refund and rate reduction obligations relating to the Rayne Field proceedings. In effect, the motions request the Commission to make clear that the parties are not foreclosed by the order issued July 21, 1965, or the proposal thereby conditionally approved, from the right to urge in the Rayne Field proceedings such disposition of the benefits Texas Eastern may realize in such proceedings as the parties may deem appropriate.

On August 20, 1965, Texas Eastern filed an answer to the aforementioned requests for clarification and a proposal to resolve the objections raised. Texas Eastern states it would agree to the elimination of the second paragraph of Article V of the letter of intent and issuance of a clarifying order amending the order issued July 21, 1965, and approving the elimination with the understanding that neither the letter of intent, the order issued July 21, 1965, nor the clarification order shall be construed to require the Commission, Texas Eastern or any other party to waive any right, claim or argument, inchoate or otherwise, now or hereafter existing with respect to Rayne Field. Texas Eastern further represents that this proposal would enable effectuation of the letter of intent without prejudice to the rights of any party to make any claims or arguments in the Rayne Field proceedings or elsewhere to the same extent as though the letter of intent had never been filed or approved.

Texas Eastern served its answer on all its customers and interested State commissions with a request that any comments thereon be filed with this Commission on or before August 30, 1965. No comments thereon have been submitted.

It is our view that the proposal contained in Texas Eastern's answer filed August 20, 1965, presents a reasonable basis for resolution of the above motions for clarification, and should be approved as hereinafter provided.

The Commission orders:

(A) Texas Eastern's agreement to eliminate the second paragraph of Article V of its letter of intent filed June 1, 1965, is approved and our order issued July 21, 1965, is amended with reference to that provision to the same extent as if it had not been included in the letter of intent, subject to the understanding set forth in Texas Eastern's answer filed August 20, 1965.

(B) Except as hereinabove amended, the order issued July 21, 1965, in these proceedings remains in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

CONSOLIDATED GAS SUPPLY CORPORATION (FORMERLY HOPE NATURAL GAS COMPANY), DOCKET NO. CP65-282; THE CALIFORNIA COMPANY, A DIVISION OF CHEVRON OIL COMPANY (FORMERLY THE CALIFORNIA COMPANY, A DIVISION OF CALIFORNIA OIL COMPANY) (OPERATOR), ET AL., DOCKET NO. CI65-825

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

(Issued September 3, 1965)

The California Company, a Division of Chevron Oil Company[1] (Operator), *et al.*, on February 23, 1965, and Consolidated Gas Supply Corporation,[2] on March 12, 1965, filed applications pursuant to Section 7(c) of the Natural Gas Act for certificates of public convenience and necessity authorizing sales of natural gas in interstate commerce for resale, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

Specifically, applicants seek authorization for the sale of a total of approximately 45,000 Mcf per month to Transcontinental Gas Pipe Line Corporation (Transco) pursuant to a 20-year gas purchase contract dated January 20, 1965.

The gas will be produced in the Block 23 Field, South Marsh Island Area, offshore Louisiana and will be delivered to Transco at a mutually agreeable point on Transco's line in adjacent Block 34. The total initial price proposed is 19 cents per Mcf (at 15.025 psia). The contract provides for 1 cent per Mcf escalations each five years, downward Btu adjustment (below 1000 Btu per Mcf), life-of-the-contract take-or-pay make-up, and reimbursement for fifty percent of new taxes.

Pursuant to due notice,[3] a petition to intervene in Docket No. CI65-825 was

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[1] Effective July 1, 1965, the name of The California Company, a Division of California Oil Company was changed to The California Company, a Division of Chevron Oil Company.

[2] Effective April 1, 1965 the name of Hope Natural Gas Company was changed to Consolidated Gas Supply Corporation.

[3] See notice of the Secretary issued March 3, 1965 in *Southeastern Public Service Company (Operator), et al., and other applicants listed herein,* Docket No. G-2684, *et al.* (30 F.R. 3363, March 12, 1965) (Docket No. CI65-825); and notice of the Secretary issued March 19, 1965, in *Hope Natural Gas Company,* Docket No. CP65-282 (30 F.R. 3890, March 25, 1965).

filed by The Philadelphia Gas Works Division of The United Gas Improvement Company (PGW) on March 19, 1965 and notices of intervention were filed by the Public Service Commission of New York (New York) in Docket No. CI65–825 on March 22, 1965 and in Docket No. CP65–282 on April 9, 1965.

Subsequently, however, the petition to intervene and the notices of intervention were withdrawn.[4] Both New York and PGW stated that their decisions to withdraw their objections to the certification of these sales at the proposed price were arrived at after Counsel for the applicants supplied fuller explanations of the contract. The features of the contract noted by PGW and New York as persuasive are the five-year stability of the initial price and the life-of-contract take-or-pay make-up provision. Both also note the fact that the volumes involved are quite small.

The initial price of 19 cents per Mcf is less than our Statement of General Policy No. 61–1 Guideline Price of 19.5 cents per Mcf for this area (18 CFR 2.56). Therefore, in keeping with our announced policy and in the absence of objection, we shall issue certificates to the applicants as requested.

At a hearing held on September 1, 1965, the Commission on its own motion received and made a part of the record in these proceedings all evidence, including the applications and exhibits thereto, submitted in support of the respective authorizations sought herein, and upon consideration of the record,

The Commission finds:

(1) The applicants in Docket Nos. CP65–282 and CI65–825 are "natural-gas companies" within the meaning of the Natural Gas Act, as heretofore found by the Commission.

(2) The sales of natural gas proposed in Docket Nos. CP65–282 and CI65–825 as hereinbefore described and more fully described in the applications in said proceedings will be made in interstate commerce subject to the jurisdiction of the Commission, and such sales together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The applicants in Docket Nos. CP65–282 and CI65–825 are able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(4) The sales of natural gas by applicants in Docket Nos. CP65–282 and CI65–825 together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are required by the public convenience and necessity, and certificates therefor should be issued as hereinafter ordered and conditioned.

The Commission orders:

(A) Certificates of public convenience and necessity are issued, upon the terms and conditions of this order, to the applicants in Docket Nos. CP65–282 and CI65–825 authorizing the sales for resale of natural gas in interstate commerce, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, all as hereinbefore described and as more fully described in the applications in Docket Nos. CP65–282 and CI65–825.

(B) The certificates granted in paragraph (A) above are not transferable and shall be effective only so long as applicants continue the acts and operations

[4] PGW filed its notice of withdrawal on April 27, 1965 and New York filed its notices of withdrawal on April 22 (Docket No. CI65–825) and May 3, 1965 (Docket No. CP65–282).

thereby authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations, and orders of the Commission.

(C) The grant of the certificates issued in paragraph (A) above shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act or of Part 154 or Part 157 of the Commission's Regulations thereunder, and is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against applicants. Further, our action in this proceeding shall not foreclose or prejudice any future proceedings or objections relating to the operation of any price or related provisions in the gas purchase contract herein involved. The grant of the certificates aforesaid for service to the particular customer involved shall not imply approval of all of the terms of the contract, particularly as to the cessation of service upon termination of said contract, as provided by Section 7 (b) of the Natural Gas Act. The grant of the certificates aforesaid shall not be construed to preclude the imposition of any sanctions pursuant to the provisions of the Natural Gas Act for the unauthorized commencement of any sales of natural gas subject to said certificate.

Commissioner Ross *dissenting*.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

EL PASO NATURAL GAS COMPANY, DOCKET NO. CP64-184

FINDINGS AND ORDER FURTHER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued September 3, 1965)

On June 22, 1965, El Paso Natural Gas Company (Petitioner) filed in Docket No. CP64-184 a petition to amend further the Commission's order issued April 20, 1964, 31 FPC 959, as amended, in the subject docket to delete therefrom authorization for the construction and operation of certain facilities and for the sale and delivery of natural gas by means of such facilities, all as more fully set forth in the petition to amend in this proceeding.

The order of April 20, 1964, authorized Petitioner to construct and operate, among other facilities, thirteen mainline taps and to sell and deliver natural gas by means of such taps to certain existing customers. Petitioner states that seven of these taps have not been constructed and are not now proposed to be constructed since the distributor customers involved have not gone forward with the initiation of natural gas service. Therefore, petitioner seeks to have authorization for the following facilities and appurtenances and for the sale and delivery of natural gas by means of such facilities deleted from the order of April 20, 1964:

Customers	Facilities	Location
California-Pacific Utilities Co	Richard E. Markillie Tap No. 1	Douglas County, Oreg.
	Kenneth R. Bare Tap	Do.
	Sladen O. Shugart Tap	Do.
Northwest Natural Gas Co	Sher Khan Tap	Lane County, Oreg.
	Clifford Picknel Tap	Do.
	Glenn Weeldreyer Tap	Do.
	M. C. Helms Tap	Linn County, Oreg.

Due notice of the filing of the petition to amend and opportunity for hearing thereon has been given by publication in the Federal Register on July 7, 1965 (30 F.R. 8597). No protest or petition to intervene has been filed in this proceeding.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued April 20, 1964, as amended, in Docket No. CP64–184 be further amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order issued April 20, 1964, as amended, in Docket No. CP64–184 is further amended to delete therefrom authorization for the facilities and for the sale and delivery of natural gas by means of such facilities as set forth in the foregoing table, all as hereinbefore described and as set forth in the petition to amend.

(B) In all other respects said order, as amended, shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

FLORIDA GAS TRANSMISSION COMPANY, DOCKET NO. CP66–12

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued September 3, 1965)

On July 12, 1965, Florida Gas Transmission Company (Applicant) filed in Docket No. CP66–12 an application pursuant to Section 7(c) of the Natural Gas Act, as implemented by Section 157.7(c) of the Regulations under the Act, for a certificate of public convenience and necessity authorizing the construction, during the 12 month period commencing with the date on which this order issues, and the operation of natural gas facilities for the sale of natural gas to direct customers and existing distributors for resale and for miscellaneous rearrangements not resulting in any change of service rendered by means of the facilities involved, all as more fully set forth in the application in this proceeding.

Applicant proposes to construct the following maximum number of projects pursuant to the instant authorization:

(1) Three projects for the transportation and sale of natural gas previously authorized under certificates for transportation and sale to existing distributors at rates on file with the Commission for resale in existing market areas. Each project will include any necessary lateral, lateral loop lines, metering, regulating and appurtenant facilities.

(2) Five projects for direct sales of natural gas to consumers located outside local distributors' franchise areas. Each project will include the necessary tap, meter, regulator and such minimum distance of appropriate size (1-inch to 6-inch) line pipe as may be necessary.

(3) Twenty miscellaneous rearrangements.

The total cost of facilities proposed under this application will not exceed a maximum of $30,000 and the total deliveries to any one customer will not exceed a maximum of 100,000 Mcf of natural gas per year.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on September 1, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Florida Gas Transmission Company, a Delaware corporation having its principal place of business in Winter Park, Florida, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its opinion and order of December 28, 1956, in Docket Nos. G–9262 and G–9960 (16 FPC 118).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation and/or sale of natural gas in interstate commerce and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(6) The authorization hereinafter granted should be limited to construction during a 12 month period commencing with the date on which this order issues and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $300,000, with the total deliveries to any one customer not to exceed a maximum of 100,000 Mcf of natural gas per year.

(7) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit within 60 days after the expiration of the authorization granted hereinafter, a statement in compliance with Section 157.7(c)(8) of the Commission's Regulations under the Natural Gas Act.

(8) The certificate issued hereinafter should be conditioned upon Applicant's compliance with the provisions of Section 157.7(c)(7) of the aforesaid Regulations.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity is issued authorizing Applicant, Florida Gas Transmission Company, to construct, during the 12 month period commencing with the date on which this order issues, the proposed facilities hereinbefore described, as more fully described in the application in this proceeding and to operate such facilities to sell natural gas to direct customers and to distributors for resale as hereinafter provided.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general

terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(C) The authorization granted in paragraph (A) above is limited to construction during the 12 month period commencing with the date on which this order issues and the total expenditures for facilities to be constructed thereunder are limited to a maximum of $300,000, with the total deliveries to any one customer limited to a maximum of 100,000 Mcf of natural gas per year.

(D) Applicant shall submit within 60 days after the expiration of the authorization granted by paragraph (A) above a statement in compliance with Section 157.7(c)(8) of the Commission's Regulations under the Natural Gas Act.

(E) The certificate issued by paragraph (A) above is expressly conditioned upon Applicant's compliance with the provisions of Section 157.7(c)(7) of the aforesaid Regulations and, further, shall not entitle any industrial customer to whom firm deliveries are authorized herein to any priorities to additional gas for meeting any future increases in its requirements at the expense of firm resale customers desiring to acquire additional gas to meet any future increases in their requirements.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

FLORIDA GAS TRANSMISSION COMPANY, DOCKET NO. CP66-19

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued September 3, 1965)

On July 19, 1965, Florida Gas Transmission Company (Applicant) filed in Docket No. CP66-19 an application, as supplemented on August 5, 1965, pursuant to Section 7(c) of the Natural Gas Act, as implemented by Section 157.7(b) of the Regulations under the Act, for a certificate of public convenience and necessity authorizing the construction during the period from July 1, 1965, to July 1, 1966, and the operation of gas purchase facilities to enable Applicant to take into its certificated main pipeline system natural gas which will be purchased from producers or other similar sellers thereof, all as more fully set forth in the application in this proceeding.

The purpose of this "budget-type" application is to augment Applicant's ability to act with reasonable dispatch in contracting for and connecting to its pipeline system new supplies of natural gas in various producing areas generally coextensive with said system.

The total cost of the facilities covered by this application will not exceed a maximum of $1,500,000, with no single project to exceed a cost of $300,000, which costs are proposed to be financed from internally generated funds.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on September 1, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Florida Gas Transmission Company, a Delaware corporation having its principal place of business in Winter Park, Florida, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of December 28, 1956, in Docket Nos. G-9262 and G-9960 (16 FPC 118).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit within 60 days after expiration of the authorization granted hereinafter, a statement in compliance with Section 157.7(b)(3) of the Commission's Regulations under the Natural Gas Act.

(6) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(7) The authorization hereinafter granted should be limited to construction during the period from July 1, 1965, to July 1, 1966, and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $1,500,000, with no single project to exceed a cost of $300,000.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity is issued authorizing Applicant, Florida Gas Transmission Company, to construct during the period from July 1, 1965, to July 1, 1966, the proposed facilities hereinbefore described, as more fully described in the application in this proceeding, and to operate such facilities only to take natural gas supplies from producers or other similar sellers who have received authorization from the Commission to sell natural gas to said Applicant.

(B) Applicant shall submit within 60 days after the expiration of the authorization granted by paragraph (A) above a statement in compliance with Section 157.7(b)(3) of the Commission's Regulations under the Natural Gas Act.

(C) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(D) The authorization granted in Paragraph (A) above is limited to construction during the period from July 1, 1965, to July 1, 1966, and the total expenditures for facilities to be constructed thereunder are limited to a maximum of $1,500,000, with no single project to exceed a cost of $300,000.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

INTERSTATE POWER COMPANY, DOCKET NO. CP65-360

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued September 3, 1965)

On May 14, 1965, Interstate Power Company (Applicant) filed in Docket No. CP65-360 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain transmission pipeline facilities for the transportation of natural gas in interstate commerce, all as more fully set forth in the application.

Applicant proposes to construct and operate approximately 10.0 miles of 12-inch pipeline from a point near Hooppole, Illinois to the Rock River near Prophetstown, Illinois, and 1.5 miles of 8-inch submarine pipeline crossing the Rock River, parallel to its existing pipeline, for the purpose of increasing its system design capacity. Highway crossing permits are required from the State of Illinois and the Counties of Henry and Whiteside, as well as permits from the United States Army Corps of Engineers and the Department of Public Works and Buildings, Division of Waterways, of the State of Illinois, for which applications have been made.

Applicant's proposed facilities will enable it to utilize the additional volumes requested from Natural Gas Pipeline Company of America (Natural) and will make capacity available for future load growth.

Natural is presently authorized to deliver 25,334 Mcf per day of pipeline gas and 4,248 Mcf per day of storage gas to Applicant. In Docket No. CP65-169 Natural has been granted authorization to increase its deliveries to Applicant by 600 Mcf daily from pipeline capacity and 320 Mcf daily from storage capacity.

The estimated cost of the proposed facilities is $423,350, and will be defrayed from the proceeds of the sale of securities in connection with electric and gas expansion programs.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on September 1, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought, and upon consideration of the record,

The Commission finds:

(1) Applicant, Interstate Power Company, a Delaware corporation having its principal place of business in Dubuque, Iowa, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of July 24, 1959, in Docket No. G-18220 (22 FPC 128).

(2) The proposed construction and operation of facilities by Applicant as hereinbefore described, and as more fully described in the application in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed construction and operation of facilities are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Applicant, Interstate Power Company, authorizing the construction and operation of facilities as hereinbefore described and as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be completed and placed in actual operation, as provided in paragraph (b) of Section 157.20 of the aforesaid Regulations within 12 months of the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

NATURAL GAS PIPELINE COMPANY OF AMERICA, DOCKET NO. CP65–420

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued September 3, 1965)

On June 28, 1965, Natural Gas Pipeline Company of America (Applicant) filed in Docket No. CP65–420 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain facilities for a new delivery point for the sale of natural gas to Illinois Power Company (Illinois Power) for resale and distribution in the Village of Hoyleton, Illinois, all as more fully set forth in the application in this proceeding.

Specifically, Applicant proposes to construct and operate a 2–inch side tap, approximately 200 feet of 3–inch lateral and a meter station in Washington County, Illinois. The estimated cost of these facilities is $9,530, which cost will be financed with funds on hand.

Applicant states that Illinois Power, an existing customer of Applicant, will provide natural gas service for Hoyleton from the quantity of gas which Applicant has heretofore been authorized to sell and deliver to Illinois Power. Hoyleton's estimated third year peak day and annual natural gas requirements are 193.9 Mcf and 15,195 Mcf, respectively.

The application indicates that Illinois Power has obtained the necessary authorizations from the Illinois Commerce Commission and from Hoyleton.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on September 1, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Natural Gas Pipeline Company of America, a Delaware corporation having its principal place of business in Chicago, Illinois, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of October 13, 1942, in Docket No. G–235 (3 FPC 830).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is issued authorizing Applicant, Natural Gas Pipeline Company of America, to construct and operate the proposed facilities in order to sell and deliver natural gas as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities authorized shall be constructed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 6 months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., David S. Black and Carl E. Bagge.

NORTHERN NATURAL GAS COMPANY, DOCKET NO. CP65–415

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued September 3, 1965)

On June 25, 1965, Northern Natural Gas Company (Applicant) filed in Docket No. CP65–415 an application pursuant to Section 7(c) of the Natural Gas Act for

authorization to provide up to 420 Mcf of natural gas per day a firm basis to Metropolitan Utilities District of Omaha, Nebraska (Metropolitan) for resale by Metropolitan to General Appliance Manufacturing Company (General), all as more fully set forth in the application.

Metropolitan has requested Applicant to provide up to 420 Mcf of natural gas per day on a firm basis for service to General in its new lawn mower manufacturing plant under construction at Omaha. Metropolitan has an effective service agreement with Applicant to purchase 135,000 Mcf per day of contract demand, and its firm sale to General will be made from that contract quantity. However, under the provisions of Applicant's applicable rate schedule R–2, all large volume (200 Mcf or more per day) industrial customers, whether they are served by Northern or through a distributor, are subject to interruption in accordance with a procedure set forth in said rate schedule R–2 unless the industrial customer is certificated to receive firm gas and the volume is set forth in a service agreement. Therefore, Applicant requests a certificate authorizing the 420 Mcf per day as firm service to General, and agrees to file with the Commission a new service agreement with Metropolitan reflecting the firm service so authorized. No additional facilities are proposed.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on September 1, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits thereto, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Northern Natural Gas Company, a Delaware corporation having its principal place of business in Omaha, Nebraska, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission.

(2) The firm natural gas service authorized by this order is subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid firm natural gas service is required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Applicant, Northern Natural Gas Company, authorizing the delivery of up to 420 Mcf of natural gas per day on a firm basis to Metropolitan Utilities District of Omaha, Nebraska for resale by Metropolitan to General Appliance Manufacturing Company, upon the terms and conditions of this order.

(B) Applicant shall file with the Commission a service agreement with Metropolitan reflecting the firm service authorized above, within 30 days from the date of issuance of this order.

(C) The certificate issued above shall not entitle General to any priorities to additional gas for meeting any future increases in its requirements at the expense of firm resale customers desiring to acquire additional gas to meet any future increases in their requirements.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

SOUTH TEXAS NATURAL GAS GATHERING COMPANY, DOCKET NO. CP66-8

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued September 3, 1965)

On July 12, 1965, South Texas Natural Gas Gathering Company (Applicant) filed in Docket No. CP66-8 an application pursuant to Section 7(c) of the Natural Gas Act, as implemented by Section 157.7(b) of the Regulations under the Act, for a certificate of public convenience and necessity authorizing the construction during the fiscal year August 1, 1965, to August 1, 1966, and the operation of gas purchase facilities to enable Applicant to take into its certificated pipeline system natural gas which will be purchased from producers thereof, all as more fully set forth in the application.

The purpose of this "budget-type" application is to augment Applicant's ability to act with reasonable dispatch in contracting for and connecting to its pipeline system new supplies of natural gas in various producing areas adjacent to said system.

Applicant requests waiver of the cost limitations imposed by Section 157.7(b) of the Commission's Regulations under the Natural Gas Act so that it may maintain its competitive position in acquiring new supplies of natural gas. The total cost of the proposed facilities will not exceed $1,000,000, with no single project to exceed a cost of $250,000, which costs will be financed from cash on hand, from cash generated from operations and from internal sources.

After due notice, no petition to intervene notice of intervention or protest to the granting of the application has been filed.

At a hearing held on September 1, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, South Texas Natural Gas Gathering Company, a Delaware corporation having its principal place of business in Corpus Christi, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its opinion and order issued August 30, 1962, in Docket No. G-18907 (28 FPC 401, 418).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit within 60 days after the expiration

of the authorization granted hereinafter a statement in compliance with Section 157.7(b)(3) of the Commission's Regulations under the Natural Gas Act.

(6) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(7) The authorization hereinafter granted should be limited to construction during the fiscal year August 1, 1965, to August 1, 1966, and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $1,000,000, with no single project to exceed a cost of $250,000.

(8) Good cause has been shown for waiver of the cost limitations imposed by Section 157.7(b) of the Commission's Regulations under the Natural Gas Act.

(9) The certificate issued hereinafter should not be construed as authorization to attach new customers or to increase the volume of sales to existing jurisdictional customers.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity is issued authorizing Applicant, South Texas Natural Gas Gathering Company, to construct during the fiscal year August 1, 1965, to August 1, 1966, the proposed facilities hereinbefore described, as more fully described in the application in this proceeding, and to operate such facilities only to take natural gas from producers who have received authorization from the Commission to sell natural gas to said Applicant.

(B) Applicant shall submit within 60 days after the expiration of the authorization granted by paragraph (A) above a statement in compliance with Section 157.7(b)(3) of the Commission's Regulations under the Natural Gas Act.

(C) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(D) The authorization granted in paragraph (A) above is limited to construction during the fiscal year August 1, 1965, to August 1, 1966, and the total expenditures for facilities to be constructed thereunder are limited to a maximum of $1,000,000, with no single project to exceed a cost of $250,000.

(E) Applicant's request for waiver of the cost limitations imposed by Section 157.7(b) of the Commission's Regulations under the Natural Gas Act is granted.

(F) The certificate issued by paragraph (A) above shall not be construed as authorization to attach new customers or to increase the volume of sales to existing jurisdictional customers.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

UNITED NATURAL GAS COMPANY AND PENNSYLVANIA GAS COMPANY, DOCKET NO. CP65-421

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued September 3, 1965)

On June 28, 1965, United Natural Gas Company (United) and Pennsylvania Gas Company (Pennsylvania) filed in Docket No. CP65-421 a joint application,

as supplemented July 26, 1965, pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain facilities and the exchange of natural gas, all as more fully set forth in the application.

The parties propose to exchange up to 6,000 Mcf of natural gas per day on a regular basis during the months of May through October, pursuant to the terms of a five year contract dated June 23, 1965. All deliveries will be made on a gas-for-gas basis, with deliveries to be balanced at the end of each calendar month.

The proposed exchange of gas will be accomplished through the utilization of an existing interconnection between the parties' respective systems in Elk County, Pennsylvania, and an interconnection proposed to be constructed near Youngsville, Pennsylvania. The Youngsville connection will require the construction and operation by United of approximately 2.5 miles of 6-inch transmission line, estimated to cost $71,790, and the construction and operation by Pennsylvania of a metering station and flow control facilities estimated to cost $10,560. All construction will be financed with cash on hand.

The proposed exchange will provide United with additional operating flexibility by creating a second source of supply into its Youngsville service area, and at the same time will relieve Pennsylvania from transporting equal volumes of gas a distance of 20 miles to ultimate points of delivery for injection into storage.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on September 1, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits thereto, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) United Natural Gas Company, a Pennsylvania corporation having its principal place of business in Oil City, Pennsylvania, and Pennsylvania Gas Company, a Pennsylvania corporation having its principal place of business in Warren, Pennsylvania, are both "natural-gas companies" within the meaning of the Natural Gas Act, as heretofore found by the Commission.

(2) The proposed construction and operation of facilities and exchange of natural gas by United and Pennsylvania are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed construction and operation of facilities and exchange of natural gas are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) United and Pennsylvania are able and willing properly to do the acts and to perform the service proposed, and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to United Natural Gas Company and Pennsylvania Gas Company, authorizing the construction and operation of facilities and exchange of natural gas hereinbefore described, as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued above and the rights granted thereunder are conditioned upon the compliance of United and Pennsylvania with all applicable

Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities authorized shall be constructed and placed in actual operation, and the exchange of natural gas shall be undertaken, as provided by paragraph (b) of Section 157.20 of the aforesaid Regulations, within one year from the date on which this order issues.

(D) United and Pennsylvania shall file their Exchange Agreement dated June 23, 1965, with the Commission as a new rate schedule to their respective FPC Gas Tariffs, Original Volume No. 2, within 60 days from the date of issuance of this order.

OPINION NO. 473

ARKANSAS POWER & LIGHT COMPANY, DOCKET NO. E-7090

OPINION AND ORDER DETERMINING JURISDICTION

(Issued September 7, 1965)*

Syllabus

1. Here Commission is dealing not merely with single or multiple flow of energy but instead with an interstate energy pool. P. 750.
2. Citing *Indiana & Michigan*, Commission *holds* Respondent's sales of energy from interstate pool are sales in interstate commerce subject to its jurisdiction under Section 201 of the Federal Power Act. P. 750.
3. Discussing Respondent's attempt to trace out-of-state energy, Commission observes that it has no burden to show by tracing techniques that interstate energy reaches each wholesale customer, where as here, interstate energy permeates entire system. PP. 750, 751.
4. There may be situations where a public utility which is part of an integrated power system can show that some of its wholesale sales are isolated from interstate network and, as such, not in interstate commerce—any such demonstration would have to rely primarily upon convincing engineering analysis of system operation rather than purely negative showing of absence of measureable interstate flows. P. 751.
5. Use of tracing to disprove that a particular sale of company which is part of electrically integrated system is in interstate commerce is a wholly unrealistic methodology irrelevant to present day power system technology. P. 751.
6. Argument that subject facilities are used in local distribution and thus facilities and sales therefrom are beyond Commission jurisdiction is rejected as not relevant. P. 751.
7. If company is, in fact, a public utility, all wholesale sales for resale in interstate commerce are subject to provisions of Sections 205 and 206 of the Federal Power Act regardless of facilities used. P. 751; 760.
8. Under Federal Power Act, Commission has exclusive jurisdiction over all sales at wholesale in interstate commerce except where expressly exempt—State assertion of jurisdiction has no bearing on question. P. 752.
9. Fact that utility had sufficient generation in Arkansas during peak periods or during whole year to have more than supplied the 23 customers does

*Initial decision appears on p. 753. Rehearing denied by order issued November 5, 1965, 34 FPC 1242. Affirmed, *Arkansas Power & Light Company* v. *F.P.C.*, 368 F. 2d 376 (CA8–1966).

not alter result, for Middle South control area is not operated that way and record does not support such a segregation of supplies and markets. P. 752.

10. To exempt sales to cooperatives would deprive their members of the protection afforded by the Act to customers of municipalities—Commission has regulated such sales for years. P. 752.
11. Courts give weight to an established course of administrative interpretation. P. 752.
12. In a proceeding under Section 201 of the Federal Power Act, Commission *determines* that Respondent's wholesale sales are jurisdictional and requires that rate schedules be maintained for them.

Richard M. Merriman, Harry A. Poth, Jr., and *E. B. Dillon, Jr.* for Arkansas Power & Light Company.

Wallace E. Brand for the Staff of the Federal Power Commission.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

BAGGE, *Commissioner:*

This is a proceeding under Section 201 of the Federal Power Act to determine whether wholesale sales made by Arkansas Power & Light Company (Respondent) to 23 purchasers[1] in the state of Arkansas are subject to the jurisdiction of the Commission. The proceeding was initiated by a show cause order issued by the Commission on April 16, 1963, 29 FPC 744, relating to Respondent's failure to file rate schedules for the sales to the 23 purchasers in accordance with Section 205 of the Act. The proceedings are now before us upon exceptions to the initial decision of Presiding Examiner Ames W. Williams filed by Respondent and adopted by the Arkansas Public Service Commission and the brief opposing exceptions filed by our staff. In accordance with our recent decision in *Indiana & Michigan Electric Company*, 33 FPC 739, Opinion No. 458, Docket No. E–7089, issued April 14, 1965, we agree with the examiner that the wholesale sales for resale here involved are subject to our jurisdiction under the Act and that Respondent is required to maintain rate schedules for them.

The hearing began September 9, 1964, and concluded September 28, 1964, but was much reduced because of extensive stipulation of facts concerning the operations of Respondent and its affiliates. After the filing of briefs the examiner issued his decision on April 22, 1965. As a result of our Order No. 282, on April 21, 1964 (31 FPC 972), permitting companies to file rate schedules subject to reservation on the question of jurisdiction, Respondent on July 30, 1964, filed rate schedules for the 23 sales in issue with such a reservation.

The Respondent admits that it is a public utility within the meaning of Section 201(e) of the Federal Power Act and has on file its rate schedules covering sales to Louisiana Power & Light Company, Mississippi Power & Light Company, Empire District Electric Company, Tennessee Valley Authority, Oklahoma Gas &

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[1] The purchasers referred to in the original order are Southwestern Power Administration, Citizens Light and Power Company, Public Utilities Company of Crossett, West Memphis, North Little Rock, Prescott, Hope and Osceola, Arkansas, Benton Municipal Light and Water Works, Ashley-Chicot Electric Cooperative, Inc., Riceland Electric Cooperative, Inc., C & L Rural Electric Cooperative Corp., Craighead Electric Cooperative Corp., Woodruff Electric Cooperative Corp., Petit Jean Electric Cooperative Corp., First Electric Cooperative Corp., Farmers Electric Cooperative Corp., Carroll Electric Cooperative Corp., South Central Electric Cooperative, Inc., Southwest Arkansas Electric Cooperative Corp., Ouachita Rural Electric Cooperative Corp., Mississippi County Electric Cooperative, Inc., and North Arkansas Electric Cooperative, Inc. The Southwestern Power Administration was erroneously included in this order and The Conway Corporation omitted. This opinion and order, therefore, does not relate to Southwestern, but includes Conway.

Electric Company, Southwestern Electric Power Company and Arkansas Missouri Power Company.

The principal issues raised by Respondent and the staff are (1) whether the sales to the 23 purchasers are sales at wholesale in interstate commerce within the meaning of Sections 201 and 205 of the Act, (2) whether Section 201(b) exempts the sales if the facilities involved are used in local distribution and (3) whether sales to an electric cooperative are sales for resale within Section 201(d) of the Act. The first two issues are almost completely settled by *Indiana & Michigan, supra*, so that only a brief discussion of the evidence is needed in addition to the examiner's decision.

Respondent is one of the four operating subsidiaries of Middle South Utilities, Inc., a holding company, which also owns Louisiana Power & Light, Mississippi Power & Light, New Orleans Public Service, Inc. and Middle South Services, Inc., a service company. It is interconnected with the other operating subsidiaries. The Middle South system, in turn, is interconnected with companies and systems surrounding it. Respondent is in fact one of 140 major utilities operating in a network covering the eastern half of the United States and a portion of Canada. This network includes the service areas of three large groups of companies. Respondent is in the "Interconnected Systems Group" in its Southwest Region.

All of these interconnected utilities operate continuously in parallel; that is, the frequency of each generator is synchronized at the standard 60 cycles. The entire system of companies is arranged so that generation will match load and will be obtained from the most economical sources. On a regional level Respondent and its affiliates (except for New Orleans which is controlled separately) form a "control area" which covers large portions of the states of Arkansas, Louisiana and Mississippi.

This three-state control area is connected to the utilities or control areas that surround it by tie lines known as "boundary ties." Each boundary tie has a meter which records the flow in the tie line. The information recorded by the meters is telemetered to the control center at Pine Bluff, Arkansas. At the control center the System Operator supervises frequency control, power dispatching and scheduling of generation with a view to continuously providing the energy requirements of the control area from the sources yielding the lowest overall cost consistent with reliability of service.

This objective is achieved through the use of the generators in the control area or by arranging interchange with other systems. The key tool for this purpose is frequency control. This is a basic requirement for any electric utility and is critical for a utility which is interconnected with others. The basic frequency is 60 cycles per second. If the frequency falls below this, it means that the load on the interconnected systems has increased, or generation had decreased, as by the loss of a generating unit. Conversely if the frequency rises, it means the load has decreased in relation to generation. There is an obligation in each control area to provide sufficient generating capacity to preclude imposing the frequency regulating burden on other systems. The system operator ordinarily will employ the generating resources in the control area to supply its requirements. Where there is a shortage of generation, however, energy will automatically move in from other areas to meet the deficiency. This is known as "pool assist." Where it is economically justified or otherwise necessary, the system operator will also arrange interchange transactions with another system. Even where no pool assist or interchange is necessary, there may still be outward flows over some boundary ties and inward flows over others, although there may be no net movement of power either way.

In calling upon generation to meet an increase in load, it is desirable that the system operator use the most economical generation available. The generators on

the Middle South system, as on other systems, vary in efficiency; that is, some generators require fewer Btu's of heat to generate a kilowatt hour of electric energy than others. Fuel costs vary from station to station, and costs also vary depending upon the percentage of capacity at which the unit is being operated. Transmission losses also vary depending upon the location of the generator and the load. The incremental cost of energy from any given generator adjusted for losses is known as "Delivered Lambda" and is expressed in mills per kilowatt hour. It works out that the system operates most efficiently when the delivered lambdas of each generator are equal. Attempting to achieve this result the Middle South System Operator utilizes a computer which assists in the allocation of generation among available sources at optimum economy. When the computer indicates that the delivered lambda at the boundary tie is at least three-tenths of a mill less than the Middle South system's lambda, adjusted for losses, the Middle South System Operator will arrange an interchange transaction and obtain the needed energy from an adjoining system.

As a consequence of this method of operation, Respondent receives and delivers energy across state boundaries pursuant to rate schedules on file with the Commission. In 1963 Respondent received 1,062,818,000 kwh of electric energy from Louisiana Power and Mississippi Power within the control area and from Oklahoma Gas & Electric Company and Empire District Electric Company outside the control area. In the same year total deliveries to those systems were 766,462,000 kwh.

The sales to the 23 customers involved in these proceedings are made from short lines extending from substations where the voltage is stepped down in most instances from 115 kv to 13.8 kv for delivery to each customer. Total deliveries to these customers amounted to 718,768,360 kwh in 1963. The sales to the 23 customers are made from energy available in Middle South's control area which extends over three states and from energy received from other systems outside the control area. As in *Indiana & Michigan, supra*, we are not dealing merely with a single flow of energy or multiple flows of energy but are dealing instead with an interstate pool of energy to which the generators of the control area and other interconnected systems contribute power and from which all loads, and sometimes the loads of other systems, are supplied. Therefore, in accordance with *Indiana & Michigan, supra*, and the authorities cited therein, particularly *Pennsylvania Water & Power Co.* v. *F.P.C.*, 343 U.S. 414, Respondent's sales of energy from this interstate pool are sales in interstate commerce and are subject to our jurisdiction under Section 201 of the Federal Power Act.

A witness for Respondent made an attempt to trace out-of-state energy to the points of sale in issue. He utilized what Respondent characterized as a manual tracing method by which he studied Respondent's facilities, the log sheets for deliveries to or receipts of energy from other companies and the flows of energy and loads in Respondent's system. He applied this method to the monthly peak hour for each of the four months April, August, October and December used in the Company's Power System Statement, Form 12, filed with the Commission for 1963. On the basis of this study he found that 60 out of 108 delivery points received interstate energy, but the remaining 48 did not. Alternatively, he used a computer, particularly with respect to the distribution of transmission losses, and he found that 66 out of 108 delivery points received interstate energy, but the remaining 42 did not. In both cases he found for these four peak hours that 16 out of the 23 customers received interstate energy, but 7 customers did not. Respondent's witness did not have an opinion as to whether the seven customers received any out-of-state energy during the remaining 8,756 hours in the year. However, the staff showed that, on the basis of Respondent's computer study and

reported flows over certain interconnections into Arkansas, several more of the customers must have received out-of-state energy during the year.

In our opinion, these tracing studies added little to this proceeding. They did provide unnecessary additional proof that the sales by Arkansas to its wholesale customers are made from an integrated system in which there are large flows of energy in interstate commerce. We reiterate our view expressed initially in *Indiana & Michigan, supra*, that there is no burden upon the Commission to show by tracing techniques that interstate energy reaches each wholesale customer, where it has shown, as here, that, as a matter of engineering analysis of the system, interstate energy permeates the entire system. Moreover, as Respondent's witness acknowledged the tracing studies adduced here do not prove that any of the few sales which under that method were shown not to be receiving interstate energy during the four-hour test period were not sales in interstate commerce, since these sales could have utilized interstate energy at some time outside the test period.

There may be situations where a public utility which is part of an integrated interstate power system can show that some of its wholesale sales are isolated from the interstate network and, as such, are not in interstate commerce. In our opinion, however, any such demonstration would have to rely primarily upon a convincing engineering analysis of system operation rather than a purely negative showing of the absence of measurable interstate flows, no matter how comprehensive such a tracing study might be. An interstate electric network is dynamic and ever changing both with respect to load and to generation source. It is an oversimplification, therefore, to talk in terms of a flow of electricity from point to point in an integrated power network of the type involved here. Instead, generation from each source in the system contributes directly or indirectly, and to an ever varying extent, to the energy present, in all parts of the system which are not isolated from out-of-state energy sources. The fact that, as a matter of engineering determination, identification of either the source or destination of particular units of energy within an interstate power system such as respondent's may be difficult and at times impossible does not detract from the interstate nature of the over-all operation. On the contrary, the more complex and comprehensive the nature of the interstate network, the more unlikely it will be that any energy sources will be measurably identifiable. The use of tracing to disprove that a particular sale of a company which is part of an electrically integrated interstate system is in interstate commerce is a wholly unrealistic methodology which is irrelevant to present day power system technology.

Respondent argues that the lines extending from its substations to the 23 customers are facilities used in local distribution, and, as such, the facilities and the sales made from them are beyond the jurisdiction of the Commission. Respondent's witness described most of these lines as operating at 13.8 kv and serving retail customers, large and small, as well as the wholesale customers involved here. In our view the evidence concerning the nature of these lines is not relevant. In accordance with our opinion in *Indiana & Michigan, supra*, we fully agree with the statement of the examiner that:

> If the company is, in fact, a public utility, all wholesale sales for resale in interstate commerce are subject to the provisions of Sections 205 and 206 of the Act regardless of the facilities used.

Entirely apart from this principal, which is directly derived from Section 201 of the Act, we may observe as we observed in *Indiana & Michigan, supra*, that facilities other than those leading directly to the connection with the customer are involved in the sale, and many of these facilities are clearly jurisdictional. Furthermore, the fact that a company may make a few direct sales off a line

transmitting power to a wholesale customer does not convert the line into a local distribution facility. *F.P.C.* v. *Southern California Edison Co.* (Colton), 276 U.S. 205. In fact, "at no point before delivery [to a wholesaler] has been completed has interstate transmission terminated," and "there is no ground for the position that local distribution includes any transmission occurring before the wholesaler who sells at retail is reached." *Wisconsin Michigan Power Co.* v. *F.P.C.*, 197 F. 2d 472, 477, certiorari denied 345 U.S. 934.

Respondent argues that because the 23 sales are subject to regulation by the State of Arkansas they are not subject to regulation under the Federal Power Act. This question has already been settled. Under the Federal Power Act we have exclusive jurisdiction over all sales at wholesale in interstate commerce except where expressly exempt. State assertion of jurisdiction does not have any bearing on the question. *F.P.C.* v. *Southern California Edison Co.* (Colton), 376 U.S. 205, 215; *U.S.* v. *Public Utilities Commission*, 345 U.S. 295, 299–311; *Wisconsin Michigan Power Co.* v. *F.P.C.*, 197 F. 2d 472, 479–480 (CA7), certiorari denied 345 U.S. 934. The fact that there was sufficient generation in Arkansas during peak periods or during the whole year to have more than supplied the 23 customers does not alter the result, for that is not the way the Middle South control area is operated, and the record does not support such a segregation of supplies and markets.[2]

Finally, Respondent argues that sales to cooperatives are not sales for resale because in other connections it has been held that the relationship of a cooperative association and its members is not that of buyer and seller but rather is that of principal and agent. We do not take issue with these decisions, but they are not relevant to the problem here. A sale by a company to a cooperative for redistribution to its members is not unlike a sale of electric energy to a corporation for resale to its stockholders. To exempt sales to cooperatives would deprive their members of the protection afforded by the Act to the customers of municipalities and private utilities. Consequently, it is not surprising that the Commission has regulated sales to cooperatives for years.[3] There are innumerable rate schedules for the sale of electric energy to cooperatives on file. The courts, of course, give weight to such an established course of administrative interpretation.[4]

The Commission further finds:

(1) Arkansas Power & Light Company, Respondent, is a corporation organized and existing under the laws of the State of Arkansas. It owns and operates a transmission network for the transmission of electric energy in interstate commerce, which energy is transmitted thereby from the state in which it is generated and is consumed at points outside thereof. Such facilities are in addition to, and do not include, facilities used for the generation of electric energy or facilities used in local distribution or only for the transmission of electric energy in intrastate commerce, or facilities for the transmission of electric energy consumed wholly by the transmitter. Respondent is, therefore, a public utility within the meaning of the Federal Power Act.

(2) Respondent operates its facilities as part of an interstate system comprised of a control area covering large portions of three states. Respondent combines its requirements with other systems in the control area, and the com-

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[2] See our discussion on this matter and other aspects of alleged state jurisdiction in *Indiana & Michigan, supra.*

[3] *Otter Tail Power Co.*, 8 FPC 393, 396; *Florida Public Utilities Co.*, 9 FPC 3, 11; *Wisconsin Michigan Power Company*, 10 FPC 170, 173, aff'd 197 F. 2d 472 (CA7), certiorari denied 345 U.S. 934; *Indiana & Michigan Electric Co., supra.*

[4] *U.S.* v. *Public Utilities Commission*, 345 U.S. 295, 315.

bined requirements are supplied by the pooled generating facilities of systems in the control area. The systems in the control area are also interconnected with other systems, and part of the combined requirements of systems within the control area are at times supplied by energy generated in states outside of the control area. As a result, all wholesale sales by Respondent's system are sales from an interstate pool and are sales of electric energy in interstate commerce within the meaning of Section 201 of the Federal Power Act.

(3) Respondent sells electric energy to the 23 customers listed in footnote 1 above, and each such sale is a sale at wholesale for resale in interstate commerce within the meaning of Sections 201, 205 and 206 of the Federal Power Act.

(4) The facilities used by the Respondent to complete the transmission and sale of interstate energy to the 23 customers referred to in (3), above, are not local distribution facilities within the meaning of Section 201 of the Act.

(5) Respondent has filed, under protest, rate schedules for service to the 23 customers referred to in (3), above, and Respondent should maintain these on file as its rate schedules for service to those 23 customers, as provided below.

The Commission orders:

(A) Respondent shall maintain on file, in accordance with Part 35 of the Commission's Regulations and Section 205 of the Federal Power Act, the rate schedules on file with the Commission as of this date, referred to above, as its rate schedules for its sales at wholesale of electric energy to those 23 customers. Such rate schedules shall remain effective until superseded by a change filed pursuant to Section 205(d) of the Act and Section 35.3(c) of the Regulations thereunder or until changed pursuant to order of this Commission. This proceeding is, in all other respects, terminated.

(B) The decision of the presiding examiner, to the extent not inconsistent herewith, is adopted as the decision of the Commission.

(C) Exceptions not granted herein are hereby denied.

INITIAL DECISION

OF THE PRESIDING EXAMINER UPON AN ORDER TO SHOW CAUSE

(Issued April 22, 1965)

WILLIAMS, *Presiding Examiner:* This proceeding is the result of an order issued by the Federal Power Commission on April 16, 1963, 29 FPC 744, directing the Arkansas Power & Light Company, hereinafter referred to as Respondent, to show cause why the Commission should not find that the Respondent has been violating Section 205 of the Federal Power Act and Part 35 of the Regulations promulgated pursuant thereto, with respect to electrical energy sales at wholesale for resale to 23 purchasers specified in such order [1] by failing to file rate schedules as required by such statute with respect to jurisdictional sales of electric energy.

The hearing, initially set for June 24, 1963, was continued from time to time until September 9, 1964, when it began and continued until concluded on Septem-

[1] The purchasers referred to in the original order are Southwestern Power Administration, Citizens Light and Power Company, Public Utilities Company of Crossett, West Memphis, North Little Rock, Prescott, Hope and Osceola, Arkansas, Benton Municipal Light and Water Works, Ashley-Chicot Electric Cooperative, Inc., Riceland Electric Cooperative, Inc., C & L Rural Electric Cooperative Corp., Craighead Electric Cooperative Corp., Woodruff Electric Cooperative Corp., Petit Jean Electric Cooperative Corp., First Electric Cooperative Corp., Farmers Electric Cooperative Corp., Carroll Electric Cooperative Corp., South Central Electric Cooperative, Inc., Southwest Arkansas Electric Cooperative Corp., Ouachita Rural Electric Cooperative Corp., Mississippi County Electric Cooperative, Inc., and North Arkansas Electric Cooperative, Inc. The Southwestern Power Administration was erroneously included in this order and The Conway Corporation omitted. This decision, therefore, does not relate to the jurisdictional status of the former.

ber 28, 1964. The hearing time was reduced to a minimum as a result of an extensive stipulation of facts concerning the operations of the Respondent and its affiliates. The final brief was filed on December 23, 1964.

Following the opinion of the Supreme Court of the United States in *F.P.C. v. S. Cal. Edison*, 376 U.S. 205 (1964), the Federal Power Commission issued a policy statement, Order No. 282, on April 21, 1964, 31 FPC 972, which advised electric utility companies that there may remain some special situations in which a company engaged in the wholesale of electric energy, although interconnected with systems in other states, will wish to contest its jurisdictional status as to particular sales. Such companies were permitted to file their wholesale rate schedules with respect to such sales containing a reservation as to the question of jurisdiction which could subsequently be adjudicated in an orderly fashion.

On July 30, 1964, the Respondent filed wholesale rates for the 23 sales challenged by the order of April 16, 1964, but with a reservation contesting the Commission's asserted jurisdiction.

The Respondent is an admitted public utility within the meaning of Section 201(e) of the Federal Power Act and has on file its rate schedules covering sales to Louisiana Power & Light, Mississippi Power & Light, Empire District Electric Company, Tennessee Valley Authority, Oklahoma Gas & Electric Company, Southwestern Electric Power Company and Arkansas-Missouri Power Company.

The Issues

The first issue is whether or not the sales of electric energy by the Respondent to the 23 customers named in the order of April 16, 1963 are sales at wholesale in interstate commerce within the meaning of Sections 201 and 205 of the Federal Power Act. The second issue, assuming that the first is resolved in the affirmative, is whether or not Section 201(b) of such Act exempts the 23 sales upon the basis that the facilities involved in making such sales are used in local distribution. The third issue raised by the Respondent is the question whether or not sales to cooperatives are sales of energy for resale within the meaning of Section 201(d) of the Act.

The Stipulated Evidence

The Respondent is one of the four operating subsidiaries of Middle South Utilities Inc. (Middle South), a holding company, which, in addition to the Respondent, owns Louisiana Power & Light Company (Louisiana), Mississippi Power & Light Company (Mississippi), New Orleans Public Service, Inc. (New Orleans) and Middle South Services, Inc., a service subsidiary.

The Respondent is interconnected by high voltage transmission lines with the other operating subsidiaries at the borders of the States of Arkansas, Louisiana, and Mississippi. New Orleans, however, is interconnected only with Louisiana. The interconnections are part of a network of transmission lines operating at 115,000 volts and above, and are cross-connected and operated so as to permit power supplies to flow from the many operating stations within the network to any point on the network where energy is needed. In addition to the interconnections between the Middle South operating subsidiaries, such system is also connected with the Empire District Electric Company, Tennessee Valley Authority, Oklahoma Gas & Electric Company, Mississippi Power Co., Gulf State Utilities, Central Louisiana Electric and the Southwest Power Administration.

The operating subsidiaries, including the Respondent, are members of the Southwest Region—Interconnected Systems Group which is included in the

North American Power Interconnection Committee (NAPSIC). The 140 electric utilities making up CANUSE, PJM and Interconnected Systems Group cover the eastern half of the United States and a small portion of Canada. They operate continuously in parallel. Such operation is required in order to synchronize the frequency output of all connected generators at the standard 60 cycles.

The object of the interconnected electric system is to provide sufficient generation to meet load requirements at any point, plus the losses on the entire interconnection since lacking such a balance, the frequency of the entire system would either increase or decrease.

The Middle South System companies share a generation control arrangement which regulates generation in the service areas of the Respondent, Louisiana, Mississippi and New Orleans [2] and provides for its own requirements and any that New Orleans cannot meet with its own resources.

The combined service areas of the Middle South subsidiaries form what is known as a "control area" [3] and various generators in the three states making up this control area [4] are selected by the operator in charge to provide the needs of the system within the area.

A control area is, in turn, connected to other control areas and utilities that surround it by tie lines known as "boundary ties" and the evidence shows that such ties cover large segments of the States of Arkansas, Louisiana and Mississippi. Each boundary tie has a meter which records the direction and volume of energy flowing in the line and such intelligence is transmitted with respect to the Middle South subsidiaries to the System Operator's Control Center at Pine Bluff, Arkansas where the generators are balanced against the system load requirements.

If a sudden increase in the load requirements of a control area develops, the interconnections with other areas and systems provide instantaneous additional power through a "pool assist."

The system operator's primary concern is, of course, operating economy and a knowledge of the incremental cost of generating a kilowatt hour from the individual sources in the control area is a prerequisite to such an achievement. With this information available, the operator can adjust generation output so that the incremental cost of generation output from any given source is equal to the incremental cost of output from any other source. The Middle South System employs a computer to allocate generation so that each station maintains an equal delivered lambda.[5]

Similar transactions also occur between control areas when available adjacent lambda at a boundary tie is at least three-tenths of a mill less than the Middle South System's own lambda.

It is known too, that energy flows over boundary ties of the Middle South System even though not scheduled by the area control operator. This phenomenon occurs even when the interchange controls are set at zero and the net effect produced by such uncontrolled flows is a balancing of all boundary ties.

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[2] New Orleans has its own control system within the Middle South control area.

[3] Through interconnection and cross-connection of control areas by transmission networks, the control operator has a choice in the selection of generators to meet area power requirements. The selection is, of course, made upon the basis of meeting the combined system requirements at the least cost.

[4] Sometimes generators outside of the control area are called upon to meet deficiencies within the area.

[5] Delivered lambda is the incremental cost in mills of an additional kilowatt hour delivered to load including losses from a particular generating unit or station. This definition does not, however, take into consideration the incremental heat rate of a generating unit or incremental operating and maintenance costs.

With respect to sales of energy to the 23 customers involved in the show cause order of April 16, 1963, the record indicates that the Respondent's deliveries from its step down substations to the customers' facilities totaled 718,768,360 kilowatt hours during the year 1963.[6]

Respondent's Position

One segment of Respondent's position is based upon the case of *Peoples Natural Gas Co.* v. *Public Service Commission*, 270 U.S. 550 (1926) which is construed to support the premise that if there is more than enough generation by the Respondent within the State of Arkansas to satisfy the needs of the 23 show cause customers,[7] the Arkansas State Commission is the proper regulating authority over such sales and not the Federal Power Commission. Mr. Lewis M. Robinson, Chairman of the Arkansas Public Service Commission, testified at length stating that the Arkansas Commission has continuously exercised regulatory jurisdiction over the service and rates to the 23 customers from 1935 to date for service to private companies and municipalities, and from 1937 to date for cooperatives.

The Respondent also maintains that the Federal Power Commission lacks jurisdiction since the facilities used to make sales to the 23 customers are local distribution facilities. Reliance for the validity of this proposition is placed upon the case of *Connecticut Light & Power Co.* v. *F.P.C.*, 324 U.S. 515 (1945) and the testimony of Mr. Everett E. Thompson, presently the Planning Engineer of the Respondent's Long Range Planning Section, and an employee since 1949.

The Respondent likewise relies upon Mr. Thompson for two four-hour studies, one manual and one computer,[8] made concerning the sources of the energy supplied to the 23 customers which purport to show that in the case of the manual study, 7 customers did not receive any interstate or commingled energy and as to the computer study, it is argued that while some delivery points dropped off, others were picked up. Respondent contends that only 10 of the 23 customers are shown to have received commingled energy by the computer study.

Finally, it is the Respondent's contention that the evidence does not show the sales of energy to the 8 cooperatives among the 23 customers are sales at wholesale merely because the Federal Power Commission Index of Filed Electric Rate Schedules reveals that a large number of contracts involving sales to cooperatives are on file with the Commission.

Staff's Position

The Staff of the Federal Power Commission argues that the Respondent is an admitted "public utility" within the meaning of the Federal Power Act and, under Section 205 thereof, the Federal Power Commission has jurisdiction over wholesale sales for resale if such sales are in interstate commerce. The Staff further maintains that the record amply demonstrates this fact and, therefore, the matter of whether or not the sales made to all 23 of the show cause customers are made by local distribution facilities, is irrelevant. Also, the Staff takes exception to the Respondent's claim that sales of energy by the cooperatives to their members are not "resales" of such energy.

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[6] Respondent places the amount at 714,636,000 kilowatt hours sold rather than delivered.

[7] The record shows that the Respondent's generating facilities in Arkansas during the year 1963 produced 5,235,091 Kwa. This amount is several times the amount delivered to the 23 customers.

[8] The four hours used in the studies were the hours ending at 8 p.m., April 22, 1963; 3 p.m., August 28, 1963; 7 p.m., October 8, 1963, and 7 p.m., December 18, 1963.

The Proof

The Respondent, as set forth in the preceding resume of the stipulation of fact, is one of the four interconnected operating subsidiaries of Middle South, Inc., doing business in the States of Arkansas, Louisiana, and Mississippi. These companies are interconnected in a control area with the center at Pine Bluff, Arkansas, and, in turn, with other control areas and systems covering the eastern half of the United States and part of Canada.

Since electrical energy cannot be stored, the integrated and interconnected power pool as herein demonstrated is the best means of obtaining instantaneous service and maximum operating economy as the demand for power occurs.

The manner in which the vast and integrated transmission network operates has been previously reviewed and it is obvious that energy flows back and forth and across state lines as the needs of the various interconnected control areas fluctuate and full requirements cannot be met by the generation within certain areas.

In point of fact, the two four-hour tracing studies placed into evidence by the Respondent show unequivocally that interstate or commingled energy reached at least 16 of the show cause customers in the brief period examined. Taking into consideration the scope of the interconnected and highly integrated system herein involved and the testimony by Engineer Thompson that no equipment is used by the Respondent to impede the flow of out-of-state energy into the Middle South complex, it is neither difficult nor unreasonable to reach the conclusion that at some time during the remaining 8,756 unchecked hours of the year, interstate or commingled energy found its way to the remaining 7 customers.[9]

The fact that the amount of out-of-state energy reaching these customers may be quite small in comparison to the quantity of Arkansas or intrastate generated energy consumed is, as stated in the case of *Connecticut Light & Power Co.* v. *F.P.C.*, 324 U.S. 515, 535, 536 (1945), unimportant. See also *Michigan Wisconsin Power Co.* v. *F.P.C.*, 197 F. 2d 472, 478 (CA7–1952) cert. den., 345 U.S. 934.

Since the decision in *Pennsylvania Water & Power Co.* v. *F.P.C.*, 343 U.S. 414 (1952), wherein the Supreme Court stated that "the Federal Power Commission has complete authority to regulate all of this commingled power flow," in dealing with an interconnected interstate electric system such as the Middle South system of which Respondent is an integral part, there is no necessity for tracing or attempting to trace out-of-state energy to either sustain or refute the burden of proof as to interstate sales where pool sales are involved. It follows that the Federal Power Commission, having the authority to regulate *all* of the wholesale sales for resale of commingled energy, certainly has the authority to regulate each part thereof. See also *Wisconsin Michigan Power Co.* v. *F.P.C.*, *supra*.

The Respondent also believes that the Federal Power Commission lacks jurisdiction over the sales in issue since the Department of Public Utilities of the State of Arkansas has exercised regulatory control of the service and rates to the 23 show cause customers for some 25 years. An analogy is drawn between the circumstances in this proceeding and the matter involving the *Peoples Natural Gas Co.* v. *Public Service Commission*, 270 U.S. 550 (1926). In the latter case, West Virginia natural gas purchased at the state line by a Pennsylvania gas company and commingled with a lesser amount of gas produced in the latter state, was sold only to customers within the State of Pennsylvania. In an abandonment proceeding the order of the Pennsylvania Public Utilities Commission requiring the

[9] The four hours used in the two studies appear to have been selected simply because the information happened to be available and the witness had no opinion as to which of the 23 customers may or may not have received interstate or commingled energy during the balance of the year.

continuance of service to a local community was upheld on the theory that there was more than enough Pennsylvania-produced gas in the fungible mass flowing through the company's pipeline to meet the requirements of the Pennsylvania community threatened with a loss of service.

The analogy drawn by Respondent, however, is not pertinent for a number of reasons, not the least persuasive of which is the fact that the *Peoples'* case did not involve a pool sale of electric energy. Also, it is implicit in the *Peoples'* decision that the respective amounts of West Virginia and Pennsylvania-produced gas in the company's pipeline are known and measurable quantities—elements that are not readily ascertainable with respect to electrical energy moving instantaneously in an interconnected and integrated system.[10]

The measurability or separability concept of commingled interstate and intrastate gas has now been rejected by the Supreme Court in *F.P.C.* v. *Lo-Vaca Gathering Company, et al.*, 379 U.S. 366, (1965) wherein restrictive use contracts between the parties sought to eliminate FPC jurisdiction over gas in a commingled flow that would be used by the contracting parties and not be resold.

The court, in reviewing its pertinent decisions since *Connecticut Light & Power Co., supra*, stated:

> * * * "Federal jurisdiction was to follow the flow of electric energy, an engineering and scientific, rather than a legalistic or governmental, test." And that is the test we have followed under both the Federal Power Act and the Natural Gas Act, except as Congress itself has substituted a so-called legal standard for the technological one. Id., at 530–531. In *Interstate Natural Gas Co.* v. *Federal Power Comm'n.*, 331 U.S. 682, 687, we considered the anatomy of the pipeline system to discover the channel of the constant flow; again in *Federal Power Comm'n.* v. *East Ohio Gas Co.*, 338 U.S. 464, 467; and most recently in *Federal Power Comm'n.* v. *Southern Cal. Edison Co.*, 376 U.S. 205, 209, n. 5. The result of our decisions is to make the sale of gas, which crosses a state line at any stage of its movement from wellhead to ultimate consumption, "in interstate commerce" within the meaning of the Act.

The court further succinctly stated:

> Were supplies of gas and pipeline companies free to allocate by contract gas from a particular source to a particular use, havoc would be raised with the federal regulatory scheme, * * *

The views of the court were reiterated in the case of *F.P.C.* v. *Amerada Petroleum Corporation, et al.*, 379 U.S. 687, decided February 1, 1965.

Having disposed of the first issue raised in this proceeding in the affirmative, it is now appropriate to consider whether or not Section 201(b) of the Federal Power Act exempts the wholesale sales to the 23 show cause customers upon the basis that the facilities involved in making such sales are used in local distribution.

The Staff argues that since the Respondent is an admitted "public utility" within the meaning of Section 201(c) of the Federal Power Act, the nature of the facilities used in making wholesale sales to the 23 customers is irrelevant. It is claimed there is nothing in Section 205 of the statute which states or suggests that jurisdiction over the interstate wholesale sales of a "public utility" as in any way dependent upon the nature of the facilities over which the par-

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[10] In *Amerada Petroleum Corporation* v. *F.P.C.*, 334 F. 2d 404 (1964), the court, while adhering to the *People's*[1] ruling, reiterates its belief that the volumes of intrastate and interstate gas moving in the petitioner's pipeline while commingled, are known quantities and measurable by volume.

ticular sales are made even if such facilities could properly be classified in their entirety as "local distribution facilities."

The construction placed by the Respondent upon Part II of the Federal Power Act would, if adopted, exempt substantial interstate wholesale sales of energy for resale from regulation. Obviously, such a result was not the object of the legislation; likewise Part II has not been so interpreted by the Federal Power Commission or the courts.

The interpretation of the statute the examiner is asked to accept here was firmly rejected in the matter of *Hartford Electric Light Co.* v. *F.P.C.*, 131 F. 2d 953, cert. den., 319 U.S. 741 (1943) and again in *Connecticut Light & Power Co.* v. *F.P.C.*, 141 F. 2d 14, 18 (1944).[11]

In 1951 the court in *Wisconsin Michigan Power Co.* v. *F.P.C.*, 197 F. 2d 472, cert. den., 345 U.S. 934, reiterated the Commission statement that:

> * * * Nothing in the Act makes our jurisdiction under Part II over sales of electric energy dependent upon the nature of the facilities involved in effecting the sale. "Sale of electric energy at wholesale" is defined only as "a sale of electric energy to any person for resale" (Section 201(d)). Under the statute the nature of facilities only applies to the determination of the status of an electric company as a "public utility" under Part II.

A fair analogy may be drawn between the circumstances in the case at bar and the case of *F.P.C.* v. *East Ohio Gas Co., et al.*, 338 U.S. 464, 469 (1949), a natural gas case, wherein the Supreme Court stated:

> Respondents also contend that East Ohio is exempt from the Act because all its facilities come within the proviso in Section 1(b) making the Act inapplicable "to the local distribution of natural gas or to the facilities used for such distribution." But what Congress must have meant by "facilities for local distribution" was equipment for distributing gas among consumers within a particular local community, not the high-pressure pipelines transporting the gas to local mains. For in decisions prior to enactment of the statute this court had sharply distinguished between the two; it had made it clear that the national commerce power alone covered the high-pressure trunk lines to the point where pressure was reduced and the gas entered local mains, while the state alone could regulate the gas after it entered those mains.

The Respondent places much credence in the testimony of Witness Thompson who stated that in his opinion all of the facilities he described as used in serving the show cause customers between the Respondent's transformers and the 23 customers' delivery points are local distribution facilities and that "whether or not a circuit was classified as a distribution circuit or transmission circuit depends on the function the circuit is serving" and not its length or voltage.

Applying the function criterion in this instance, it is abundantly clear that the Respondent's circuits to the delivery points of the show cause customers are performing a transmission function by carrying the energy to the wholesale purchaser, and that the local distribution facilities do not come into service until after the wholesale energy is metered into the wholesale purchaser's distribution facilities.

As the Presiding Examiner so well stated in his decision in *Indiana & Michigan Electric Company*, Docket No. E-7089, issued December 16, 1964, and approved by the Commission in Opinion No. 458, issued April 14, 1965, 33 FPC 739 at 775:

> There is obviously a transmission function involved in the bulk transfer of energy even where the transmission facilities are also used to effect distribu-

[11] Remanded on other grounds.

tion at retail, the bulk transfer being for delivery to a point for subsequent *local* distribution in the retail market.

Also, in *Wisconsin Michigan Power Co.* v. *F.P.C.*, *supra*, the court stated:

> * * * Thus the interstate transmission of electric energy continues from Michigan through the transformers in reduced voltage of the wholesaler; upon delivery to him local distribution begins when he resells. His sales and distribution at retail are clearly local in character, and constitute only local distribution, but at no point before delivery to him has been completed, has interstate transmission terminated. In other words, "facilities used in local distribution" means facilities used for making resale and distribution to consumers, jurisdiction over which is left to the states.

While the Respondent and its witness, Mr. Thompson, have denominated the facilities in question to be facilities used in local distribution, this designation does not necessarily make them so. The Federal Power Commission is not bound by the opinions or conclusions of expert witnesses but is free to exercise its expertise and make determinations from all the facts of record.[12]

This entire rationale, however, is now academic since the Federal Power Commission has firmly asserted in Opinion No. 458, *supra*, that there is nothing in the Federal Power Act that makes Commission jurisdiction over sales dependent on whether the facilities are local distribution facilities. If the company is, in fact, a public utility, all wholesale sales for resale in interstate commerce are subject to the provisions of Sections 205 and 206 of the Act regardless of the facilities used.

The Respondent also claims that its sales to 14 of the show cause customers organized as cooperatives are not sales at wholesale for resale within the meaning of the Federal Power Act because the relationship existing between a cooperative association and its members is not that of buyer and seller, but rather that of principal and agent. A number of cases are cited by Respondent purporting to support this proposition.

An examination of these cases, however, indicates that they are concerned with sales by cooperatives acting as collective marketing agents for their members rather than the converse situation presently under consideration.

Here, the Federal Power Commission is asserting jurisdiction only over interstate and wholesale sales of energy *to* cooperatives and not over local retail sales *by* cooperatives. How the latter sales are effected or denominated by the individual cooperative with respect to its members or customers is without significance. Regardless of the euphemism employed, it logically follows that the cooperatives are not giving away the energy purchased from the Respondent and that the recipients, whether they are called customers, agents, principals, members or otherwise, are obviously paying something more than the wholesale price in exchange therefor. Such an exchange, in the opinion of this examiner, is patently a "resale" within the intent and meaning of the statute.

ADDITIONAL FINDINGS AND CONCLUSIONS

Upon consideration of the entire record in this proceeding, including the pleadings, the evidence adduced and the briefs filed, it has been found and concluded, in addition to the findings and conclusions heretofore stated, that:

(1) Arkansas Power & Light Company is a corporation organized and existing under the laws of the State of Arkansas. It owns and operates a transmission network for the transmission of electric energy in interstate commerce which

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[12] See: *Market Street Railway Co.* v. *Railroad Commission of California*, 324 U.S. 548, 560; *Central Illinois Public Service Co.* v. *F.P.C.*, 338 F. 2d 682 (1964).

energy is transmitted thereby from the state in which it is generated and consumed at points outside thereof, which is in addition to and does not include facilities used for the generation of electric energy or facilities used in local distribution, or any for the transmission of electric energy in intrastate commerce or facilities for the transmission of electric energy consumed wholly by the transmitter. Respondent is, therefore, a public utility within the meaning of the Federal Power Act.

(2) Respondent operates its facilities as part of an interstate system comprised of a control area covering two or more states. Respondent combines its requirements with other systems in the control area and the combined requirements are supplied by the pooled generating facilities of systems in the control area.

(3) Respondent, operating as part of a control area, pools its requirements with other systems and part of the combined requirements are at times supplied by energy generated in states outside of the control area.

(4) Respondent, operating as part of a control area, does not attempt to limit flows of energy over transmission line ties to other companies in the control areas which are located in other states, nor does it attempt to limit such flows over individual boundary transmission line ties of the control area with companies in other states, outside of the control area.

(5) As a result of the methods used by Respondent in operating its system, all wholesale sales from Respondent's system are sales of electric energy "in interstate commerce" within the meaning of Section 201 of the Federal Power Act.

(6) The sales of electric energy to each of the cooperatives named in the Commission's show cause order of April 16, 1963, as well as the sales to municipalities and privately owned utilities are "sales at wholesale for resale in interstate commerce" within the meaning of Sections 201, 205 and 206 of the Federal Power Act.

(7) The facilities used by the Respondent to complete the transmission and sale of interstate energy to the 23 show cause customers, are not local distribution facilities within the meaning of Section 201 of the Act even if such fact were relevant.

Whereas, on July 30, 1964, in accordance with the Commission's Order No. 282 issued April 21, 1964, *supra*, Respondent filed rates for the sale of electric energy at wholesale to: Citizens Light and Power Company; Public Utilities Company of Crossett; the municipalities of West Memphis, North Little Rock, Prescott, Hope, and Osceola, Arkansas; Benton Municipal Light and Water Works; Ashley-Chicot Electric Cooperative, Inc.; Riceland Electric Cooperative, Inc.; C & L Rural Electric Cooperative Corp.; Craighead Electric Cooperative Corp.; South Central Electric Cooperative, Inc.; Southwest Arkansas Electric Cooperative Corp.; Ouachita Rural Electric Cooperative Corp.; Mississippi County Electric Cooperative, Inc.; North Arkansas Electric Cooperative, Inc.; The Conway Corporation; Woodruff Electric Cooperative; Farmers Electric Cooperative Corp.; and First Electric Cooperative Corp. which have been accepted for filing by the Commission and Respondent has, from time to time since July 30, 1964, filed changes of those rates which have been accepted for filing.

ORDER

WHEREFORE, *It Is Ordered*, subject to review by the Commission:

Respondent shall maintain on file, in accordance with Part 35 of the Commission's Regulations and Section 205 of the Federal Power Act, the 23 rate sched-

ules on file with the Commission as of this date, referred to above, as its rate schedules for its sales at wholesale of electric energy to those 23 customers. Such rate schedules shall remain effective until and unless superseded by a change filed pursuant to Section 205(d) of the Act and Section 35.3(c) of the Regulations thereunder, or changed pursuant to order of this Commission. This proceeding is, in all other respects, terminated.

AMES W. WILLIAMS,
Presiding Examiner.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

LONE STAR GAS COMPANY, DOCKET NO. CP66–10

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND PERMITTING AND APPROVING ABANDONMENT OF FACILITIES

(Issued September 7, 1965)

On July 13, 1965, Lone Star Gas Company (Applicant) filed in Docket No. CP66–10 an application pursuant to Sections 7(b) and 7(c) of the Natural Gas Act for permission and approval to abandon certain facilities and for a certificate of public convenience and necessity authorizing the construction and operation of new facilities in the area of the City of Denton, Texas, all as more fully set forth in the application.

Applicant proposes to construct and operate approximately 13 feet of 4-inch transmission pipeline, and to abandon approximately 3.67 miles of existing 4- and 6-inch transmission pipeline, all in order to realign its facilities presently serving Denton, Texas and Acme Brick Company, an industrial customer. Approximately 2.76 miles of the pipeline to be abandoned will be utilized in place as distribution facilities, 0.49 mile will be removed and salvaged for use elsewhere on Applicant's system, and 0.42 mile will be abandoned in place. The subject proposal will not result in the abandonment or diminution of service to any of Applicant's existing customers.

Total estimated cost of Applicant's proposed construction is $266, and will be financed with funds on hand.

After due notice, no petition to intervene, notice of intervention or protest in opposition to the granting of the application has been filed.

At a hearing held on September 1, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits thereto, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Lone Star Gas Company, a Texas corporation having its principal place of business in Dallas, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission.

(2) The proposed construction and operation of facilities by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed construction and operation of facilities are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) The proposed abandonment of facilities by Applicant is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(5) The aforesaid proposed abandonment of facilities is permitted by the public convenience and necessity, and approval therefor should be granted as hereinafter ordered.

(6) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Applicant, Lone Star Gas Company, authorizing construction and operation of the facilities hereinbefore described, as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities authorized shall be constructed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the aforesaid Regulations, within 90 days from the date on which this order issues.

(D) Permission for and approval of the proposed abandonment of facilities by Applicant are granted.

(E) Applicant shall advise the Commission of the date of the abandonment of said facilities within 10 days thereof.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

MARATHON OIL COMPANY, DOCKET NO. RI64-549

ORDER AMENDING ORDER

(Issued September 7, 1965)

On August 23, 1965, Marathon Oil Company (Marathon) filed a motion in the above-docketed proceeding requesting amendment of the Commission's order issued herein on March 25, 1965, 33 FPC 637, accepting an offer of settlement for the rate under Marathon's FPC Gas Rate Schedule No. 10 for a sale of natural gas made to Transcontinental Gas Pipe Line Corporation (Transco) in the North Markham-North Bay City Field, Matagorda County, Texas (Texas Railroad Commission District No. 3). In said order, we directed Marathon to retain the related refunds, and, among other things, gave it the election to commingle the retained refunds with its general assets and use them for its corporate purposes at an interest rate of 6% per annum from May 7, 1965, to the date on which they are paid over to the person ultimately determined to be entitled thereto in a final order of the Commission. On May 8, 1965, Marathon advised the Commission that it had elected to retain the refund monies by so commingling them with its general assets.

In Opinion No. 468, *Area Rate Proceeding*, Docket No. AR61-1, *et al.*, 34 FPC 159 (issued August 5, 1965) we determined that the proper rate of interest for refund monies so retained and commingled with general corporate funds was 4.5% per annum.

We believe it appropriate that Marathon should also be required to pay only the interest rate established by our Opinion No. 468, that being the prime rate of interest as fixed by the Federal Reserve Board, and shall, therefore, amend the order of March 25, 1965, accordingly.

The Commission orders:

(A) The Motion for Amendment of the order issued herein on March 25, 1965, filed by Marathon on August 23, 1965, is granted.

(B) Ordering Paragraph (F) of the order issued herein on March 25, 1965, is amended so as to provide for an interest rate of 4.5% per annum in lieu of 6% per annum from May 7, 1965, to the date on which they are paid over to the person ultimately determined to be entitled thereto in a final order of the Commission.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

NORTHERN NATURAL GAS COMPANY, DOCKET NO. CP65-414

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND PERMITTING AND APPROVING ABANDONMENT OF FACILITIES

(Issued September 7, 1965)

On June 24,1965, Northern Natural Gas Company (Applicant) filed in Docket No. CP65-414 an application pursuant to Sections 7(b) and 7(c) of the Natural Gas Act for permission and approval to abandon certain natural gas facilities and for a certificate of public convenience and necessity authorizing the construction and operation of certain other facilities, all in Sarpy County, Nebraska, all as more fully set forth in the application in this proceeding.

Applicant utilizes the facilities to be abandoned, and will utilize the facilities proposed to be constructed, to deliver gas to its Peoples Natural Gas Division (Peoples Division) for resale and distribution in Bellevue, Nebraska, and for resale to the Kramer Power Plant (Kramer). Applicant states that its town border station serving Bellevue and a large segment of its 8-inch Bellevue branchline are located within the city limits of Bellevue and in close proximity to residential housing developments. As a safety precaution, Applicant proposes to reduce the branchline pressure by relocating the Bellevue town border station approximately two miles upstream from its present site.

Specifically, Applicant proposes the following disposition and construction of facilities:

1. Abandon and remove 130 feet of the 8-inch Bellevue line and construct 110 feet of new 8-inch line at the new location of the town border station.
2. Abandon in place by sale to Applicant's Peoples Division 11,724 feet of the 8-inch Bellevue line.
3. Abandon by sale to Peoples Division a regulator setting serving Kramer.
4. Abandon in place by sale to Peoples Division six farm taps on the Bellevue line.
5. Remove and abandon by sale to Peoples Division a portion of the Bellevue town border station and retire the remaining portion.
6. Construct and operate a new town border station.

Applicant states that no service will be affected by these proposals.

The total cost of construction and removal is estimated to be $46,630 which cost will be financed from cash on hand. Peoples Division will pay Applicant the depreciated original cost for the facilities to be sold.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on September 1, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Northern Natural Gas Company, a Delaware corporation having its principal place of business in Omaha, Nebraska, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of April 6, 1943, in Docket No. G–280 (3 FPC 967).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) The facilities to be abandoned, as hereinbefore described, are subject to the jurisdiction of the Commission and the abandonment of such facilities is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(5) Such abandonment by Applicant, as hereinbefore described, is permitted by the public convenience and necessity, and an order authorizing and approving same should be issued as hereinafter ordered.

(6) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(7) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is issued authorizing Applicant, Northern Natural Gas Company, to construct and operate the proposed facilities, as hereinbefore described, all as more fully described in the application herein, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities authorized shall be constructed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 6 months from the date on which this order issues.

(D) Permission for and approval of the abandonment by Applicant of the facilities hereinbefore described, all as more fully described in the application in this proceeding, are granted.

(E) Applicant shall advise the Commission of the date of said abandonment within 10 days of the date thereof.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge

PENNSYLVANIA ELECTRIC COMPANY, DOCKET NO. E-6899

ORDER TERMINATING PROCEEDING

(Issued September 7, 1965)

This proceeding was instituted by Commission Order to Show Cause issued on October 1, 1959, 22 FPC 633. That order noted that Pennsylvania Electric Company (Company) had been taking accelerated amortization on certain utility property and had been reporting the accruals arising from deferred tax accounting therefor in its actual report to shareholders through a balance sheet account other than the account prescribed by the Commission in Order No. 204, 19 FPC 837. On November 30, 1959, Company filed its answer which stated that Company was accounting for the deferred tax amounts arising from deferred tax accounting for accelerated amortization in conformity with the requirements of Order No. 204 but was reporting to shareholders and others with the accounting classification prescribed by the Pennsylvania Public Utilities Commission. Thereafter, in its supplemental answer filed on April 8, 1960, Company stated that in December of 1959, after approval by the Pennsylvania Public Utilities Commission, Company had transferred the amounts previously accumulated in "Account 271 A—Earned Surplus Restricted" to an account entitled "Account 258.2—Miscellaneous Reserves—Reserve for Future Income Taxes".

On December 31, 1962, this Commission issued its opinion in *Appalachian Power Company*, Docket No. E-6900, 28 FPC 1199, affirmed 328 F. 2d 237 (CA4-1964), certiorari denied, 379 U.S. 829. Among other things the *Appalachian* opinion noted that Order No. 204 required companies electing deferred tax accounting to record and report the accumulated accruals arising therefrom in a balance sheet account titled "Account 266, Accumulated Deferred Taxes on Income" (now designated Account 281).

On July 2, 1965, the Commission staff wrote to Company to inquire about Company's present deferred tax reporting practices. In reply, on July 30, 1965, Company's counsel filed motion styled "Motion to (1) Accept Proffered Stipulation of Facts, (2) Accept Proposed Waiver of Intermediate Decision Procedure, and (3) Grant Opportunity to Present Oral Argument and File Briefs Before the Commission". The gravamen of that motion was that this proceeding has been pending for many years and that Company has been denied its day in court to contest the matters alleged in the Order to Show Cause.

This Commission's main objection to Company's reporting practices voiced in the Order to Show Cause was the classification of deferred tax accruals arising from the use of accelerated amortization in a restricted surplus account in the proprietary section of the balance sheet. After Company's voluntary application approved by the Pennsylvania Public Utilities Commission in December of 1959, that reporting practice was discontinued. As indicated in Company's Form No. 1 for 1964, Company is presently reporting these accruals in a balance sheet account titled "Reserve—Future Income Taxes" presented at the bottom of the righthand side of its balance sheet and set apart from the proprietary portion of the balance sheet. Although we do not approve of the use of "Reserve—Future Income Taxes" in lieu of "Accumulated Deferred Income Taxes—Accelerated Amortization" we do not believe this discrepancy in nomenclature to be sufficiently serious to warrant the time and attention inherent in any continuation of this proceeding.

The Commission further finds:

It is necessary and appropriate for the purposes of the Federal Power Act and the Commission's Uniform System of Accounts that this proceeding be terminated.

The Commission orders:

The above-captioned proceeding is hereby terminated.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

ALABAMA-TENNESSEE NATURAL GAS COMPANY, DOCKET NO. RP65-58

ORDER APPROVING RATE REDUCTION

(Issued September 8, 1965)

Alabama-Tennessee Natural Gas Company (Alabama-Tennessee) on May 21, 1965, submitted a letter of intent proposing to file a reduction of 0.95¢ per Mcf in its jurisdictional rates to be effective as of the first of the month in which the letter of intent is accepted and approved by the Commission. The proposed change in rates would effectuate an immediate annual reduction of approximately $107,000 based upon 1964 test year sales volumes. Alabama-Tennessee also proposed to reduce its rates to flow-through annual liberalized depreciation tax savings, subject to certain terms and contingencies.

Alabama-Tennessee's rate reduction proposal has resulted from numerous conferences held over a period of several months with the Commission's staff. These conferences were initiated by a letter from the Chief of the Bureau of Natural Gas, dated December 14, 1964, as a consequence of the staff's continuing supervision of natural gas companies and its periodic review of the annual reports filed with the Commission by such companies. The proposal is summarized in part as follows:

(1) Upon acceptance by the customers of Alabama-Tennessee and the Federal Power Commission of all of the provisions embodied in the proposal, Alabama-Tennessee will file revised tariff sheets to effect a reduction in the commodity charge of its jurisdictional rates of 0.95 cents per Mcf effective as of the first of the month in which the letter of intent is accepted and approved by the Commission.

(2) In the event that Opinion No. 417, 31 FPC 208 (as modified by Opinion No. 417-A, 31 FPC 928) is finally affirmed by the court of last resort, Alabama-Tennessee will make a further reduction of 0.44 cents per Mcf to reflect the annual effect of liberalized depreciation tax benefits. This additional rate reduction would take effect (subject to the conditions in paragraph (3) below) on the date when the court decision affirming those opinions becomes final and non-appealable. In addition to such rate reduction, Alabama-Tennessee would also unconditionally refund (1) any revenues collected in excess of those properly collectible under the aforesaid opinions between May 5, 1964[1] and the effective date of the proposed rate reduction of 0.95 cents in this docket, and (2) 0.44 cents per Mcf sold between such effective date and the date on which Opinion Nos. 417 and 417-A became final and non-appealable. All refunds provided for in the proposal are payable with interest at 7 percent per annum.

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[1] The date when Opinion No. 417 became a final order of the Commission.

(3) If Alabama-Tennessee decides not to use liberalized depreciation, it may postpone the future rate reduction of 0.44 cents per Mcf summarized in paragraph (2) above, by filing with the Commission a written notice of its election to revert to straight-line depreciation. This election must be made, and such notice must be given, within the 30-day period following the date upon which the aforesaid Commission opinions become final and non-appealable.

If Alabama-Tennessee gives such notice, and, also, in fact discontinues use of liberalized depreciation in the first calendar year immediately following such final judicial affirmance of Opinion No. 417, its obligation to make the 0.44 cent per Mcf rate reduction shall cease unless the Commission has rendered a decision on or before September 1, 1967, enunciating a policy that any pipeline which has discontinued the use of liberalized depreciation in its tax returns shall, nevertheless, be treated for ratemaking purposes as if it had not discontinued to claim such tax benefits. In that event, Alabama-Tennessee's obligation to make the 0.44 cent per Mcf rate reduction shall become effective as of the date the opinion enunciating such policy with respect to any individual pipeline has become final and non-appealable. Within 30 days thereafter, Alabama-Tennessee shall reduce its future rates by 0.44 cents per Mcf as of that effective date and shall, also, refund 0.44 cents per Mcf sold between the effective date of judicial affirmance of Opinion No. 417 and the effective date of such rate reduction.

(4) If Alabama-Tennessee's obligations to make the future rate reductions and refunds described in paragraph (3), above, ceases because the Commission does not enunciate a policy of compulsory flow-through with respect to any individual pipeline prior to September 1, 1967, or because of judicial reversal of any decision enunciating such a policy, Alabama-Tennessee shall nevertheless refund 0.44 cents per Mcf sold between the date when Opinion No. 417 becomes final and non-appealable and January 1 of the next succeeding calendar year.

(5) Alabama-Tennessee's obligation to flow-through supplier refund and rate reductions pursuant to ordering paragraphs (E), (F), and (G) of Opinion No. 360, 27 FPC 1180, shall remain in effect during the life of this agreement.

(6) Alabama-Tennessee reserves the right in its sole discretion to withdraw the proposal or agreement in the event that there is not complete acceptance of all the terms and conditions therein set forth.

(7) Alabama-Tennessee requests waiver of the general rules and regulations, particularly Part 154 thereof, to permit the proposed rate and tariff changes to become effective on less than 30 days notice as proposed.

(8) The proposal is submitted pursuant to Section 1.18(e) of the Rules of Practice and Procedure, and, if it is not accepted in its entirety, it shall be privileged and of no effect.

Comments of the same general tenor and effect were submitted by the Cities of Huntsville, Sheffield, and Florence, Alabama, as well as by the Tennessee Valley Municipal Gas Association on behalf of its members.[2] These comments are limited to a single feature of the proposed settlement—the provision which makes Alabama-Tennessee's future flow-through of annual liberalized depreciation tax savings contingent upon the outcome of further proceedings in the event that it discontinues the use of liberalized depreciation for tax purposes.

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[2] The municipalities of Athens, Alabama; Corinth, Mississippi; Decatur, Alabama; Florence, Alabama; Huntsville, Alabama; Iuka, Mississippi; Russellville, Alabama; Selmer, Tennessee; Sheffield, Alabama; and Tuscumbia, Alabama.

The objecting parties (jurisdictional customers of Alabama-Tennessee) state that they "believe" the voluntary rate reduction proposed by Alabama-Tennessee is not enough. However, they are willing to accept that reduction and the provisions for refund set forth in the proposal, but "Alabama-Tennessee's proposal with respect to its possible future discontinuance of liberalized depreciation" (summarized in paragraph (3) above) is unacceptable for the following reasons:

(i) Alabama-Tennessee would make acceptance of its proposal a prerequisite to the 0.95 cents per Mcf reduction which is "required" by excessive earnings unrelated to liberalized depreciation and prerequisite to refunds and reductions required by Opinion Nos. 417 and 417–A which are unrelated to possible future discontinuance of liberalized depreciation.

(ii) It is not likely the Commission will issue a decision prior to September 1, 1967 in any proceeding involving a natural gas company's discontinuance of liberalized depreciation.

(iii) If Alabama-Tennessee at some future date elects to discontinue the use of liberalized depreciation the issue of such discontinuance and the effect on future rates can and should be determined with reference to Alabama-Tennessee by appropriate rate filing.

The customers contend that if Alabama-Tennessee is unwilling to make "the required reduction" without the conditions unacceptable to the customers, "the Commission should issue an order directing Alabama-Tennessee to show cause forthwith why its jurisdictional rates should not be reduced at least 0.95 cents per Mcf and why the penalties of Section 21 of the Natural Gas Act should not be invoked for willfully and knowingly failing to perform an act required by the Act."

First, we reject the thesis that there is any basis herein for invoking Section 21 of the Act, which in any event is a criminal sanction enforceable only in the courts. Second, it is obvious that rejection of the proposal as submitted and initiation of show cause proceedings would further delay the effectiveness of any rate reduction. As heretofore noted, Alabama-Tennessee filed its proposal after discussions with the staff. That filing is nevertheless a voluntary package offer of Alabama-Tennessee to reduce its rates and not a "required reduction" as claimed by the objecting parties.

Our review of the proposal as submitted indicates that in addition to an immediate 0.95 cents per Mcf reduction in rates, it would preserve intact and unimpaired Alabama-Tennessee's obligations under Opinion No. 360, 27 FPC 1180, to flow through supplier refunds and rate reductions and its obligations to flow through liberalized tax depreciation benefits under Opinion Nos. 417 and 417–A. However, the latter obligations, *i.e.*, to flow through the liberalized depreciation benefits are subject to a future cut-off date if Alabama-Tennessee has availed itself of its tax option to cease taking liberalized depreciation, unless the Commission, in a proceeding involving any natural-gas company (including Alabama-Tennessee), has rendered a decision prior to September 1, 1967, requiring such flow-through for rate-making purposes even though the natural-gas company has discontinued the use of liberalized depreciation for tax purposes.

It is our view that the aforementioned condition (as more fully summarized in paragraph (3) above), does not warrant rejection of the proposal submitted by Alabama-Tennessee, especially since it provides that the aforementioned future cut-off date will be mooted by a timely decision involving any natural-gas com-

pany or Alabama-Tennessee. Moreover, there is nothing in the present order approving the company's proposal which would stop us at any date subsequent to September 1, 1967, from prospectively determining this issue.

On balance, we believe that the immediate and substantive benefits of the rate reduction proposed and the continuation of outstanding obligations outweigh the remote and contingent effect, if any, of the aforementioned condition. Accordingly, it is our view that the proposal is in the public interest and should be approved as hereinafter provided.

The Commission finds:

(1) Good cause exists for waiving the requirements of Section 154 of the Commission's Regulations under the Natural Gas Act in order that the rate reduction of 0.95 cents per Mcf may become effective on August 1, 1965, as hereinafter ordered.

(2) The proposed reduced rates and Alabama-Tennessee's agreement to further reduce its rates as provided in the proposal, are proper and in the public interest in carrying out the provisions of the Natural Gas Act and should be accepted for filing and made effective as hereinafter provided and ordered.

The Commission orders:

(A) The provisions of Section 154 of the Commission's Regulations under the Natural Gas Act are waived to the extent necessary to make the tariff sheets to be filed effective as of the date hereinafter specified, subject to the terms and conditions of this order.

(B) Alabama-Tennessee's proposal filed May 21, 1965, to reduce its rates by 0.95 cents per Mcf; to further reduce its rates subject to specified contingencies and to flow-through supplier refunds and rate reductions, in accordance with the pertinent provisions of Opinion No. 360, is approved and made effective as specified herein subject to the terms and conditions of this order.

(C) Alabama-Tennessee shall file within ten days following the date of issuance of this order, revised tariff sheets reducing the commodity component of its jurisdictional rates by 0.95 cents per Mcf. Upon the filing by Alabama-Tennessee of such sheets and acceptance thereof, evidenced by letter addressed to Alabama-Tennessee by the Secretary of the Commission, such tariff sheets shall be effective as of September 1, 1965.

(D) Alabama-Tennessee shall comply fully with each of the obligations it has assumed in the proposal embodied in its letter of intent filed May 21, 1965, and shall comply with each of the provisions of this order.

(E) Within 20 days of making refunds in accordance with paragraph (B) herein, Alabama-Tennessee shall report to the Commission, in writing and under oath, the amount of the refund made to each customer, showing separately the amount of principal and interest so paid, together with a computation showing the manner in which such refund was determined, and shall serve a copy of such report upon each customer receiving a refund, and upon each interested State Commission.

(F) This order is without prejudice to any findings or orders which have been made or may hereafter be made by the Commission and is without prejudice to any claims or contentions which may be made by the Commission, Alabama-Tennessee, the Commission staff, or any other party affected by this order, in any proceedings now pending or hereafter instituted by or against Alabama-Tennessee or any other persons or parties affected by this order.

OPINION NO. 474

NATURAL GAS PIPELINE COMPANY OF AMERICA, DOCKET NOS. CP62-243, CP61-339, CP63-99; MISSISSIPPI RIVER FUEL CORPORATION, CP61-341, CP63-105; MISSISSIPPI RIVER TRANSMISSION CORPORATION, CP61-341, CP61-339, CP62-76, CP62-242, CP63-100; OKLAHOMA ILLINOIS GAS PIPELINE COMPANY, CP62-260; PANHANDLE EASTERN PIPE LINE COMPANY, CP63-106; PAN AMERICAN PETROLEUM CORPORATION, CI62-1347, CI62-1348, CI62-1349; MIDWEST OIL CORPORATION, CI62-1350; SUNRAY DX OIL COMPANY, CI62-1383, CI62-1386, CI62-1387; SHELL OIL COMPANY, CI62-1401, CI62-1402, CI62-1403; CLEROY INC., ET AL., CI62-1424; ROBERT G. ANDERSON, CI62-1442; PHILLIPS PETROLEUM COMPANY, CI62-1453, CI62-1454; CHAMPLIN PETROLEUM COMPANY (FORMERLY CHAMPLIN OIL & REFINING CO.) CI62-1455, CI62-1456; SLATS HONEYMON DRILLING COMPANY, CI62-1463; THOMAS N. BERRY & COMPANY, CI62-1465; THOMAS C. MUELLER, CI62-1467; W. C. SOJOURNER, ET AL., CI62-1470; JOHN P. GALLAGHER, ET AL., CI62-1471; KEENER OIL COMPANY, CI62-1480; H. H. COFFIELD, CI62-1482; H. L. WILLETT, CI62-1488; KINGWOOD OIL COMPANY, CI62-1514, CI63-3; FRED C. MUELLER, CI62-1531; CITIES SERVICE PETROLEUM COMPANY, CI62-1556; SOHIO PETROLEUM COMPANY, CI63-34, CI63-52; SOUTHERN UNION PRODUCTION COMPANY, CI63-54; T. F. HODGE, CI63-81; KIRBY PRODUCTION COMPANY, CI63-85; EL PASO NATURAL GAS PRODUCTS COMPANY, CI63-89; TIDEWATER OIL COMPANY, CI63-119, CI63-120; E. A. OBERING, CI63-139; ASHLAND OIL & REFINING COMPANY, CI63-178; MARATHON OIL COMPANY, CI63-313, CI63-314, CI63-315; GEORGE W. PIRTLE, CI62-1481; SAM K. VIERSEN, CI63-521; PHILIP C. DIXON, CI63-585; HEFENER PRODUCTION COMPANY, CI63-595; HARPER OIL COMPANY, CI63-598; WILLIAM GALLAGHER, ET AL., CI63-702; CHARLES P. GALLAGHER, ET AL., CI63-715; SINCLAIR OIL & GAS COMPANY, CI63-766

OPINION AND ORDER REVERSING IN PART PRESIDING EXAMINER'S INITIAL DECISION, DENYING CERTIFICATE APPLICATIONS, AND PROVIDING FOR FURTHER HEARING

(Issued September 9, 1965)*

Syllabus

1. Competing certificate applications must be given a comparative hearing. P. 776.
2. It was not error to rule out two projects failing to meet what Examiner considered minimum requirements applicable to project; project failing to meet such requirements cannot be certificated and need not be given further comparative evaluation. P. 776.
3. Any determination regarding best suited project must begin with analysis of present and future natural gas needs of St. Louis area. P. 776.
4. Competition is a factor to be considered in passing upon pipeline application. P. 778.
5. Proper load balance is important consideration in a natural gas market of advantage to both consumer and industrials because it provides a reasonably priced gas supply not otherwise available. P. 778.

*Initial decision appears on P. 801.

6. Oklahoma-Illinois' proposal would deprive area of load balance benefits provided by present interruptible market. P. 778.
7. While Commission policy encourages extension of natural gas service benefits to small less-favored communities, extensions cannot be approved when to do so would result in affirmative injury to existing gas consumers. PP. 781, 782.
8. Resale and domestic customers are primary intended beneficiaries of Commission regulation under the Gas Act — it is highly questionable whether their injury should be regarded as offset by possible benefits to industrial customers and other interests of less central concern. P. 783.
9. Oklahoma-Illinois project is not in the public interest being based on a diversion of Mississippi's industrial customers and constituting unjustifiable duplication of existing facilities which can be expanded at much less expense. P. 783.
10. Fact that Mississippi has monopoly over pipeline service into St. Louis area is not decisive in evaluation of its project. P. 784.
11. A monopoly will serve to eliminate duplication of facilities and may thus reduce costs to rate payer. P. 784.
12. Impact of monopoly upon competitive situation cannot be ignored in passing on certificate applications. P. 784.
13. Commission's responsibility is to insure that project ultimately certificated is that which is best suited to present and future needs of St. Louis market area. P. 785.
14. In a proceeding under Section 7 of the Natural Gas Act, upon mutually exclusive applications to serve St. Louis area, Commission *denies* proposal of Oklahoma-Illinois and *remands* others for further proceedings.

Commissioner Ross *concurring in result.*

Commissioner O'Connor *dissenting.*

Charles C. McDugald and *Paul Goldstein* for Natural Gas Pipeline Company of America.

John H. Hendren, Cleon L. Burt, Harry S. Littman, Dale A. Wright, and *Melvin Richter* for Mississippi River Fuel Corporation and Mississippi River Transmission Corporation.

William J. Grove and *Carroll L. Gilliam* for Oklahoma Illinois Gas Pipeline Company.

G. R. Redding, William LeBuhn, Raymond N. Shibley, and *J. William Via, Jr.* for Panhandle Eastern Pipe Line Company.

Leland Cadenhead, Raymond N. Shibley, and *J. William Via, Jr.* for Trunkline Gas Company.

Cecil E. Munn and *Bernard A. Foster, Jr.* for Champlin Oil & Refining Company.

George D. Horning, Jr. for El Paso Natural Gas Products Company.

James E. Bye and *Ted P. Stockman, Jr.* for Midwest Oil Corporation.

Oliver L. Stone and *Thomas G. Johnson* for Shell Oil Company.

William K. Tell, Jr. for Sohio Petroleum Company.

Morton Taylor, Robert M. Vaughn, and *Harold L. Kennedy* for Marathon Oil Company.

Homer E. McEwen, Jr. and *Dale E. Doty* for Sunray DX Oil Company.

Willard W. Gatchell for Granite City Steel Company, *et al.*

Dwight H. Moorehead and *George J. Meiburger* for Owens-Illinois Glass Company.

Christian B. Peper and *William G. Holtsnider* for St. Charles Gas Corporation.

W. O. Crain, Saunders Gregg, W. H. Drushel, Jr., Thomas Fletcher, and *James W. McCartney* for United Gas Pipe Line Company.

J. David Mann, *William W. Ross*, and *Frederick Moring* for Laclede Gas Company.

Robert S. Hunt and *Q. P. Dorschel* for Illinois Power Company.

Daryal A. Myse for Citizens Gas Company.

Jerry T. Duggan, *Charles E. McGee*, and *James D. McKinney, Jr.* for Gas Service Company.

J. Philip Bahn and *James B. Falahee* for Michigan Gas Storage Company.

Albert J. Feigen for the Cities of Bourbon, Cuba, Pacific, St. Clair, Steelville, Sullivan, Washington and Waynesville, Missouri, and American Gas Company.

Charles V. O'Hern, Jr. for Central Illinois Light Company.

John H. Groves for Indiana Gas & Water Company, Inc.

John B. Randolph and *Joseph H. Grand* for Missouri Natural Gas Company.

Louis W. Cowan for Missouri L. P. Gas Association.

John A. McGrath, *Jerome J. McGrath*, and *Thomas C. Williams* for National Coal Association; United Mine Workers of America; Fuels Research Council, Inc.; and Mid-West Coal Producers Institute, Inc.

Robert E. Lee Hall for National Coal Association.

Welly K. Hopkins for United Mine Workers of America.

Charles W. Stadell for Mid-West Coal Producers Institute, Inc.

Norton Standeven, T. C. McCorkle, and *Clifford O. Stone, Jr.* for Pan American Petroleum Corporation.

Jack Brandon and *Clyde Willbern* for Tidewater Oil Company.

Dale E. Doty for Midwest Missouri Gas Company.

Thomas F. Ryan, Jr. for Citizens Gas Fuel Company.

John R. Rebman for Phillips Petroleum Company.

George P. Lewnes for the Staff of the Federal Power Commission.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

BLACK, *Commissioner:*

INTRODUCTION

This comparative certificate proceeding pursuant to Section 7(e) of the Natural Gas Act is before us for decision following oral argument heard December 16, 1964, on exceptions to Examiner Martin E. Rendelman's initial decision issued September 10, 1964.[1] At issue is the question of which of three mutually exclusive applications filed by Oklahoma Illinois Gas Pipeline Company (Oklahoma Illinois); Mississippi River Transmission Corporation, jointly with Natural Gas Pipeline Company of America (Mississippi-Natural); and Panhandle East-

[1] Exceptions were filed on October 14, 1964, by the Arkansas Public Service Commission; on October 21, 1964, by Shell Oil Company; on October 23, 1964, by the Missouri Public Service Commission and United Gas Pipe Line Company; on October 26, 1964, by Panhandle Eastern Pipe Line Company, Trunkline Gas Company, Mississippi River Fuel Corporation and Mississippi River Transmission Corporation, Natural Gas Pipeline Company of America, *et al.*, Laclede Gas Company, Illinois Power Company, Missouri Natural gas Company, Pan American Petroleum Corporation, Sunray DX Oil Company, Champlin Oil & Refining Company and Cities Service Oil Company, Marathon Oil Company, Midwest Oil Corporation, the Fuels Research Council, Inc., *et al.*, the City of St. Louis, and the Illinois Commerce Commission (letter); and on November 2, 1964, by Tidewater Oil Company.

Briefs opposing exceptions were filed on November 11, 1964, by the Commission's Staff, the Missouri Public Service Commission, Natural Gas Pipeline Company of America, Mississippi River Fuel Corporation and Mississippi River Transmission Corporation, Oklahoma Illinois Gas Pipeline Company, Panhandle Eastern Pipe Line Company, *et al.*, Laclede Gas Company, the Gas Service Company, the Granite City Group, Owens-Illinois Gas Company, the Cities of Bourbon, Cuba, Pacific, etc., Pan American Petroleum Corporation, Champlin Petroleum Company and Cities Service Oil Company, Shell Oil Company, and Midwest Oil Corporation.

ern Pipe Line Company (Panhandle) is best adapted to meet the immediate and future gas supply needs of the greater St. Louis market area. For the reasons discussed below, we find that the examiner's decision must be reversed as to its principal holdings granting a certificate to Oklahoma Illinois; that the Oklahoma Illinois application must be denied; and, that the applications of Mississippi-Natural and Panhandle must be remanded to the examiner for further proceedings in conformity with this opinion and order.

DESCRIPTION OF PROJECTS

The details of the three projects are described in the examiner's decision and we need only concern ourselves with their salient features.

Oklahoma Illinois, a newly-formed company, proposes to build a pipeline consisting of some 307 miles of 24-inch transmission pipeline and some 394 miles of 12 and 20-inch supply line, together with related compressor facilities, laterals, and appurtenant facilities. As shown in the map attached hereto, the line would form the shape of a "T", with an elongated top bar extending from the Anadarko Basin in northwest Oklahoma through Kansas and Missouri, to St. Louis, and across the Mississippi River to Alton, Illinois; and with a stem extending from the Arkoma Basin in southwest Oklahoma northward to roughly the midpoint of the top bar. Oklahoma Illinois' gas supply would be furnished by some 43 producers in fields in northwestern Oklahoma and in the Red Oak-Norris Fields in southeastern Oklahoma. Estimated cost of this project is $62 million.

The proposed pipeline would have an initial capacity of 186,000 Mcf per day, expandable to 300,000 Mcf per day by additional compression. Its market falls into three categories.[2] First, the pipeline would initially transport and sell up to 105,000 Mcf per day of gas to 14 industrial concerns in the St. Louis area. Second, it would make sales for resale of contract demand and winter peaking gas to the Laclede Gas Company (Laclede), the largest distributing company in the St. Louis area, and also to distributing systems serving 13 central Missouri communities along the pipeline's route, totaling up to 81,000 Mcf per day. Third, it would sell volumes of interruptible gas to the 14 industrial concerns mentioned above. Two of the largest of the industrial firms to which Oklahoma Illinois proposes to sell are Shell and American Oil, both of which are producer-promoters of the pipeline. Total sales for the third year, both firm and interruptible, are estimated at 52,168,583 Mcf (14.65 psia).

As described by the examiner, Oklahoma Illinois' original proposal involved primarily the transportation of gas which the producers would sell directly to industrial concerns in the St. Louis area. At the hearing, Oklahoma Illinois amended its proposal as described in the so-called "C" series of exhibits to provide, *inter alia*, for producer sales to Oklahoma-Illinois, and sales by Oklahoma Illinois to the industrial concerns. It appears that Oklahoma Illinois has abandoned its earlier proposal before the examiner, and only the so-called series "C" proposal is before us.

Mississippi River Transmission Corporation (Transmission), which has a monopoly of pipeline service into the St. Louis area, proposes to increase by some 65,000 Mcf per day the volume of gas it transports into the St. Louis area by purchases from Natural Gas Pipeline Company of America (Natural). Natural would deliver the gas into Transmission's pipeline at a point about 50 miles east of St. Louis, where Natural's line intersects Transmission's line. The cost of this joint project is estimated at $10.5 million, to be expended for

[2] See the map comprising Appendix A hereto. To this map, which is in the record, we have added some information not originally shown on it.

additional facilities on Natural's system. Certain changes which have been made in this project as originally proposed are discussed below. We shall hereinafter refer to this as the Mississippi-Natural project. Also, in general, when we refer to Mississippi we mean both it and Mississippi River Fuel Corporation (Fuel), whose facilities were recently merged with those of Transmission,[3] but on occasion we shall refer to Fuel separately.

Panhandle proposes to construct a 16-inch transmission line from its existing mainline facilities north of St. Louis near Glasgow, Illinois, for a distance of some 53 miles to a point in the St. Louis area near Alton, Illinois (see map comprising Appendix A hereto). Through these facilities, it would transport some 65,000 Mcf per day of gas (at 14.73 psia), for sale in the St. Louis area on a firm basis. The volumes utilized for this service would be made up downstream on Panhandle's system by increasing the deliverability capacity of Panhandle's Howell Storage Field in Michigan from 65,000 Mcf per day to 130,000 Mcf per day. The total cost of the project, including construction of 20 new storage wells in the Howell Storage Field, cushion gas, measurement and regulating equipment, and other facilities, is estimated at $6,036,000, which Panhandle proposes to finance from funds on hand.

Panhandle did not designate any specific customers in its application but stated that it would serve whichever customer or combination of customers we select to receive the supplies of gas it is authorized to transport into the St. Louis area. Panhandle would sell its gas under a proposed LS–2 rate schedule limited to partial requirements customers purchasing gas for resale, which provides for a $2.05 demand charge and a 22.9 cents commodity charge, and monthly minimum bill of 75 percent use of the contract demand.

SUMMARY OF EXAMINER'S DECISION

The examiner found that the Oklahoma Illinois project was of marginal economic feasibility, but that its many advantages outweighed its deficiencies and justified its certification. The examiner was of the view that Fuel formerly, and now Transmission, have not met their obligations of satisfying their customers' natural gas requirements as fully as they should have. The basic consideration upon which he relied in approving Oklahoma Illinois' project was, in his opinion, its distinct advantage of breaking Mississippi's monopoly of pipeline service in St. Louis, thus bringing the benefits of competition to that area. In addition to the benefits provided by an alternate source of supply in the event of emergency, the examiner also found that the Oklahoma Illinois project would fill a large unsatisfied need for gas in the St. Louis area, particularly among the industrial concerns. He estimates that Oklahoma Illinois could save the industrial concerns some $966,000 a year or more, and would stimulate industry and improve employment conditions in the St. Louis area. Finally, the examiner found that the Oklahoma Illinois project would satisfy the requirements of public convenience and necessity provided certain corrective conditions with respect to markets, gas

[3] Pursuant to Commission orders issued August 7, 1964, 32 FPC 547, 551, Fuel and Transmission merged their facilities, with the survivor being Transmission, thus eliminating an initially proposed sale by Transmission to Fuel of the gas Transmission would purchase from Natural. Prior to the merger, Fuel owned and operated the pipeline facilities coming from the south into the St. Louis area to serve distributing companies and other customers there with gas Fuel purchased in northern Louisiana from United Gas Pipe Line Company. Transmission owned and operated a line coming from the east into the St. Louis area to supply Fuel with additional gas to serve the St. Louis market. Transmission purchased its gas from its supplier, Trunkline Gas Company, at a point in south-central Illinois where Transmission's line connected with Trunkline's north-south line. See the map comprising Appendix A.

supply, rates, financing, economic feasibility, and other matters were complied with.

In denying the other two projects the examiner put primary emphasis on the necessity of breaking Mississippi's monopoly and introducing pipeline competition into the St. Louis area.

Before turning to the merits, we should discuss briefly a procedural matter raised by the examiner's decision. The Supreme Court's decision in *Ashbacker Radio Corp.* v. *F.C.C.*, 326 U.S. 327, held that competing certificate applications must be given a comparative hearing. To meet this requirement, we provided for a comparative hearing on the applications in this case. These proceedings, conducted pursuant to our Rules of Practice and Procedure, afforded all parties full opportunity of presenting their case and of cross-examining their opponents' cases. However, the examiner in his decision did not evaluate the projects on a comparative basis because he found that only one, the Oklahoma Illinois project, would accomplish what he considered the *sine qua non* of certificability in this case, namely, the breaking of Mississippi's pipeline monopoly of the St. Louis area by means of a new, large, competitive pipeline into the area. Various parties contend that the examiner's failure to compare the three projects in reaching his decision violates the Ashbacker requirement.

While we differ with his results, we see no error in the examiner's approach, which consisted simply of ruling out the projects that fail to meet what he considered to be the minimal requirements applicable to a project to serve the St. Louis area. *Cf.*, *Minneapolis & St. Louis Railway Co.* v. *U.S., et al.*, 361 U.S. 173, 184–185 (1959). Obviously, if a project does not meet the minimal requirements, it cannot be certificated and it need not be given further comparative evaluation with its competitors. In any event, we now make such an evaluation.

THE ST. LOUIS MARKET

Any determination regarding the best suited project must begin with an analysis of the present and future natural gas needs of the St. Louis area. Each of the projects can then be evaluated in the context of these general market guidelines. The record clearly indicates that additional supplies of gas are needed for the St. Louis market. One of the major differences among the three proposals presently before us, however, is the magnitude of the present and future needs and the manner in which they should be met.

Oklahoma Illinois presented a comprehensive market analysis of the St. Louis area which concluded that the St. Louis market presently needs a pipeline providing additional capacity approximating 186,000 Mcf and that this would increase to 200,000 and 300,000 Mcf per day in 1970 and 1975 respectively. In addition, Oklahoma Illinois presented the testimony of executive officers representing some 14 industrial firms which it has contracted to serve in support of its claims regarding the size and nature of the St. Louis industrial gas market. Direct industrial sales to these firms, which are presently being serviced by Mississippi, would constitute some 90 percent of Oklahoma Illinois' 1964 total sales.

Mississippi's estimates of the need for additional gas in St. Louis differs substantially from those of Oklahoma Illinois. Its estimates are based primarily on historic load factors and the answers to questionnaires which it had submitted to its customers to establish their estimated future needs. Mississippi contends that Oklahoma Illinois' proposed industrial sales are substantially overstated and that the industrial customers do not need or require the increment of service proposed by Oklahoma Illinois. At most, Mississippi says, Oklahoma Illinois proposes to serve these industries only 10,500,000 Mcf more gas per year than it

would supply to them if Oklahoma Illinois were not certificated and when this volume is discounted for unsupported and overstated estimated volumes, it is reduced to only 6,100,000 Mcf per year. It is Mississippi's position that if its present proposal to increase its sales by 65,000 Mcf is approved it can meet the expanding future needs of the area in an orderly and logical manner through the utilization of excess capacity and appropriate annual incremental additions to its facilities. Mississippi estimates the additional requirements to 1970 to be not more than 163,000 Mcf per day.

Panhandle did not submit an independent market analysis but proposes to deliver the same volumes of gas to the St. Louis market as that proposed by Mississippi, *i.e.*, about 65,000 Mcf.

These market analyses differ in result but they all predict a substantial increase in the needs of the St. Louis area for additional volumes of gas. Oklahoma Illinois estimates of the general volumetric requirements of the present industrial market must be reduced. First, by eliminating some 4.5 million Mcf from the estimates of its two affiliated customers which are not supported by the record. Secondly, an additional 2.2 million Mcf must be eliminated from its estimates of the interruptible market to adjust for the erroneous assumption of five of the industrial customers [4] that interruptible gas would be available for more than the 235 days supported by the record. Moreover, it has grossly exaggerated the firm gas requirements of its industrial customers. Here we find the Mississippi evidence more convincing. Oklahoma Illinois' estimates of the present needs of the St. Louis utility market are reasonable. But the high rates which it proposes for this service defeat its ability to obtain this load.

As to the future, Mississippi's 1970 estimates are without record support, and are contrary to its trended growth experience. Oklahoma Illinois' long-range market projections were based on a trend in the growth of population and the number of occupied house units in the area for the years 1940 and subsequent. We have serious difficulty with the validity of the basic assumption of the study that all gas sales, residential, commercial and industrial, will increase in direct proportion to the population, but St. Louis undoubtedly will experience a significant growth in its gas requirements in the future, as all parties are agreed. The growth may well approximate that predicted by the Oklahoma Illinois witness in terms of total gas volumes, firm and interruptible. As to the division between the two, however, Oklahoma Illinois' study is necessarily influenced by its errors in estimating the firm requirements of the present industrial market.

COMPETITION

The examiner based his approval of Oklahoma Illinois' proposal almost exclusively on his finding that there was a need for a second supplier of natural gas in order to break Mississippi's monopoly and introduce pipeline competition into the St. Louis area. He justified this conclusion on the basis that Mississippi's past record of failing to satisfy its customers natural gas requirements as fully as it should have, pointing out that first the distributing customers [5] and now the industrial customers have complained vigorously of its failure to satisfy their expanding gas needs. The examiner denied the other applications because they failed, in his opinion, to accomplish this objective.

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[4] Owens-Illinois, Laclede Steel, National Lead-Titanium Division, Dow Chemical and Granite City Steel Co.

[5] See *e.g.*, the complaint proceeding instituted by Fuel's utility customers which culminated in the Commission's opinion in *Arkansas-Louisiana Gas Company*, 27 FPC 697, rehearing denied, 27 FPC 1257 (1961).

The examiner properly points out that competition is a factor to be considered in passing on a pipeline application. If in this case Oklahoma Illinois had presented a proposal which while otherwise meeting the minimum requirements had truly brought the benefits of competition to the St. Louis market we would certainly give it serious weight in deciding among the competitive proposals before us. However, we disagree with the examiner that Oklahoma Illinois has presented such a proposal. Competition is not an end in itself and Oklahoma Illinois cannot surmount its other defects merely because in the abstract, competition may be useful in the St. Louis market. In all of the other situations in which we have certificated a second pipeline to serve a major consuming area, it has been in circumstances in which the new competition by focusing on new customers and growth in demand of old customers has been able to provide the competitive spur without the serious immediate impact on the existing pipeline necessitated by a grant of the Oklahoma Illinois proposal. And if it had been feasible for Oklahoma Illinois to propose a pipeline that initially would not require sales of the magnitude required by its actual proposal this might have been true here. However, an analysis of the nature of the competition proposed to be provided by Oklahoma Illinois detracts from its value in benefiting the consuming public as a whole.

The record supports the fact that there is an increasing need for natural gas in the St. Louis market among all classes of users. Since Oklahoma Illinois proposes to serve almost exclusively the industrial segment of this market and its limited efforts outside the area are clearly not competitive pricewise, it is evident that it does not intend to or cannot compete with Mississippi in a manner which would promote the overall public interest. Thus, even if it were otherwise a viable project, the questions involved in considering the Oklahoma Illinois application is not whether competition should be introduced into the St. Louis market but whether competition limited to the lucrative industrial load should be introduced where the effect would be to raise the cost of gas to other classes of users.

The economic feasibility of Oklahoma Illinois' project is premised on a diversion of Mississippi's industrial customers which Oklahoma Illinois proposes to convert from the present interruptible service provided by Mississippi to firm gas service. Since these industrial loads constitute the major portion of the industrial load now served by Mississippi, not only will Oklahoma Illinois' presence in the St. Louis market not result in competition, it will disturb the market balance which now exists between industrial and residential customers. Proper load balance is an important consideration in a natural gas market which is of advantage to both the consumer and the industrials because it provides a supply of natural gas at a reasonable price which would not be otherwise available. It is apparent that the growth in peak demand requirements of the residential consumer load in the St. Louis area will create an ever increasing need for a flexible industrial interruptible market. Oklahoma Illinois' proposal would deprive the area of the load balance benefits provided by the present interruptible market. Even if there is an ultimate market for an additional large supply of gas in the St. Louis area the way to meet it is not by divorcing the industrial and residential loads. While this might act as an indirect spur to improve the quality of Mississippi's present service, it would be competition in a way not calculated to promote the public interest.

THE OKLAHOMA ILLINOIS PROPOSAL

An examination of the market Oklahoma Illinois proposes to serve shows the sales in three categories: (1) industrial customers in the St. Louis area; (2) one utility serving the St. Louis market, Laclede; and (3) a number of small

municipalities and industrial customers in central Missouri. The backbone of the proposal, which would account for approximately 90 percent of the proposal sales, are the 14 industrial customers in the St. Louis area.

The Industrial Market

Oklahoma Illinois would provide both firm and interruptible gas to the 14 industrial concerns to which it proposed to sell gas. It estimates the first year industrial sales at approximately 44,000,000 Mcf of which more than 30,000,000 Mcf would be firm gas. This industrial load is now being served largely by Mississippi. Sales to Shell Oil Company, an affiliated producer customer of Oklahoma Illinois, would constitute over 21 percent of the proposed industrial sales and sales to American Oil Company, another affiliated producer customer, would account for another 12 percent. It is clear that what Oklahoma Illinois proposes is essentially an industrial pipeline operation.

Oklahoma Illinois contends that its project would satisfy the needs of the 14 industrial customers[6] which Mississippi has not met and cannot meet. However, in our opinion the needs of the industrial market are by no means as extensive as Oklahoma Illinois contends. We do not believe the record supports the conclusion that there is an adequate market for these huge volumes of gas demands of Oklahoma Illinois' proposed industrial customers. The testimony of the various industrial witnesses, while generally supporting their ability to consume their claimed total annual volumetric requirements, are not convincing as to their need for this gas on a firm contract basis. It is clear that they are motivated by their dissatisfaction with the pricing practices which have characterized Mississippi's service in the past; by their concern that Mississippi's past failure to provide truly firm service for necessary industrial processes will continue; and, by their alarm over the Commission's endeavors to allocate available gas supplies between Mississippi's industrial and utility customers.[7]

The testimony of these witnesses shows that, with some exceptions, the industrial customers initially established their firm gas requirements in a manner similar to that presently used by Mississippi, resulting in significantly lower firm gas requirements than that contained in Oklahoma's market evidence in this proceeding. These witnesses concede that subsequently they revised their estimates and established the firm requirements as used in the Oklahoma Illinois market study on the assumption that a major portion of the gas then purchased from Mississippi on either a firm or interruptible basis would be purchased from Oklahoma Illinois under firm requirements. Significantly, this upward revision in firm requirements was necessary to establish the projects' economic feasibility.

Furthermore, the contractual arrangements under which these industrial concerns proposed to purchase Oklahoma Illinois gas gives rise to doubts that their needs for firm gas are as large as claimed. For example, the industrials' field purchase contracts, which would be retained as tariff provisions under the series "C" proposal, contain provisions authorizing the industrials to reduce contract volumes by up to 10 percent per year on the declining balance each year after the first. Additional reductions in the contract volumes were available "for economic or technical reasons." Finally, certain of the industrial firms

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[6] American Oil Company, American Steel, American Zinc Company, Ceero Corporation, Dow Chemical, Granite City Steel, Laclede Steel, Nation Lead Company, National Lead Titanium, Olin Mathieson, Owens-Illinois Glass, Pittsburgh Plate Glass, Shell Oil Company, and C. J. Williams & Company.

[7] Opinion No. 355, *Arkansas-Louisiana, et al.*, Docket No. G–17567, *et al.*, 27 FPC 697, reversed *sub nom. Granite City Steel Company* v. *F.P.C.*, 320 F. 2d 711.

had contract provisions whereby they could still further reduce their annual takes by more than 10 percent but not to exceed 30 percent of the contract quantity if other industrial customers would waive their contract rights to reductions for the year in question.

Of course, such adjustments in firm volume and reduction rights are legitimate matters of negotiation between a pipeline and its industrial customers. However, here the firm gas requirements of these customers appears to have been initially established to satisfy the feasibility requirements of the Oklahoma Illinois project rather than to reflect a genuine need for firm gas supplies. For example, there is evidence that the affiliated customers, Shell and American Oil, overestimated their requirements. American Oil estimated that its purchase from Oklahoma Illinois would be somewhat more than 5,000,000 Mcf, about half of which would be firm gas. This compares to a total estimated sale by Mississippi in 1964 of 3,506,000 Mcf and an actual purchase from Fuel of 2,554,079 Mcf. American's witness admitted on cross-examination that American really needed only 1,000 Mcf of firm gas daily and it would have preferred to contract for that amount and wanted to purchase 14,000 Mcf of interruptible gas daily. Oklahoma Illinois insisted, however, that it contract for 7,500 Mcf of firm gas daily. Computing the actual requirements of American at 1,000 Mcf of firm gas daily and 14,000 Mcf of interruptible gas daily would result in total annual requirements of 3,655,000 Mcf, or almost 1½ million Mcf less than Oklahoma Illinois' estimate of 5,120,016 Mcf. American's estimates assumed a total conversion to natural gas consumptions, to the exclusion of cheaper priced coal and refinery by-products, and without a realistic evaluation of the relative fuel costs involved. There is similar evidence in the record that Shell has overestimated its requirements by more than 3,000,000 Mcf.

We take notice of Mississippi's 1963 Form 2 which shows its permanently certificated sales to the above described industrial customers to be approximately 24,000,000 Mcf. Mississippi's Form 2's for 1961 and 1962 established an annual increment growth in the sales to these customers of approximately 3,000,000 Mcf. It can be anticipated that Mississippi's sales to these customers in 1964 will approximate 27,000,000 Mcf in contrast to Oklahoma Illinois proposed sales in 1964 of 44.3 million Mcf. Thus, it is evident that over 60 percent of the total sales to the 14 industrial customers proposed by Oklahoma Illinois in 1964 will approximate 27,000,000 Mcf in contrast to Oklahoma Illinois propermanently certificated sales.[8]

The record shows that a substantial portion of the new 17,000,000 Mcf of gas which Oklahoma Illinois proposes to provide to the St. Louis industrial gas market would be purchased by its two affiliates, Shell and American Oil. It is significant that neither of these companies have heretofore requested Mississippi to provide this additional service. In other words, the very backbone of the Oklahoma Illinois project would consist of customers taken away from Mississippi, or of sales to affiliated customers. The fact that Oklahoma Illinois must base virtually its entire market showing on affiliated industrial customers or customers taken from the existing supplier undermines its claim that there exists a large unsatisfied industrial market in that area.

The Utility Market

The record is clear that the principal distributing companies serving the St. Louis area—Laclede and Illinois Power Company—which distribute some 80

[8] In addition, pursuant to the temporary certificates issued by the Commission pending the outcome of these proceedings Mississippi has been providing these customers additional volumes of 9.8 million Mcf per year.

percent of the gas in the area—have no need or desire for deliveries of gas from Oklahoma Illinois' proposed pipeline, since they are now receiving adequate service from Mississippi. Mississippi is already under contract to supply their requirements for two years, and offered to supply them for three more years, an offer the distributing companies declined because they did not wish to contract so far in advance. In fact, these and other St. Louis area distributing companies oppose the Oklahoma Illinois project[9] because it would increase gas costs in the St. Louis area and adversely affect their operations.

Oklahoma Illinois proposes to sell Laclede up to 15,000 Mcf of firm gas per day at specified load factors. This sale would comprise some 5 percent of Oklahoma Illinois' annual sales. Laclede, however, says that it cannot and would not purchase gas from Oklahoma Illinois because Oklahoma Illinois' rates would not be competitive with Mississippi's, its present supplier.[10] The record indicates that Oklahoma Illinois' rates would indeed be significantly higher than the rates for gas delivered by either the Transmission-Natural project or by the Panhandle project.[11] Thus, Laclede's statement that it would not buy Oklahoma Illinois gas cannot be disregarded.

Without the sale to Laclede the economic feasibility of the Oklahoma Illinois project would, according to the examiner, be only marginal, since the project would earn an overall rate of return of 6.62 percent and a rate of return on common equity of 7.55 percent. Oklahoma Illinois' finance witness stated that unless the Oklahoma Illinois project were allowed by the Commission to earn a 7 percent rate of return overall, and between 12 and 13 percent on equity, reflecting interest on First Mortgage Bonds at 5.5 percent, there would be great doubt whether the project could be financed. In this regard, it is noted that the examiner found that Oklahoma Illinois has failed to submit a definitive plan for financing its project, a deficiency he would remedy by a corrective condition.

The Mid-Missouri Market

Oklahoma Illinois stresses that its project would enable service to thirteen small, heretofore unserved communities in Central Missouri along the routes of its pipeline. These sales would comprise less than 5 percent of Oklahoma Illinois' total sales. This Commission has pursued a policy of encouraging pipelines

[9] Other parties also opposing the Oklahoma Illinois project include the City of St. Louis, and the Arkansas Public Service Commission. The Missouri Public Service Commission neither opposed nor supported Oklahoma Illinois, but expressed concern over whether the project would have an unfavorable impact on St. Louis distributing companies and the consumers of gas.

[10] On the present record Oklahoma's utility rates are some 23 percent higher at an 80 percent load factor than Transmission's presently effective utility rates as reduced by the Commission's settlement orders issued August 7, 1964, 32 FPC 547, in Docket No. RP63–2. Thus, even assuming that certification of Oklahoma Illinois would necessitate upward adjustments in Mississippi's rates, Oklahoma's proposed utility rates to Laclede would be substantially higher than Mississippi's.

[11] Oklahoma Illinois' proposed CD–1 rate provides for a demand charge of $3.10 and a commodity charge of 25 cents, resulting in an average rate of 35.2 cents per Mcf at a 100 percent load factor and 45.4 cents at a 50 percent load factor. Transmission's presently effective CD–1 rate provides for a demand charge of $1.89 and a commodity charge of 23.2 cents, resulting in an average rate of 29.4 cents at a 100 percent load factor and 35.6 cents at a 50 percent load factor. Panhandle's proposed LS–2 rate provides for a demand charge of $2.05 and a commodity charge of 22.9 cents, resulting in an average rate of 29.6 cents at a 100 percent load factor and 31.8 cents at a 75 percent load factor (reflecting the proposed 75 percent minimum bill provision). We recognize that some of these rates are unsupported and could not be approved by the Commission, but they provide a rough idea of the relative price levels of the service proposed by applicants under the demand-commodity rates applicable in the St. Louis area.

to extend the benefits of natural gas service to small, less favored communities. However, such extensions cannot be approved when to do so would result in affirmative injury to existing gas consumers. Here the benefits of service to these new communities must be measured against the investment proposed for its fulfillment, and its effect upon the communities to be served, St. Louis, as well as the Mid-Missouri communities. Oklahoma Illinois, dependent on a few large industrial customers, would lack the stabilizing effect of a dependable domestic consumer market and would be highly vulnerable to unfavorable economic changes. Since we lack jurisdiction over direct industrial sales, Oklahoma Illinois' operations would be largely free of our control. Its jurisdictional and domestic customers would be irretrievably tied to service from the pipeline no matter how high its costs might rise. We conclude that whether viewed from the interests of the St. Louis area or the Mid-Missouri market the project is too costly.

It is regrettable that the proposal to serve these communities has come to us as part of a proposal which would supply them gas only under the most unfavorable conditions. However, there are other pipelines in this vicinity and their natural growth should bring gas service to them in the reasonably foreseeable future and, we would expect, under more favorable conditions.

Cost Impact on Consumers

An infirmity in the Oklahoma Illinois project is its probable material adverse cost impact on Mississippi, Mississippi's distributing company customers, and, ultimately, on the consumers of gas in the St. Louis area. If Oklahoma Illinois pre-empts fourteen of Mississippi's industrial customers, whose requirements constitute some 20 percent of Mississippi's annual sales, the unit cost of gas delivered by Mississippi would necessarily increase. Perhaps more important, Mississippi's loss of these sales, which are estimated at some 20 million Mcf of interruptible sales annually, could subject it to take-or-pay penalties on its annual purchases from United, its Louisiana supplier, by reason of Mississippi's inability to maintain the required 72 percent purchase load factor.

After extended discussion, the examiner estimated the total adverse cost impact on Mississippi and Transmission at approximately $950,000 a year initially. However, he thought that the domestic consumer would not immediately feel the effects of this increased cost because of the rate moratorium imposed in the recent settlement of Mississippi's pending rate case. In any event, he concluded that the injury would be outweighed by savings to the industry and improvement of economic conditions by the increased availability of natural gas, and the competitive and other advantages of another pipeline into the area.

It is extremely difficult to find the precise cost impact of the Oklahoma Illinois project on Mississippi's existing resale customers. Mississippi places it at $4,368,000 annually and Laclede at some $3.2 million (subject to certain downward adjustments conceded on the record with a net effect of $2.4 million). The Commission staff, while conceding a possible impact of $5.6 million annually, concludes that in reality practically no impact would be experienced. Our analysis leads us to conclude that the adverse impact of Oklahoma Illinois certification on Mississippi's resale customers would be in the area of $1.4 million.

Our computations, appended hereto as Appendix B, take into consideration the effect of the recent United Gas Pipe Line settlement, and the concession by Mississippi's witness that certain of its remaining industrial customers' sales could be upgraded. We assume that Mississippi would experience an increase in its costs of service of $1,131,000 resulting from its take-or-pay obligations to United upon the loss of these 14 industrial customers; its jurisdictional custom-

ers would be assessed an additional $910,662 of this amount. In addition, because of the loss of these industrial sales, its resale customers would experience an increase in their proportionate allocated costs of the pipeline. This would result in a net increase of $547,490 resulting in a net annual adverse impact of $1,458,152 which we here adopt as a fair measure of this impact.

It is true, of course, that the growth potential of the St. Louis market would rapidly overtake the take-or-pay obligations, and absorb the increased cost allocations. However, our computation assumes that Oklahoma Illinois will acquire only the 14 industrial customers here identified from Mississippi's market. Recognizing its location, the existence of its excess capacity, and its marginal economic feasibility, this would be, at best, naive.

Even assuming the accuracy of the economic savings to the industrial customers computed by the examiner, we do not believe that this Commission would properly fulfill its public interest responsibilities by granting Oklahoma Illinois a certificate in such circumstances. The grant of a certificate which would result in higher prices must be based on the assumption that St. Louis consumers can properly be made to forego, indefinitely, the benefits which they might otherwise be entitled to in order to provide Oklahoma Illinois the market it requires. The resale customers and domestic customers are the primary intended beneficiaries of Commission regulation under the Act, and it is highly questionable whether injury to them should be regarded as offset by possible benefits to industrial customers and other interests of less central concern under the Act.

Conclusion

We have examined with care the evidence relating to the present and probable future fuel supply situation in the St. Louis area, the nature and extent of its industrial needs, the alternative supplies afforded by competitive fuels, as well as the alternatives advanced in this record for provided future increments of industrial gas for the St. Louis market area. Our analysis leads us to this conclusion that the Oklahoma Illinois project, which would involve over 700 miles of large diameter pipe and transport 186,000 Mcf of gas per day at a cost of $62 million is not in the public interest. The project, which is based upon a diversion of Mississippi's industrial customers, would constitute an unjustifiable duplication of existing facilities which can be expanded consonant with the growing needs of the St. Louis market and at much less expense. In comparison, the Mississippi-Natural and Panhandle projects, which would each transport some 65,000 Mcf of gas per day and involve less than 75 miles of pipeline, would cost an estimated $10.5 million for the former and some $6 million for the latter. It is true, of course, that these estimated costs for the Mississippi-Natural and Panhandle projects are incremental costs and that the total costs of gas service from these projects would be higher than these bare figures might imply.

We recognize that additional expansion of the Mississippi system will eventually be necessary to meet the growing needs of the St. Louis market. But the record clearly shows the existing inexpensive expansibility of the Mississippi system over and above that proposed in the present proceeding. Thus the necessary investment can be deferred until a point more approximating its period of use, with the resulting saving to the consumer. It is clear from the foregoing that the problem of supplying the growing gas requirements of the St. Louis area, including, if necessary, the introduction of a competitive supplier of gas, can and should be solved by a less extensive and costly pipeline than that proposed by Oklahoma Illinois. Thus, the certification of Oklahoma Illinois would result in an unjustifiable expenditure of resources, which must in the final analysis be borne by the gas consumer.

Opponents of Oklahoma Illinois have raised several serious procedural questions relating to the Oklahoma Illinois' proposal, and the conditions the examiner would attach to its certificate. In view of our conclusion here that the Oklahoma Illinois project does not meet the public interest requirements, and cannot be certificated, we need not consider these further.

THE MISSISSIPPI-NATURAL PROJECT

The Mississippi-Natural project originally involved sales by Transmission to Fuel of 65,000 Mcf per day of gas that Transmission would obtain from Natural, and the resale by Fuel of such volumes to St. Louis consumers. In view of their recent merger, this intermediate sale by Transmission to Fuel, and certain related features thereof, including the proposed rate schedule applicable to such sale is eliminated. Mississippi still proposes to obtain the gas from Natural at a point where their lines intersect in south-central Illinois, some 50 miles from the St. Louis area, and would transport and deliver this gas to its (formerly Fuel's) utility customers, and to direct industrial customers in the St. Louis area. Mississippi avers that it would require no additional facilities to render the service proposed.

Natural's original proposal also has been subject to changes during the pendency of this proceeding. Natural originally sought authority to, among other things, increase the design day capacity of the Gulf Coast Division of its system by increments of 35,000 Mcf and 30,000 Mcf of gas per day, respectively, and to deliver the total daily contract quantities into Transmission's facilities as aforesaid. To render this service, Natural proposed facilities including approximately 71.5 miles of 30-inch pipeline partially looping its existing pipeline in Texas, Arkansas, and Illinois, and approximately 9,800 BHP of additional compressor horsepower at certain specified stations on the system. Natural has now constructed most of these facilities pursuant to authorization granted by Commission order issued on July 27, 1964, in Docket No. CP64–162, 32 FPC 370, as a part of its then-pending 70,000 Mcf expansion program. Accordingly, Natural would now have to amend its application so as to construct and operate certain additional facilities to enable the service proposed in this proceeding for the St. Louis market.

The Presiding Examiner held that the Mississippi-Natural project should be denied primarily because Mississippi's continued monopoly of supplying natural gas to the St. Louis area is not in the public interest, and because the public convenience and necessity require a project that will break the existing monopoly and bring competition into the St. Louis area.

The fact that Mississippi has a monopoly over the pipeline service into the St. Louis area is not decisive in our evaluation of its project. In the field of public utility regulation, and particularly where so-called "natural monopolies" are concerned, it is recognized that a monopoly will serve to eliminate duplication of facilities and may thus reduce costs to the rate payer; in such situations, regulation rather than competition is relied upon to protect the public from possible exploitation.[12] Nevertheless, the impact of a monopoly on the competitive situation is a factor we should not ignore in passing on certificate applications, cf., *City of Pittsburgh* v. *F.P.C.*, 237 F. 2d 741 (CADC–1956).

Mississippi rightly points out that the examiner has condemned its project because of its past practices, and argues that he is unfairly attempting to punish

[12] *Cf., F.C.C.* v. *RCA*, 346 U.S. 86, 92 (1952); *Penn Water Power Co.* v. *U.S.*, 343 U.S. 414, 421 (1951); *Slaughter-House Cases*, 83 U.S. 36, 66 (1873); *McFayden* v. *Public Utilities Consolidated Corp.*, 299 P. 671, 673 (1931); *Metropolitan Edison Co.* v. *P.S.C.*, 191 A. 678, 682 (1937).

it for policies no longer followed. It maintains that past policies no longer followed are not relevant to what is required by the present and future public convenience and necessity.

We agree. Our responsibility is to insure that the project ultimately certificated is that which is best suited to the present and future needs of these markets. Our sole interest is to insure that the undesirable conditions which have prevailed in this market in the past are not allowed to recur.

The record before us is overwhelming that Mississippi, in the past, failed to satisfy its obligations to the gas consuming public. The present record clearly establishes that Mississippi's industrial market requirements were computed without consultation with the customers themselves. And, it is clear that its pricing practices with its industrial customers is characterized in part at least by considerations of what the market will bear. Thus, we consider it necessary that in the remanded proceedings Mississippi establish that in fact it is ready, willing, and able to fulfill its present and future obligations to render all needed service at just and reasonable rates to both its industrial and utility customers.

Mississippi and some of its utility customers argue that since Natural's pipeline lies only 50 miles east of the St. Louis area, where it proposes to make deliveries into Mississippi's pipeline, the certification of the Mississippi-Natural project would thus bring competition into the St. Louis area.

This argument is weak. Natural's proximity to the St. Louis Market and the certification of its proposed sale to Mississippi might still deny the St. Louis area the benefits of competition, since Natural under its existing proposal would make deliveries only into Mississippi's facilities some 50 miles away from St. Louis, and could not compete directly with Mississippi for customers in the St. Louis area.

The Mississippi-Natural project, like the Oklahoma Illinois project, is subject to infirmities but its cost and size are reasonably consistent with the needs of the St. Louis market. Rather than denying this application we shall remand it for further consideration by the examiner. In the further proceedings Natural should examine the feasibility of providing facilities for delivery of the gas at a point more convenient to the St. Louis market area.

The Mississippi-Natural project on the present record is deficient in numerous respects cited by the Commission's Staff and various parties in their briefs and exceptions but not discussed by the examiner because of his approach to this case.[12] These deficiencies include Natural's and Mississippi's failure adequately to substantiate their estimates of future revenues, expenses, and income in conformity with Section 157.14(11) of the Commission's Regulations, Natural's failure to support its new Rate Schedule PL–1 in conformity with Section 157.14(18)(ii) of the Regulations, and Natural's failure to show that its gas supply is adequate in reserves and deliverability. It is unnecessary to discuss these deficiencies in detail since they can and should be explored in the remanded proceedings to the extent they are not cured by amendment or modification to the applications.

THE PANHANDLE PROJECT

The examiner would deny the Panhandle project on basically three grounds. First, he noted that Panhandle's proposed LS–2 rate schedule would be applicable only to Mississippi. Thus, he found that Panhandle's project would permit Mississippi's monopoly in the St. Louis area to continue. For this reason, he concluded that its certification would be contrary to the public interest.

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[12] As discussed earlier in this opinion, the examiner did not consider the Mississippi-Natural and Panhandle projects in detail because he held that they could not satisfy the essential prerequisites of a project to serve the St. Louis area.

We disagree. Although Panhandle proposes service to Mississippi, it has also stated, on the record, that it would serve industrial customers in the area if we find this appropriate. Thus, in the remanded proceedings, if it is found that our regulatory efforts would be enhanced by the presence of a competitive supplier, it is apparent that a project in the magnitude and character of the Panhandle project could satisfy that need with a minimum duplication of facilities, without unnecessary investment of resources, and with minimal injury to the residential consumers of St. Louis.

We well might find that approval of Panhandle's project would provide the necessary additional gas supplies, but that Mississippi should continue to serve as the prime supplier in the St. Louis area subject to our jurisdiction. It seems clear that certification of such a project as Panhandle would have a potent competitive effect in the area. And should our regulatory efforts fail to preclude recurrence of past events, the presence of the second supplier would make available the possibility of an effective remedy.

The examiner's second ground for denying the Panhandle application was the inadequacy of its market showing. The record, however, is clear that there is an adequate market in the St. Louis area for the Panhandle project, in the sense of there being customers who need and can reasonably expect to purchase the volumes Panhandle proposes to deliver. (*cf., Kansas Pipe Line and Gas Company, et al.*, 2 FPC 29; 45.)

The examiner also held that Panhandle had not shown that Mississippi's facilities are capable of receiving the gas Panhandle would deliver near Alton, Illinois. In addition, Mississippi contends that Panhandle's gas differs in composition from Mississippi's to such a degree that they are not interchangeable and could not be utilized together in Mississippi's system. The gas can, of course, be physically commingled, but adjustment costs might be incurred. We believe, however, that Panhandle should have the opportunity of curing these deficiencies by the introduction of further evidence in the remanded proceedings. Specifically, additional evidence is needed respecting the ability of Mississippi's facilities to receive the Panhandle gas at Alton; the possible delivery points for such gas, the changes, if any, in Mississippi's facilities and operations which will be required to receive and utilized such volumes; any adjustments, at burner tip or otherwise, which would be required as a result in the difference in composition of Panhandle's gas; and the additional costs, if any, which Mississippi and/or Panhandle might entail in effecting such changes.

The third ground advanced by the examiner for denying Panhandle's application was that it had failed to satisfy, in many respects, the minimal requirements of public convenience and necessity. For example, the examiner concluded that Panhandle's application failed to substantiate its gas supply, failed to support its proposed LS–2 rate schedule, and otherwise failed to meet the technical filing requirements of our regulations. As to Panhandle's gas supply, contrary to the examiner, we find that the Howell Storage field is capable of expansion to provide storage for the additional volumes of gas required to accommodate its project; that Panhandle's gas reserves are adequate; and, that its Waverly Storage Field is capable of delivering 25,000 Mcf per day on a peak day. However, we agree with the examiner that additional evidence is required regarding Panhandle's ability to receive the injection volumes and deliver the withdrawal volumes as scheduled.

Respecting Panhandle's rate and economic feasibility showing, it is true that Panhandle did not put in evidence a system-wide cost of service to support its proposed LS–2 rate for the St. Louis service, contrary to Section 157.14(18)(ii) of our Regulations, which requires such a cost of service for the first calendar

year of operations and an allocation of these costs to each class of service. Panhandle merely presented an incremental costs of service study which allocates the relatively low costs of expanding the Howell Storage field to the proposed new service. Panhandle should make the showing required by our Regulations with respect to the rates and economic feasibility of its project at the further hearing hereinafter ordered.

Since the close of the record in this proceeding Panhandle, like Natural, has been authorized to construct some of the facilities proposed herein. Thus, some of the additional injection and withdrawal facilities in the Howell Storage Field which Panhandle proposed in this proceeding will now be constructed as an adjunct to Panhandle's recent major system expansion for service to markets other than St. Louis. Panhandle would, of course, now have to construct and operate certain additional storage field facilities to provide the service proposed in this proceeding for the St. Louis market and it must bear the burden of proof that the Howell Storage Field is capable of still further expansion to provide the additional storage volumes proposed herein. We shall authorize Panhandle, like Natural, to modify or amend its application to prescribe such additional facilities as may be necessary.

As we have indicated, because of changes made and to be made in the parties' projects, rates and tariffs, it is possible to make only rough comparisons of the levels of the party's respective rates for service to the St. Louis area. However, a comparison of the incremental revenues that Oklahoma Illinois, Panhandle and Natural would receive from supplying their proposed third-year volumes tends to confirm our finding hereinabove that from the standpoint of keeping the cost impact to a minimum, the Mississippi-Natural and Panhandle projects are superior to the Oklahoma Illinois project.

While the Panhandle project is not adequately supported on the present record there is good reason to believe that Panhandle can eliminate the deficiencies in its presentation if afforded the opportunity at a further hearing. Accordingly we shall reverse the examiner's decision rejecting this proposal and shall provide for a further hearing to enable the company adequately to substantiate the project if it can.

On August 2, 1965, Oklahoma Illinois Gas Pipeline Company (Oklahoma Illinois) filed a motion for further oral argument in the above-cited proceedings. The same has been adopted, concurred in, or supported by various other parties, all of whom join in support of certification of the Oklahoma Illinois proposal.[14] In contrast, Panhandle Eastern Pipe Line Company, Laclede Company, Natural Gas Pipeline Company of America, and Mississippi River Transmission Company have filed answers in opposition thereto.

We have considered the various argument advanced by the parties in support of the granting of further oral argument. We conclude, however, that no useful purpose would be served by the grant thereof. Accordingly, the motion shall be denied.

CONCLUSION

For the reasons set forth hereinabove, we conclude that the applications embracing the Oklahoma Illinois project must be denied. As concerns the Panhandle project and the Mississippi-Natural project, neither of these can be

[14] Motions concurring in, or in support of the Oklahoma Illinois motion were filed by the following parties: Granite City Group, the Cities of Rolla and St. James, Missouri, Midwest Oil Corporation, Associated Natural Gas Company, The Gas Service Company, Shell Oil Company, and Owens-Illinois Glass Company. Pan American Petroleum Corporation filed a separate motion for further argument.

granted on the present record. But each proposes a project which, if substantiated, would basically be appropriate, insofar as cost and size is concerned, to the needs of the St. Louis market. Accordingly, we shall remand these applications to the examiner for further proceedings in conformity with the findings and conclusions in this order. In such proceedings the parties will be free to amend and modify their applications so as to best serve the interests of the St. Louis consumers.

Our review of the present record, as well as our past experience in dealing with the natural gas requirements of the St. Louis area establishes certain criteria which should be considered in evaluating the proposals in the remanded proceeding: (1) Is the project reasonably adapted in and character to the needs of the St. Louis market? (2) Would it unduly disrupt the operations of existing utilities? (3) Would it unnecessarily duplicate the existing pipeline facilities in the area? (4) If it involves a second supplier, would it be in the public interest to introduce competition into the St. Louis market? (5) Would it meet the minimal requirements of public convenience and necessity? (6) Would it conform to the other applicable requirements of law? These criteria should be given full consideration in the remanded proceeding.

All exceptions, arguments and requests not discussed or granted herein have been considered but are without substantial support in the record or a reasonable basis in law or are immaterial to the proper disposition of this proceeding and should be denied. The Presiding Examiner's initial decision issued herein on September 10, 1964, should be reversed in part and otherwise modified as herein set forth and as so modified should, to the extent consistent with this opinion, be adopted by the Commission as of the date of issuance of this opinion, to constitute herewith our decision in this proceeding.

The Commission further finds:

(1) The applications for certificates of public convenience and necessity embracing the project proposed herein by Oklahoma Illinois Gas Pipeline Company should be denied.

(2) A further hearing should be held in this proceeding to afford Panhandle Eastern Pipe Line Company, Mississippi River Transmission Corporation, and Natural Gas Pipeline Company of America opportunity to substantiate further their proposals for pipeline projects to serve natural gas to the St. Louis area, in conformity with this opinion and order.

(3) It is necessary and proper in the public interest and in conformity with the provisions of the Natural Gas Act that the matters and issues described hereinabove be determined by public hearing and that the proceeding be expedited in accordance with the procedures set out below.

The Commission orders:

(A) The applications for certificates of public convenience and necessity embracing the project proposed herein by Oklahoma Illinois Gas Pipeline Company are denied.

(B) Pursuant to the authority conferred upon the Federal Power Commission by the Natural Gas Act, particularly Sections 4 and 15 thereof, the Commission's Rules of Practice and Procedure, and the Regulations under the Natural Gas Act (18 CFR, Chapter I), a further hearing shall be held concerning the certificate applications filed herein by Panhandle Eastern Pipe Line Company, Mississippi River Transmission Corporation, and Natural Gas Pipeline Company of America, and the matters involved and the issues presented in this proceeding, as described hereinabove.

(C) At the hearing herein, the aplicants referred to in paragraph (B) above shall have the burden of proof and the obligation of going forward first with the presentation of their direct cases-in-chief.

(D) Presiding Examiner Martin E. Rendelman or any other officer or officers of the Commission designated by the Chief Examiner for that purpose (see delegation of authority, 27 F.R. 4267, etc.) shall preside at the prehearing conferences and at the hearing in this matter, pursuant to the Commission's Rules of Practice and Procedure, and as further provided by this order.

(E) The Presiding Examiner herein designated shall convene a prehearing conference at his earliest convenience and, in the exercise of his judgment, fix the time when the parties shall file their prepared testimony and exhibits, when other prehearing conferences shall be held, when the hearing herein shall commence and the days of hearing, and shall prescribe such other incidents of the hearing as may be necessary and appropriate, with due regard to the parties' requests and in keeping with our purpose of expediting this proceeding to the fullest possible extent.

(F) All arguments, requests, applications, exceptions and appeals not specifically discussed herein are without substantial support in fact or a reasonable basis in law, or are immaterial to the correct decision of this case, and should be and are denied.

(G) The Presiding Examiner's initial decision issued herein on September 10, 1964, should be reversed in part, as more fully set forth hereinabove, but should otherwise, to the extent consistent with this opinion and order, be adopted by the Commission as of the date of issuance of this opinion and order.

(H) The motions for further oral argument filed by Oklahoma Illinois and Pan American Petroleum Corporation, as concurred in or supported by other parties, are denied.

Commissioner Ross *concurs in the result only* but would not prohibit Oklahoma Illinois from presenting a modified project at the remanded hearing.

Commissioner O'Connor *dissenting.*

O'CONNOR, *Commissioner, dissenting:*

By the decision issued today a majority of this Commission has determined that, despite a major shortage of natural gas in the St. Louis metropolitan area, no permanent solution should be undertaken for at least several more years. I cannot concur in their determination so to proceed. Of the various parties making proposals to serve the area, only one has presented full evidence of its ability and willingness to commence service. Its presentation is reasonable in relation to the markets it proposes to serve, and it should be certificated, pursuant to the recommendations of Examiner Rendelman.

I.

The major metropolitan area and the highly diversified industrial complex concentrated at St. Louis is the largest in mid-America. Twelfth in size in the United States, it is expected that its population will increase to 2,655,000 people in the next decade. Its industrial complex is one of the major manufacturing areas of the country. Important to the continued rapid expansion of the area is a fully adequate supply of natural gas for industrial, commercial, and residential purposes. Because of its growth potential and because of prior limitations on an assured supply of natural gas on acceptable terms, it is apparent that the present and foreseeable market is fully adequate to support the major increases proposed by Oklahoma Illinois. While the fundamental issue before us is additional fuel

for the St. Louis metropolitan area, there are further benefits afforded by Oklahoma Illinois that should, on balance, preponderate in its favor. Not only does it meet the needs of St. Louis; in addition, it would provide natural gas service to 80,000 persons in central Missouri and would open major new producing fields in Oklahoma and Arkansas to the expanding market in St. Louis. It should be noted that these fields would provide a long-term supply for that area. A further consideration in this proceeding is governmental promotion of the positive benefits that flow from effective competition. Not only does the majority opinion deny effectuation of these considerations, anomalously while conceding their existence; it further commits fundamental errors in the conduct of comparative proceedings.

It is my position that Oklahoma Illinois has presented an acceptable project which is commensurate with the needs of the St. Louis metropolitan area. In accordance with the recommendations of our Staff, that project should be certificated, subject to certain protective conditions. In the event it refuses the certificate, a further proceeding should be commenced to the end that St. Louis be provided adequate natural gas service.

II.

Under Section 7 of the Natural Gas Act it is our responsibility to weigh the public convenience and necessity involved in any application presented to us, and to certificate the project that fulfills those public interest requirements. In a major pipeline certificate proceeding that interest requires a careful balancing of important policy considerations and of major financial undertakings. The first step in determining the public interest is provided by our Rules and Regulations which require, in Part 157, that a pipeline applicant present, *inter alia*, full and convincing evidence of a willingness to perform, of adequate gas supplies, of market availability, of reasonable costs of facilities, and financeability. It is significant that, of the applicants consolidated in this proceeding, only Oklahoma Illinois has met these threshhold requirements, and it is the only applicant that has held together for St. Louis the facilities that it proposes. As an initial matter, Natural has not only failed to prove such important matters as an adequate gas supply and record support for its proposed rates; it has, in addition, already constructed for use elsewhere the facilities it originally proposed for St. Louis. Panhandle's application is similarly deficient. It has not supported its proposed rates with a system-wide cost-of-service analysis; it has failed to demonstrate the requisite peak-day gas availability; it has not shown that Mississippi can accept deliveries of its proposed volumes at Alton; and it has not reflected any costs that may be incurred for burner tip adjustments required by commingling its gas with Mississippi's. In addition, Panhandle has elsewhere utilized some of the facilities it proposed for St. Louis.[1] The majority has properly concluded that we are not in a position to grant a certificate to either of these applicants. Only Oklahoma Illinois has met the threshhold requirements for a Section 7 certificate.

The Rules and Regulations do not provide for all the public interest considerations that are involved in major comparative proceedings. It is further required that the relative merits of each applicant be weighed, both individually and jointly, for the Commission to determine which best meets the need each proposes to supply. The most important of these considerations is the market analysis: what supply can be supported by the demand of the market in question.

[1] It is inconceivable to me how the majority can *find* on the record before us that Howell Storage Field is capable of delivering, by displacement, the volumes proposed for St. Louis. The third increment to that Field is not before us.

On the record before us the majority must concede, as they do, that there is a market presently in existence in St. Louis that is commensurate with the capacity proposed by Oklahoma Illinois. The following sets out the St. Louis market requirements for 1965:

	MMcf
Resale	130,126
Firm Industrial	22,734
Interruptible Industrial	36,307
Boiler sales not included in interruptible	14,000
Additional customers	3,132
Additional increase because of lower price	14,289
Total Market Requirements	220,588
Volumes sold by MRF & MRT in 1963	185,851
Less volumes sold out of St. Louis area	13,395
Less volumes purchased from Natural (temporary)	10,100
Sales in St. Louis from purchases other than Natural	162,356
Market available	58,232
Proposed sales by O.I. in St. Louis area	49,453

In addition, for the year 1970, it appears that the additional peak day capacity for greater St. Louis will be at least 151,000 Mcf. These figures establish: *first*, that in St. Louis alone there is more than adequate demand for the maximum proposal of Oklahoma Illinois of providing some 186,000 Mcf of peak day capacity for the present market; and, *second*, that there will be *additional* demand in 1965 alone of over 8,000 MMcf per year.[2]

It is apparent from prior proceedings as well as from the record before us that St. Louis has not been accorded the minimal terms of service and volumes of supply that have been required by either the industrial or residential consumers. In *Arkansas Louisiana Gas Company, et al.*, 27 FPC 697 (1962), we found that "Mississippi has not met the demands of its utility customers and they have waiting lists of customers desiring service." The comparative study presented by Oklahoma Illinois apparently confirms this:

PERCENT OF OCCUPIED HOUSING UNITS USING GAS FOR VARIOUS PURPOSES
1960

	Metropolitan area	
	St. Louis	Kansas City
Space-heating	50.6	90.7
Water heating	67.6	86.8
Cooking	65.6	71.6

This residential saturation reflects the long history in St. Louis of delay and frustration in efforts there to meet an ever-expanding market, and the resultant has been its second-class status among the major cities of the United States in terms of energy supply. Significantly, not only has the supply been deficient;

[2] Of course, due to the delay which has characterized this decision, the majority's reliance on 1964 figures is irrelevant; rather, we should be concerned with the market for 1966–67.

in addition, the service has not been on reasonable terms. It cannot be assumed that the industrials in the area have been satisfied. Their current dissatisfaction is apparent in their vigorous efforts to obtain a supply of firm gas from a supplier other than the present monopolist. The majority chooses to disbelieve the testimony of the various industrial concerns as to their increased needs, apparently on the grounds that they were initially based on estimates similar to those used by Mississippi and were subsequently revised upward.[2] The majority thereby sanctions Mississippi's well-established practice of understating its industrial customers' requirements through the device of sales forecasts rather than actual needs. The following chart presents the full picture:

Industrial customer	Direct sales: Mcf —1,000 Btu at 14.65 psia			
	Fuel volumes 1963		Oklahoma Illinois volumes	
	Estimated	Actual	Contract	Estimated
American Oil Co.	3,702,551	3,657,008	5,416,000	5,416,000
American Steel Foundries, Inc.	298,970	535,757	523,900	535,700
American Zinc Co. of Illinois	851,161	840,134	424,500	424,500
Cerro Corp.	992,667	788,015	1,116,900	1,116,900
Dow Chemical Co.	673,481	665,534	1,608,000	1,608,000
Granite City Steel Co.	8,646,676	9,645,667	11,250,000	11,250,000
Laclede Steel Co.	4,213,248	4,311,342	4,358,200	4,358,200
National Lead Co. (G.C.)	180,872	228,289	175,000	228,200
National Lead Co. (Tit.)	2,931,186	3,022,122	4,562,500	4,562,500
Olin Mathieson Chemical Corp.	930,958	1,028,374	1,094,300	1,094,360
Owens-Illinois Glass Co.	3,936,621	4,295,352	4,840,000	4,840,000
Chas. Pfizer & Co., Inc. (C. K. Williams & Co.)	191,511	191,280	227,250	227,250
Pittsburgh Plate Glass Co.	1,966,182	2,207,948	1,499,500	2,388,200
Shell Oil Co.	6,017,710	5,219,768	9,888,000	15,075,000
Total	35,582,794	36,636,110	46,984,050	53,124,750

However, even assuming *arguendo* that Oklahoma Illinois has improperly inflated its proposed sales to industrial customers, the uncertainty could be clarified by a condition in a certificate to Oklahoma Illinois that it further substantiate its proposed industrial sales. To me, the record is compelling that St. Louis has been traditionally undersupplied, and that there is at present ample market demand for a major expansion of natural gas service into the area.

The majority relies heavily on the need for both Oklahoma Illinois and Mississippi to balance their annual delivery volumes with large interruptible sales. Clearly interruptible sales are a necessary feature of the natural gas transmission business. See my dissenting opinion in *El Paso Natural Gas Company*, Docket No. CP65-178 (Order issued May 4, 1965, 33 FPC 945 at p. 948), where I emphasized that "Industrial customers, utilizing gas for a multitude of worthwhile purposes, serve as a base capacity for the transmission company, enabling it to operate year-round and supplying it with needed revenues which redound to the benefit of all consumers." It is not disputed that Oklahoma Illinois will have sufficient interruptible sales; in addition, from its efforts to indicate residential saturation in St. Louis, it must be concluded that it intends additional resale volumes in the area. Mississippi likewise has large volumes of base capacity even without the industrial volumes it will lose to Oklahoma Illinois. In addition to its indus-

[2] By inference the majority discredits the witness for American Oil Company although they were absent from the hearing. Anomalously, they proceed to admit additional volumes are justified by a shift from other fuels; so they must declare that American show which fuel is least expensive. This, however, is one matter that belongs to management in its discretion. There is no "similar evidence" that Shell overestimated its requirements.

trial load, it makes large volume sales of interruptible gas to large electric companies in the area, and it sells large volumes to Laclede on a year-round basis for injection into that distributor's storage fields. Finally, in regards to Mississippi's concern for its interruptible sales, it is only necessary to refer to *Granite City Steel Co.* v. *F.P.C.*, 320 F. 2d 711 (D.C. Cir. 1963), where the Commission's attempts to reallocate Mississippi's load-balancing volumes was unanimously reversed.

It must be further noted that, on the record before us, there can be no objection, and certainly the majority voices none, to the fact that Oklahoma Illinois is essentially an industrial service pipeline with 90 per cent of its initial annual deliveries to be made to industrial concerns. More fundamentally, it is axiomatic that any new pipeline extension will not be fully remunerative for several years, and Oklahoma Illinois' proposed firm industrial sales are an excellent approach to reducing this inherent problem. In all probability Oklahoma Illinois would expand its resale volumes yet it would have a large volume of base capacity in its industrial sales. The resale rate cannot be characterized as "too high" when the comparison is at full load factor and when it is considered that Oklahoma Illinois must be in a position to compete.

There are numerous other factors involved in the market analysis required prior to certification of Oklahoma Illinois. While ignored by the majority, these additional considerations preponderate strongly in Oklahoma Illinois' favor. The first of these is that the new pipeline would provide natural gas service for the first time in central Missouri, and it is apparently the only way many potential customers will be able to receive such service. In addition, there is every indication that there are a large number of major industrial, residential, and military customers in that area with needs that could readily be supplied by Oklahoma Illinois. I also emphasize that major new producing fields would be opened to interstate commerce, and, if the majority is to presume a managerial discretion for fuel allocations such economic concern should also reflect the local economy surrounding each producing area. They voice no such interest. Anomalously, they go further and express concern for the entire economy, upon which they predicate a fear that Oklahoma Illinois would falter in the event of an economic catastrophe. Not only would such an unsupported fear preclude any further extensions of natural gas service; it is totally contrary to their finding that St. Louis is in a position to utilize the additional volumes proposed by Oklahoma Illinois without an adverse impact on Mississippi. Rather than balancing all the compelling economic considerations, the majority selects, albeit anomalously, those economic consequences which will support its position. It is my opinion that such selectivity is not a reflection of the public interest considerations which should guide this agency in its exercise of pipeline certificate authority.

In addition to the market, there is a second major consideration for the St. Louis area, and this is the probable impact of certification of Oklahoma Illinois on Mississippi. If this Commission were to certificate a second pipeline where the losses suffered by the first would be of major proportions, the burden that would be cast upon the latter's customers would be too great to permit this Commission to discharge its responsibilities to the public. There has been charge and counter-charge on this issue, and it appears that there will be some impact on Mississippi if Oklahoma Illinois enters St. Louis. However, as the majority finds, the growth potential of the St. Louis market would rapidly overtake any increased cost allocations to Mississippi's remaining customers and would remove any take-or-pay obligations. The most telling evidence, however, is the

comparative impact on consumers if either Mississippi-Natural or Oklahoma Illinois were certificated. From the following tabulation it appears that, whichever project is certificated to provide additional service to St. Louis, there will nevertheless be an adverse impact on consumers:

IMPACT ON MRF IF OI IS CERTIFICATED

(For Jurisdictional Customers)

	Dollar amount of impact	Cents per Mcf of impact
Per examiner	$950,000	0.85
Per MRF	4,400,000	4.36
Per Laclede	1,254,000	1.19
Per OI	872,000	0.83
Per FPC staff	1,036,000	1.03
Per Majority	1,458,152	1.26

IMPACT ON MRF IF NATURAL IS CERTIFICATED

	Dollar amount of impact	Cents per Mcf of impact
Per MRF	$840,000	0.76
Per OI	2,156,000	1.94

Thus, the majority is placed in the anomalous position of increasing costs to the consumer regardless of the project they certificate.

Left in the unfortunate position of finding an adequate market and finding no adverse impact on Mississippi, the majority carry their argument one step further. They conclude that Oklahoma Illinois is "too costly." By so determining they inject an unyielding posture into the natural gas transmission business of precluding major expansions at a time when competition for growth at the city-gate has never been greater. Their assumption for this unfortunate position must be that, since limited service can be added more cheaply by additions to an existing pipeline, there is no need for major new pipelines. In the first place, however, St. Louis does not need just limited service. The market conceded by the majority fully supports certification of a transmission system capable of delivering 300,000 Mcf per day at the end of this decade, with capacity for still further cheap expansibility. Secondly, looping is not necessarily cheaper than laying a new pipeline. This is conclusively established by one of the applicants in this proceeding as a result of a major expansion it undertook recently. Panhandle was recently issued a certificate for a major system expansion at a cost of $184 per Mcf added.[4] If Panhandle were to bring 300,000 Mcf to St. Louis, based on the above costs, it would be at a cost of over $58,000,000. This does not include the cost to Panhandle of making those volumes available to each industry in the area, which cost would be an additional $9 million. Finally, of course, it would be economically infeasible for Panhandle to provide any additional service to Mid-Missouri as proposed by Oklahoma Illinois. *In toto*, the figures thus approximate what it will cost Oklahoma Illinois to provide 300,000 Mcf to St. Louis. Panhandle's proposal in this proceeding is, on its face, attractive. However, it is for small volumes that give no consideration to the market demand for the present and for the near future. In addition, that low figure is based on the displacement volumes made possible by Panhandle's Howell Storage Field. It is significant that the initial cost of this storage field to Panhandle's present customers was over three times the amount Panhandle included in its cost

[4] Docket No. CP65-255, issued June 28, 1965, 33 FPC 1295.

presentation here. Since it will cost almost the same amounts for either Panhandle or Oklahoma Illinois to meet the market requirements of St. Louis, the majority's determination further to delay that area's chronic undersupply is not acceptable. This is particularly true when consideration is given to the increasing costs of constructing additional facilities. Any difference between the cost to Panhandle and the cost to Oklahoma Illinois disappears when it is realized that present costs to Oklahoma Illinois will be less than total future costs to Panhandle. In addition, Oklahoma Illinois will provide cheap expansibility even above 300,000 Mcf, and it will also initiate service to central Missouri. The majority is without record support for its conclusion that Oklahoma Illinois is too costly. In a proper case, there is more than adequate room in mid-America for a major new pipeline, and the majority's unfounded conclusion can only be based upon a doctrinaire approach to the contrary.

III.

It must be conceded that the comparative merits of each application are not far removed from each other; there is a relative balance between each. This being the case, the most convincing public interest consideration, in addition to that of commencing permanent relief to St. Louis, is the competitive factor that certification of Oklahoma Illinois would introduce. As stated by Examiner Rendelman, "Except where the public interest dictates otherwise, the Courts and the Commission have consistently taken the view that two sources of supply are better than one, and that competition [is] better than monopoly." Examiner's decision, *infra*, pp. 812, 813. By their opinion today, the majority effectively denies this policy to St. Louis.[5]

The concept of competition which underlies this Nation's fundamental laws has many facets. In its broadest sense the policy is that of protecting the integrity of the market place, and the thrust of the law is to protect against the dominance by a single company of a particular line of commerce, not only for the Nation, but also for its various areas and regions. Thus, a healthy competitive situation is to be maintained in which sellers shall be required to exercise their best efforts without specific or implicit dictation of the terms and conditions of supply and service to buyers. More broadly, competition is emphasized to protect the consumer in his choice of products of comparable utility. This policy rests on the assumption that competition between a number of independent businesses generates constant incentive for improvement in the quality and prices charged for goods and services; that competition promotes economy and efficiency among the businesses involved; that competition promotes increased customer awareness; and that competition more generally accommodates to a degree of economic opportunity in the various sectors of the economy. Most fundamentally, competition means there are two or more sellers who are able and willing to bid for the custom of a particular buyer or groups of buyers, and that no one seller has the power to dictate what the buyer is to receive.

There are definite problems for a governmental agency in striking a balance between competition and regulation. Certainly no good purpose would be served by permitting ruinous competition in the pipeline industry. There are overriding public interest considerations that require a careful analysis of the impact on each pipeline and on the public before such competition should be authorized.

[5] It is difficult to discern their position on competition. At one point they say the balance between competition and regulation goes so far as to preclude duplication of facilities. They then declare Panhandle's project is to be favored because it will enable direct sales by it to industrials. This can only be accomplished by the same duplication proposed by Oklahoma Illinois. As to Mississippi the encouragement to Natural to extend its line westerly is clearly duplication.

For this reason it is appropriate that full consideration be given to the impact on Mississippi. Significantly, that impact would be rapidly replaced by the growth potential of the St. Louis market. Our inquiry should stop here. Since it is uniformily acknowledged that there are definite benefits to be realized from a second source of natural gas, including not only competition and the assistance it provides to regulation, but also the safety that inures to a given area by having alternate supply in an emergency, Oklahoma Illinois deserves certification. However, by their standards of what can be permitted as competition, the majority precludes entrance of another major source of supply.

At the outset it must be emphasized that this Commission is not authorized to protect a pipeline from the forces of competition. Section 7 of the Natural Gas Act clearly contemplates that competition, as that term is generally understood, is to be a consideration in the Commission's issuance of a certificate thereunder. That Section contemplates reasonable competition, and the only competition which the existing supplier is entitled to be protected against is competition by another interstate pipeline which does not have a certificate issued by this Commission. The legislative history of the 1942 amendments to Section 7 reflects this policy. The Senate Report gave the following explanation:[6]

> Provisions of the Natural Gas Act empower the Commission to prevent uneconomic extensions and waste, but it can so regulate such powers only when the extension is to a "market in which natural gas is already being served by another natural-gas company." Thus the possibilities of waste, uneconomic and uncontrolled extensions are multiple and tremendous. The present bill would correct this glaring inadequacy of the act.

The following comment appears in the House Report:[7]

> Subsection (g) is a saving clause inserted solely to make clear that the Commission will not be deprived of authority, in a proper case, to issue certificates for extensions to serve an area already being served by another natural-gas company.

The only interpretation to be placed upon the above comments is that the Commission can and should issue certificates for additional service to a particular area if consistent with the public interest and if waste will not result therefrom. Since the impact on Mississippi is found to be *de minimis*, if at all, it is inconceivable to me how the majority could harbor fears of economic waste.

The courts have consistently reflected the above considerations. In *Panhandle Eastern Pipe Line Co.* v. *F.P.C.*, 169 F. 2d 881, 884 (D.C. Cir. 1948), there is the following comment, "* * * nothing in the Natural Gas Act suggests that Congress thought monopoly better than competition or one source of supply better than two, or intended for any reason to give an existing supplier of natural gas for distribution in a particular community the privilege of furnishing such increased supply. No such privilege can be reconciled with the general mandate in Sec. 7(e) of the Natural Gas Act * * *" Certainly no natural gas company has a vested right to serve any given market exclusively.[8]

This concern for competition has been hitherto reflected in Commission certification of pipelines into the service areas of other pipelines. It is significant that, of the major metropolitan areas in this Nation, there are only four cities among the twelve largest that do not have at least two major sources of supply. Of a size larger than St. Louis, only Boston has a single supplier, and the Tennessee Gas extension into New England is in the vicinity of that city. Further-

[6] S. Report No. 948, 77th Cong., 2d Sess. (1942), p. 1.
[7] H. Report No. 1290, 77th Cong., 1st Sess. (1941), p. 4.
[8] See also, *Kentucky Natural Gas Corp.* v. *F.P.C.*, 159 F. 2d 215 (CA6–1947).

more, of the two other major cities without a second supplier, Baltimore and Washington, D.C., both cities are traversed by a second pipeline, and there is presently a proposal before the Commission for a second pipeline to serve Washington. The pattern of pipeline certification before this Commission makes it clear that we have not, in the past, been precluded from permitting a second pipeline to enter the service area of another. No pipeline in this Nation could assume, until today, that it was to be accorded the public utility status that accompanies a franchised service area. Such protection to existing suppliers can only dissuade potential applicants from undertaking the expense of presenting proposals for secondary supply of incremental needs.

Although the majority opinion makes every possible declaration in favor of competition, the terms it imposes preclude effective competition in St. Louis. Their concept is that of permitting one of two pipelines to approach, at the closest, the outermost boundaries of the metropolitan area. In addition, they propose to permit such "competition" by one of two pipelines, although both have served Mississippi in the past and continue to do so, and neither has made any further efforts to extend into the St. Louis area. The results of their proposal could not be considered to be competition. The majority goes further. They declare there is to be no duplication of facilities. This precludes competition by either Panhandle or Natural. Both of the favored pipelines are on the east side of the Mississippi River; St. Louis is on the west side. To supply distributors in the city proper a river crossing would be necessary; however, this competition cannot be permitted by the majority for it would duplicate facilities of Mississippi. Furthermore, in order for Panhandle to provide service competitive with that of Mississippi it would be necessary for Panhandle to duplicate Mississippi's line along the industrial east side of the metropolitan area. This is the only way for a second supplier to offer its supplies and services to a buyer in St. Louis; the majority, however, decrees that only Mississippi shall perform this latter function. It is an empty gesture to declare that competition has been considered and is to be promoted, but then to permit only Mississippi to operate in St. Louis. Thereby Mississippi is to be assured of a franchise area in which it can conduct itself as it sees fit. The majority goes even further. They declare that there can be no competition, in any event, that involves service to exisiting customers of Mississippi. The only competition that is to be permitted is new service to new customers. It is impossible for another pipeline to provide competition to Mississippi on economically feasible terms when the only extensions to be permitted to the second pipeline would be outside the metropolitan area, would be non-duplicative, and would be only to new customers. For this fortuity to occur it would be necessary for new industrial concerns to locate themselves outside the existing industrial sector of the area and within financially feasible reach of the end-point of the second supplier. This is not competition.

The majority expresses the fear that Oklahoma Illinois would make further inroads into Mississippi's sales pattern to industrials. This assumes competition will not work; that Mississippi will not respond to the service and supply offered by Oklahoma Illinois. It is naive to assume that Mississippi will not be in a position to offer competitive service to that of Oklahoma Illinois. It has already done so by its response to the incipient competitive threat of Oklahoma Illinois. Furthermore, the majority express the hope that they, in their posture as government regulators, can do a better job of providing reasonable terms and conditions of service than another pipeline would. This anticipation is belied, first, by the history of Mississippi's operations in the area, which have been under the control of this Commission for almost thirty years but which have not been pro-

ductive of acceptable service; and, second, by Mississippi's responding, not to the Commission's regulatory efforts, but to the competitive efforts of Oklahoma Illinois. Apparently the majority are firmly convinced that government can replace competition as the ruling principle of business development. This determination places the role of regulation in sharp focus. In considering the various applications we are forced to decide whether the ultimate judgment should rest with the finite judgment of regulators or with the elements of the market place. The controlling consideration today is the protection of Mississippi, but the risks relied upon by the majority are but part of the risks that this Commission must face whenever it proceeds in a major certificate matter. What is most significant is that the Commission has found there is no undue risk; however, the majority apparently requires no risk. Unfortunately, the small risks involved in certificating Oklahoma Illinois are far outweighed by the necessity for a permanent solution to St. Louis' fuel needs.

By their varied determinations today the majority has written competition out of the natural gas transmission business, at least for St. Louis, even though competition at the city-gate is rapidly becoming an ever more important consideration in our regulatory efforts and even though such regulated competition could be a most useful ally in our total effort *vis-a-vis* the natural gas industry. Mississippi is today accorded a protected service area although the record before us is convincing that, if ever there was a role to be performed by competition, it should be done for St. Louis. Of course, it is not the past conduct of Mississippi that should be the basis for certificating Oklahoma Illinois; instead, our determination should be that, regardless of the future efforts of Mississippi, it is nevertheless in the public interest to have a second supplier in the major metropolitan area of St. Louis. As proposed by Oklahoma Illinois, as requested by numerous industrials, as recommended by our Staff, and as Examiner Rendelman determined, the positive benefits of competition should be a compelling consideration in any decision reached on the record before use.

IV.

From all the above considerations it is apparent to me that the Commission should make every effort, consistent with the public interests, to certificate Oklahoma Illinois. As the record now stands it is the only applicant before us. What it proposes is commensurate with the needs of St. Louis. To remand this proceeding on limited grounds can only mean another round of prolonged hearings, in addition to possible court review of the majority's apparent determination to preclude any other applicant from coming before us. Clearly this favoritism to permit substantial revisions in competitive applications to the exclusion of other applications is not legally supportable. In *Northeastern Gas Transmission Co.* v. *F.P.C.*, 195 F. 2d 872 (CA3–1952), it was held that each new proposal must receive a full comparative hearing even though a prior hearing on similar proposals had just been completed, denying each application. *Midwestern Gas Transmission Co.* v. *F.P.C.*, 258 F. 2d 660 (D.C. Cir. 1958) disapproved a fragmented hearing limited to only a small part of a competing applicant's proposal. *Enterprise Co.* v. *F.C.C.*, 231 F. 2d 708 (D.C. Cir. 1955), is the foundation for a line of cases holding that, when facts which affect comparative considerations of a winning applicant's proposal change before an order issuing a permit after a comparative hearing has become final, the Commission must reevaluate the comparative considerations in light of those changed circumstances. On the record before us no applicant other than Oklahoma Illinois can proceed without further evidence. Since further evidence and comparisons thereof must again be made between the various applicants, the effects of that new evi-

dence must be considered again on a comparative basis. The majority opinion impliedly limits the remanded proceeding to Mississippi-Natural and to Panhandle, but the law is explicit that they cannot preclude interventions by Oklahoma Illinois or any other interested party who is within the ambit of their opinion.

Pursuant to the recommendations of our Staff and the conclusions reached by Examiner Rendelman, Oklahoma Illinois should be certificated. It is a reasonable proposal to serve St. Louis. It provides effective competition and a second supply to a historically unsatisfied market; it would redound to the benefit of the entire area in the form of greater industrial activity and increased employment; it provides natural gas service to new areas; it opens major new producing fields to the present and future needs of St. Louis; and it provides immediate, permanent relief to the compelling needs of that area. There are certain protective conditions that should be required. I endorse those recommended by Examiner Rendelman. In addition, there should be at least three others: first, that Oklahoma Illinois agree to a five-year moratorium on increases in the rates it proposes to distributors; second, that Oklahoma Illinois enter into a firm contract with at least one distributor in the service area to commence making sales for resale; and, third, that it further substantiate its contracts for the proposed industrial sales. These are the minimal conditions required by the public interest. Interestingly, another protective condition would be to preclude Oklahoma Illinois from duplicating the Mississippi industrial supply line on the east side of the St. Louis area, thereby removing almost $9 million from the estimated cost of the Oklahoma Illinois line. But for their refusal to consider new pipelines, this would be the most expeditious way for the majority to proceed, pending further evidence of more expansive service by a second pipeline.

Oklahoma Illinois should be offered a certificate as proposed above, with thirty days to respond. By so proceeding the administrative process would be according an expeditious resolution of a pressing market demand, with full protection to the public interest.

Finally, in the event Oklahoma Illinois should be unable to proceed, the Commission should institute another proceeding on its own motion to settle permanently the supply needs of St. Louis. This was the course we took in the *El Paso Natural Gas Company* proceeding, 30 FPC 77 (1963). It would also reflect the procedure we adopted in the first *Midwestern* proceeding, 20 FPC 575 (1958), where the Commission denied all applications but did not preclude any applicant from filing again. The standards there prescribed were subsequently acceptable only to Midwestern, and it was certified at 22 FPC 775 (1959). Significantly, no applicant was favored. The majority prefers to remand only two applicants, departing from judicial precedent, inviting extended litigation, and favoring only these two by informing them of the public interest standards required in addition to those provided in the Rules and Regulations. Not only are other applicants barred; apparently, existing customers of Panhandle and Natural that might seek to intervene are precluded from doing so. It is also significant that none of the producers who would sell to Oklahoma Illinois are permitted in the remanded proceeding, since their interests turn on that of the pipeline. The limited procedures attempted by the majority have the further effect of barring intervention by major parties whose interests deserve our consideration. While an extended comparative proceeding is unfortunate for administrative expediency, it is both fortunate and necessary for interested parties whose legitimate interests will be advanced or impaired by the results. Finally, I would note that establishing standards, albeit vague for service to St. Louis to Panhandle and Natural only is an unfair procedural device that improperly

favors those applicants who could not even meet the initial standards. Such procedure has not been condoned.[9] In view of compelling precedent any party should be permitted to intervene to the end that its interests are protected under the major policy determinations and standards enunciated today.

APPENDIX B

COST IMPACT ON MISSISSIPPI RIVER FUEL CORPORATION

(Cost of Service Impact, Exclusive of Take-or-Pay Penalties)

Line No.	Items	Demand	Commodity	Total
1	Cost of service before industrial sales loss [1]	$12,341,941	$34,943,239	$47,285,180
2	Adjustment to reflect United Gas Pipe Line Co. settlement [2]	(1,589,242)	1,876,307	287,065
3	Adjusted cost of service before sales loss	$10,752,699	$36,819,546	47,572,245
4	Percent jurisdictional business [3]	91.230	63.125	
5	Jurisdictional cost of service before sales loss	$9,809,687	$23,242,338	33,052,025
6	Adjusted total cost of service before sales loss (line above)	$10,752,699	$36,819,546	47,572,245
7	Adjustment for reduced purchases of 28,614,277 Mcf from United Gas Pipe Line Co. reflecting net industrial sales loss [4]		(5,196,353)	(5,196,353)
8	Adjusted cost of service after sales loss	$10,752,699	$31,623,193	42,375,892
9	Percent jurisdictional business [5]	91.230	75.715	
10	Jurisdictional cost of service after sales loss	$9,809,687	$23,943,501	33,753,188
11	Increase in jurisdictional cost of service due to sales loss		$701,163	701,163

[1] Exhibit No. 233. The general format of exhibit No. 233 is utilized on sheet 1 of this appendix to show cost impact exclusive of take-or-pay penalty exposure as the most appropriate illustration thereof.
[2] $1.11 demand and 18.16 cents commodity charges versus $1.43 demand and 16.54 cents commodity charges on demand volumes of 4,966,386 Mcf and commodity volumes of 115,821,416 Mcf.
[3] Exhibit No. 12 in docket No. RP63-2, stipulated amounts.
[4] 34,766,137 Mcf reduction in purchase volumes per exhibit No. 233, less 6,151,860 Mcf for upgrading of certain industrial sales as well as additional sale to River Cement, after reflecting unaccounted-for gas and line losses at exhibit No. 233 figure of 7.55 percent.
[5] See the following equation:

$$\frac{101,000,100}{133,394,505} \times 100 = 75.715 \text{ percent}$$

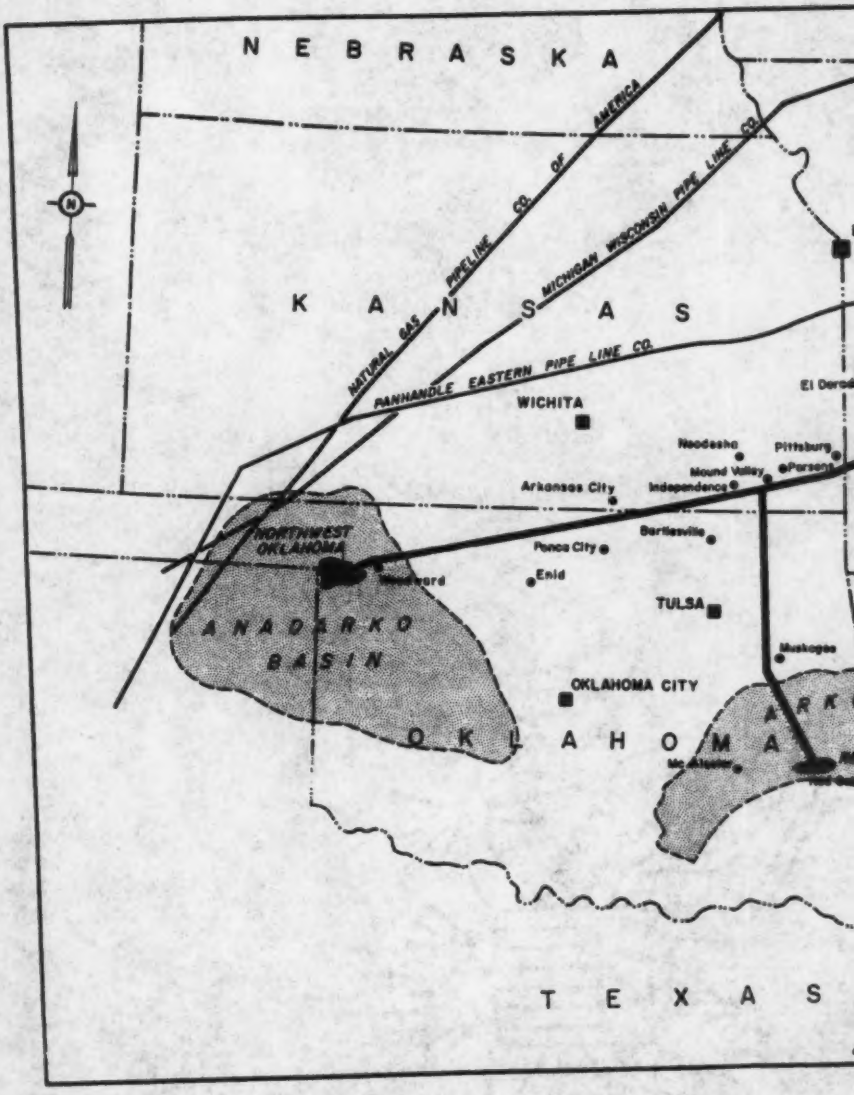
COST IMPACT ON MISSISSIPPI RIVER FUEL CORPORATION

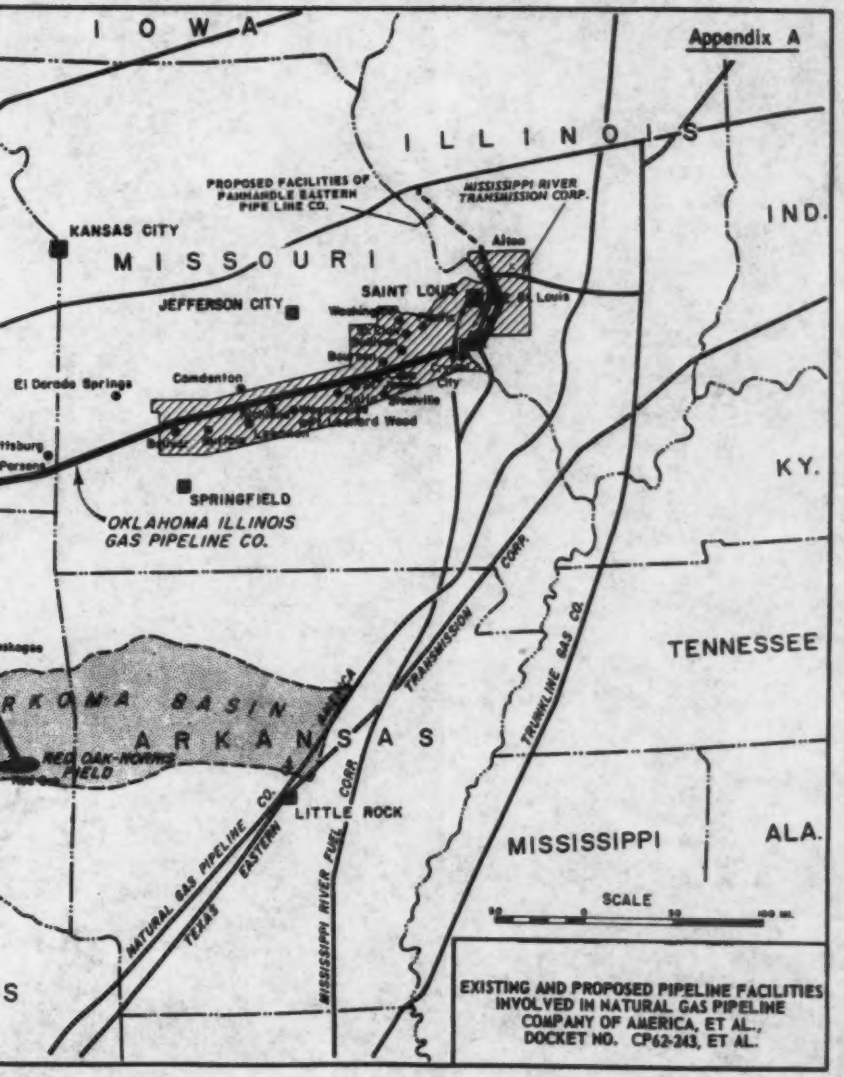
(Impact of Exposure to Take-or-Pay Penalties)

Line No.	Items	Amount
1	Required 72 percent take-or-pay volumes—Mcf	[1] 111,873,960
2	Adjusted purchases from United Gas Pipe Line Co. before sales loss—Mcf [1]	116,614,865
3	Reduction in purchases from United Gas Pipe Line Co. due to net loss of 28,655,000 Mcf of sales	[2] (10,969,140)
4	Purchases from United Gas Pipe Line Co. after net sales loss—Mcf	105,645,725
5	Take-or-pay penalty gas—Mcf	6,228,235
6	Exposure to take-or-pay penalty at 18.16 cents per Mcf	$1,131,047
7	Percent jurisdictional (from line 9 of sheet 1)	75.715
8	Jurisdictional exposure to take-or-pay penalty	$856,372

[1] Exhibit No. 217. Take-or-pay penalty exposure shown on sheet 2 of this appendix is based on exhibit No. 217, with adjustments as indicated, as the most appropriate illustration thereof.
[2] 34,375,000 Mcf less 18,456,000 Mcf (per exhibit No. 217) less 5,720,000 Mcf for upgrading of certain industrial sales as well as additional sales to River Cement, and using factor of 1.0755 per exhibit No. 233 for unaccounted-for gas and line losses.

[9] See, *e.g.*, ***American Louisiana Pipe Line Co.* v. *F.P.C.*, 344 F. 2d 525 (D.C. Cir. 1965) and *Hill* v. *F.P.C.*, 335 F. 2d 355 (5th Cir. 1964).**


NEBRASKA
KANSAS
TEXAS
NATURAL GAS PIPELINE CO. OF AMERICA
MICHIGAN WISCONSIN PIPE LINE CO.
PANHANDLE EASTERN PIPE LINE CO.
WICHITA
Neodesha
Pittsburg
Mound Valley
Parsons
Arkansas City
Independence
Bartlesville
Ponca City
Enid
NORTHWEST OKLAHOMA
ANADARKO BASIN
TULSA
Muskogee
OKLAHOMA CITY
OKLAHOMA
Mc Alester


Appendix A
IOWA
ILLINOIS
IND.
KY.
TENNESSEE
MISSISSIPPI
ALA.
ARKANSAS
MISSOURI
KANSAS CITY
JEFFERSON CITY
SAINT LOUIS
SPRINGFIELD
LITTLE ROCK
El Dorado Springs
Camdenton
Alton
PROPOSED FACILITIES OF PANHANDLE EASTERN PIPE LINE CO.
MISSISSIPPI RIVER TRANSMISSION CORP.
OKLAHOMA ILLINOIS GAS PIPELINE CO.
TRANSMISSION CORP.
TRUNKLINE GAS CO.
NATURAL GAS PIPELINE CO. OF AMERICA
TEXAS EASTERN
MISSISSIPPI RIVER FUEL CORP.
RED OAK-NORRIS FIELD
SCALE
EXISTING AND PROPOSED PIPELINE FACILITIES INVOLVED IN NATURAL GAS PIPELINE COMPANY OF AMERICA, ET AL., DOCKET NO. CP62-243, ET AL.

INITIAL DECISION
OF THE PRESIDING EXAMINER UPON APPLICATIONS FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued September 10, 1964)

RENDELMAN, *Presiding Examiner:* This is a consolidated proceeding involving three principal applications, each of which seeks to make available additional volumes of natural gas in the St. Louis, Missouri area. Natural gas is presently available in this area only through the pipelines of Mississippi River Fuel Corp. and its controlled affiliate Mississippi River Transmission Corp. The initial project involves the associated applications of Natural Gas Pipeline Company of America (Natural), Mississippi River Fuel Corporation, and Mississippi River Transmission Corporation.[1] Natural proposes to construct 41.56 miles of 30" pipeline looping and install an additional 2800 horsepower of compression at an existing compressor station and a new 4000 horsepower compressor station, for an estimated cost of $6,616,000.00 so as to increase the design day sales capacity of its pipeline system by 35,000 Mcf per day and to sell an equivalent amount of natural gas on a firm basis to Transmission for resale by Transmission to Fuel. Fuel, in turn, would resell the gas to its jurisdictional and non-jurisdictional customers in the St. Louis, Missouri area. Under this application, it was intended that delivery of the gas be accomplished through use of existing facilities connecting Natural and Transmission and Transmission with Fuel. No additional facilities are intended to be built by either Transmission or Fuel.

On October 18, 1962 Natural filed an amendment to its application in Docket No. CP62-243 modifying the originally proposed facilities so as to provide the same 35,000 Mcf per day for an estimated cost $260,000.00 less than the cost of the originally proposed facilities. On the same day Natural also filed an application in Docket No. CP63-99 for a certificate of public convenience and necessity which would permit construction and operation of 31.78 miles of 30" pipeline looping and install 3,000 additional horsepower compression at its compressor station No. 300, which would enable the sale of an additional 30,000 Mcf per day to Transmission for resale to Fuel commencing December 1, 1963. The anticipated estimated cost of these facilities is $4,169,000.00. This proposed sale of 30,000 Mcf per day to Transmission is in addition to the 35,000 Mcf per day proposed sale by Natural to Transmission in Docket No. CP62-243. The total cost of the facilities proposed to be constructed by Natural in both applications in order to provide the 65,000 Mcf per day increased capacity is estimated at $10,525,000.00. In conjunction with the filing of its application in Docket No. CP62-243, Natural also filed a request to amend its certificate in Docket No. CP61-339 (26 FPC 543) for authorization to use existing facilities interconnecting its system with Transmission for the proposed sale and delivery of the additional 35,000 Mcf per day. Natural now seeks a similar and further amendment of its certificate in Docket No. CP61-339 so as to encompass the additional 30,000 Mcf per day proposed sale in Docket No. CP63-99.

Transmission, in its applications in Docket Nos. CP62-242 and CP63-100 seeks authorization to transport and sell to Fuel the 65,000 Mcf which it proposes to purchase from Natural. Transmission further proposes that any amendment of the certificate issued in Natural's Docket No. CP61-339 include authorization for Transmission to use and operate its existing separately-owned portion of the facilities to receive the 65,000 Mcf of gas now proposed to be purchased from

[1] The combined Mississippi companies will hereinafter be referred to as Mississippi; where necessary to refer to either company singly, Mississippi River Fuel Corp. is designated as Fuel and Mississippi River Transmission Corp. as Transmission.

Natural on a firm basis. In support of its application, Transmission alleges that it has capacity on its pipeline system, substantially in excess of that required to make the proposed delivery to Fuel and at the same time meet its current commitments, and therefore does not propose to construct any additional facilities. It is Transmission's intention to make deliveries to Fuel through the use of those existing facilities installed and interconnected at a point in Madison County, Illinois under the certificate issued in Docket No. CP61–341 for the exchange of gas between Transmission and Fuel. Transmission therefore requests that the certificate issued on September 26, 1961 in Docket No. CP61–341, 26 FPC 545, be amended accordingly. Transmission further anticipates that additional quantities of interruptible gas will be made available from time to time from Natural which Transmission proposes to sell to all its customers, including Fuel, in proportion to their respective contract quantities, plus any additional interruptible gas which it receives from its other supplier, Trunkline Gas Company (Trunkline). Accordingly, Transmission requests that the certificate issued to it January 29, 1962 in Docket No. CP62–76 (27 FPC 182) authorizing sales of interruptible gas, be amended so as to enable it to render interruptible service as set forth in the proposed and amended rate schedules contained in its application in Docket No. CP62–242.

Fuel seeks amendment of the certificate issued in Docket No. CP61–341 (26 FPC 545) which would permit use of the interconnecting facilities authorized therein for the purpose of receiving into its system the additional volumes of gas proposed to be purchased from Transmission which would be made available by Transmission's applications in Docket Nos. CP62–242 and CP63–100. Fuel also states that no additional facilities are required to receive the gas to be purchased from Transmission, nor to transport this gas to existing customers in the allocations proposed in its application in Docket No. CP63–105.

By order dated October 15, 1962, (28 FPC 593) as modified November 20, 1962, (28 FPC 838) the Commission granted, *inter alia*, temporary authorization for delivery of 35,000 Mcf per day of natural gas by Natural to Transmission for resale to Fuel through facilities presently in use. Ordering paragraph (J) of the order of October 15, 1962 states as follows:

> The granting of these temporary authorizations is without prejudice to such final determination of these applications or any other applications consolidated herewith as the record may require.

Deliveries were ordered to commence for the period November 15, 1962, through December 1, 1963. On application by the parties the aforementioned temporary authorization was extended to December 1, 1964. (30 FPC 1223.)

On July 20, 1962, Oklahoma Illinois Gas Pipeline Company (Oklahoma Illinois) filed a motion to consolidate its application in Docket No. CP62–260 with the Natural, *et al.* applications. By such application filed May 14, 1962, Oklahoma Illinois seeks authority to construct and operate 394 miles of 12-inch or 20-inch supply lines and 307 miles of 24-inch transmission line, together with the necessary gathering, lateral and compressor facilities in order to transport up to 105,000 Mcf per day of gas to the St. Louis, Missouri area for purchase by industrial customers directly from Oklahoma gas field producers, and to sell to distributing utilities along the route of its pipeline and in the St. Louis area up to 81,000 Mcf per day of contract demand for resale and winter peaking service. In addition thereto, Oklahoma seeks to sell an interruptible supply of gas to the same industrial customers for whom Oklahoma Illinois would be rendering the transportation service. The initial capacity of the pipeline is intended to be 186,000 Mcf per day with a potential capacity for expansion to 300,000 Mcf per day with additional compression. The total estimated cost of this project is $64,000,000. Oklahoma Illinois proposes to purchase the gas to

be transported from approximately 43 producers all within the State of Oklahoma. By Commission order of October 15, 1962, (28 FPC 596) Oklahoma's motion to consolidate was granted along with the associated producer applications.

Under its original proposal, all the natural gas moving into the interstate pipeline system of Oklahoma Illinois would be purchased from newly developed fields in northwest Oklahoma and the Red Oak-Norris Field of the Arkoma Basin in southeast Oklahoma. Pursuant to the existing contracts, Pan American Petroleum Corporation (Pan American) and other producer applicants agreed to supply specified volumes of gas for a 20-year period to the 14 industrial customers (presently customers of Fuel) supporting the Oklahoma Illinois project. This gas, dedicated solely to the industrial customers, is to be produced from acreage located in 6 townships in Ellis and Woodward counties in northwest Oklahoma and from the Red Oak-Norris Field in Latimore and LaFlore counties in southeastern Oklahoma. Title to the gas passes at point of delivery, which is fixed in the contract at the wellhead of each well or at the outlet of the separator, if installed. The contracts further provide for an initial price of 18¢ per Mcf for the first 5 years with escalations of 2½ cents per Mcf for each 5-year period thereafter. By contract with each of the industrials, Oklahoma Illinois under this arrangement agrees to transport this gas for a period of 20 years from the delivery point in the field to the respective industrial plants in the St. Louis area. Under a second series of contracts known as the P–2 contracts, the producers agree to sell to Oklahoma Illinois, from the same acreage and reserve areas dedicated to the industrial gas purchase contracts, a daily contract quantity of gas equal to the difference between the daily volumes taken by the industrials under their contracts, averaged over a calendar year, and a quantity equal to 1 million cubic feet of gas for each 8 billion cubic feet of reserves at the same 18 cents per Mcf initial price and 5 yearly escalation provisions. These gas sales to Oklahoma Illinois are expressly subordinated to the gas sales to be made under the industrial contracts, hereinafter described.

Another type of contract, consisting of agreements between Oklahoma Illinois and the producer applicants, designated as the P–1 contracts, represents the only firm gas supply committed to Oklahoma Illinois. These P–1 contracts are wholly independent of the industrial and P–2 contracts. The gas to be sold thereunder is to be produced from 5 townships in northwest Oklahoma, separate from but adjoining the 6 township industrial reserve areas. The daily contract quantity is 1 million cubic feet for each 8 billion cubic feet of reserves, with a take-or-pay obligation on Oklahoma Illinois to take over a calendar year, a daily average equal to that amount. Like the industrial and P–2 contracts, the P–1 contracts are for a term of 20 years with an initial price of 18 cents per Mcf for the first 5 years plus escalations of 2½ cents at the end of each 5-year period thereafter.

Oklahoma Illinois additionally submitted contracts with 12 of its 14 industrial customers for the non-jurisdictional direct sale of interruptible gas at the rate of 27 cents per Mcf for a period of 5 years with no minimum bill obligation.

During the course of the hearing, respective counsel for Oklahoma Illinois and the producers advised the Presiding Examiner that the producers would not object to the issuance of a certificate which would eliminate direct sales to the industrial concerns and authorize only jurisdictional sales to Oklahoma Illinois at the interim area guideline price established by the Commission of 17 cents per Mcf for 1000 Btu gas for gas produced in northwest Oklahoma and 15 cents per Mcf for gas extracted from the Red Oak Field in southeast Oklahoma. At the oral argument respective counsel for Pan American, Mid-West and Shell affirmed their willingness to accept a certificate conditioned as hereinabove described, but re-

serving the right to increase the price per Mcf to any upward price adjustment in the area rate thereafter affected by the Commission. With the exception of Shell, the producers further agreed that there would be no demand for an upward adjustment in price for gas having a Btu content in excess of 1,000. The effect on the various existing contracts between the producers, the industrials and Oklahoma Illinois will be discussed further hereinafter.

On October 29, 1962 Panhandle Eastern Pipe Line Company filed an application, as supplemented on November 5, 1962 in Docket No. CP63–106, for a certificate of public convenience and necessity to construct and operate a pipeline and underground storage facilities so as to supply and transport 65,800 Mcf per day (at 14.73 psia) for sale in the St. Louis, Missouri area on a firm basis. By such application, Panhandle proposes to increase the deliverability capacity of its Howell Storage Field from 65,000 Mcf per day to 130,000 Mcf per day and to construct a 16-inch transmission line from its existing mainline facilities at a point near Glasgow, Illinois for a distance of 53 miles to a point in the St. Louis area near Alton, Illinois. The total cost of the project, including construction of 20 new storage wells in the Howell Storage Field, measurement and regulating equipment, cushion gas and other facilities, is estimated at $6,036,000 which Panhandle proposes to finance from funds on hand. Panhandle has not designated any customer or customers to whom any, or all, of the proposed 65,800 Mcf per day will be delivered. In its application, it is stated that Panhandle:

> Contemplates the sale by Panhandle to whichever customer or combination of customers the Commission selects for the marketing or consumption of any supplies to the St. Louis area.

However, Panhandle advises that it proposes that the gas will be made available to its St. Louis area customers at a lower cost than either of the services proposed by Natural or Oklahoma Illinois in the pending applications.

It is further stated in Panhandle's application that there is:

> * * * the possibility that some modification would be required in the applications presently filed with the Commission by Mississippi Transmission, Mississippi Fuel or Oklahoma Illinois, in the event the Commission should select one or more of the parties to provide transmission or distribution of the Panhandle gas in the St. Louis area.

Panhandle proposes an LS–2 resale rate limited to partial requirements customers purchasing gas for resale, of $2.05 per month per Mcf of contract demand and a commodity charge of 22.9 cents per Mcf, with a monthly minimum bill of 75 percent use of the contract demand. In the aforementioned order of November 30, 1962, 28 FPC 911, the Commission granted Panhandle's Motion for Consolidation of its application with those of Natural, Fuel, Transmission and Oklahoma Illinois, etc.

The hearing commenced on January 14, 1963 and was concluded on October 15, 1963 with 94 days of actual hearing during the intervening period. Oral argument before the Presiding Examiner took place on March 19th and 20th, 1964. There were just short of 14,000 pages of transcript with 249 exhibits, many of which had several subdivisions.

That substantial additional supplies of natural gas are, and have been, necessary in the St. Louis area is an uncontested fact amply supported by the past history of the constant demands on Mississippi, the only supplier, by both its utility and industrial customers, for additional volumes of gas. Since 1929, when Fuel first brought natural gas to the area, the available volume of gas has not kept pace with the burgeoning demands of the St. Louis area. During the intervening period there has been a not inconsiderable history of litigation between Fuel and its utility customers resulting from efforts of the distribution companies to obtain

a greater share of the inadequate total supply of gas heretofore made available by Fuel for the rapidly expanding suburban areas of the City of St. Louis. In the instant proceeding Mississippi's jurisdictional customers, supporting the Natural-Fuel-Transmission application, have testified to their present and past need for additional supplies of gas, and those of Fuel's non-jurisdictional customers who have executed contracts with Oklahoma Illinois, have further testified to Fuel's inability to provide their total requirements.

Each of the principal applicants in this proceeding claims the capacity to provide the panacea which would put an end to St. Louis' natural gas problems. Accepting then, as a fact, that there is a need for substantial additional supplies of gas, the question then remaining to be answered is which applicant, acting in the public interest, is best qualified to supply the additional volumes of gas apparently so sorely needed.

Stripped to its bare essentials, the fact of the matter is that this proceeding constitutes nothing more than a contest by Panhandle and Oklahoma Illinois, respectively, to establish a competitive position and thereby acquire a portion of the ready made lucrative market presently exclusively served by Mississippi. On the other hand, Mississippi has taken every possible measure to prevent the entry of another pipeline into the St. Louis area, in order to maintain its monopolistic position. Each of the applicants professes to be motivated by concern for the public interest but it takes no stretch of the imagination to deduce that such concern is incidental to Panhandle's and Oklahoma Illinois' desire to penetrate the St. Louis market, particularly the unregulated industrial market, and Fuel's zealously pursued intention to retain that which it now possesses.

It is indisputable that the natural gas situation as it exists today in the St. Louis area constitutes a monopoly; a monopoly that exists solely by virtue of the Natural Gas Act. Fuel and its controlled subsidiary, Transmission, constitute the only source of gas into the St. Louis area. As such, Fuel's control of gas sales to its industrial customers in that area demonstrates a classic example of the very ills which the antitrust statutes were intended to remedy. Fuel's unregulated industrial prices are not arrived at as the result of arm's-length negotiation, but are arbitrarily fixed at an amount adjusted only to what the traffic will bear. Moreover, until recently, Fuel's practice has been to enter into sales contracts with its industrial customers for a period no longer than six months, obviously so as not to be bound by a price in a long-term contract below that which could possibly be adjusted upwards at the end thereof. It is true that Fuel's prices are to some extent governed by the market price of competing fuels such as coal and oil. But even this situation is an anomaly since fluctuations in the market price of coal and oil result from competition in the open market, whereas the price of natural gas to the industrial concern is dictated solely by Fuel. There are also several customers of Fuel, such as Olin Mathieson Chemical Corporation and Owens-Illinois Glass Company, who find it impossible to use an alternate fuel inasmuch as natural gas is requisite to their processes. These companies have no choice but to pay the price demanded by Fuel. Furthermore, the October 1947 agreement between Fuel and Laclede Gas Co. (Laclede) whereby it was agreed that the respective parties would not compete with each other for industrial customers in the area served by each is as classic an example of an agreement in restraint of trade as it would be possible to devise. The net effect is that in the St. Louis area, under the guise of the Natural Gas Act, Mississippi, at least insofar as its direct sales are concerned, freely operates what would otherwise be an illegal monopoly.

To a large extent the predicament in which Mississippi presently finds itself, where its monopoly is now challenged by Oklahoma Illinois and Panhandle, results either from Mississippi's willingness to gamble on its ability to stave off present and future challenges to its control of the gas market, or from its own shortsightedness in the past. The Oklahoma Illinois for some time prior to filing its application for a certificate, was negotiating with Fuel's large industrial customers was a well advertised "secret" of which Fuel had to be aware, yet rather than compete with the terms dangled in front of the industrials by Oklahoma Illinois, Fuel elected to meet the challenge in the hearing room. It stands to reason that if Fuel had made a timely effort to meet the challenge to its monopoly, Oklahoma Illinois would, in all probability, have been unable to successfully negotiate contracts with the customers Mississippi presently serves. Such offers as Fuel finally did make apparently were too little and too late. Of course, if Fuel had attempted to compete there would have been some diminution of the net profit realized from its industrial sales, but inasmuch as it has been shown in the Mississippi rate hearing, Docket No. RP63-2,[2] that Fuel, in the year ending April 30, 1962, enjoyed at net profit, over and above its cost of service, from its industrial sales of approximately 8 million dollars in excess of the 6¼ percent overall rate of return fixed by the Commission from jurisdictional sales, it would seem that such diminution of overall profit could well have been afforded and without adverse effect on the consumer.

The existence of a monopoly is permitted under the Natural Gas Act when the maintenance of such a monopoly is in the public interest, *Penn Water Power Company* v. *F.P.C.*, 343 U.S. 414, particularly since it does not appear that any other pipeline has previously attempted to enter the St. Louis area. Under existing circumstances, however, with the advent of two serious contenders for the St. Louis market, and in the light of the prior history of controversy between Fuel and its utility customers, this would seem to be an opportune time for a reappraisal of the existing situation and for further consideration of whether, under the guise of the Natural Gas Act, "public convenience and necessity" requires perpetuation of the monopoly presently enjoyed by the Mississippi Companies.

In *City of Pittsburgh* v. *F.P.C.*, 237 F. 2d 741, 754 the court stated:

> The Commission, while it "has no power to enforce the Sherman Act [15 U.S.C.A. § 1-7, 15 note] as such * * * [and] cannot decide definitely whether the transaction contemplated constitutes * * * an attempt to monopolize which is forbidden by that Act * * *," nevertheless "cannot without more ignore the [Act]". Thus, if it appears that Texas Eastern's project would tend to produce monopolization of a petroleum products market, the Commission cannot ignore that fact merely because it is an antitrust factor and such factors have been placed within the ken of the Attorney General. That he is specially competent as to the antitrust laws does not make all other officers or agencies of the Government incompetent. Even private citizens play a role in the effectuation of our national antitrust policy. It would seem odd if circumstances upon which private citizens may found legal and equitable remedies and defenses should be wholly beyond the reliance of the Government. Although the Commission has no power to enjoin conduct as illegal under the Sherman Act or even to declare such illegality, it certainly has the right to consider a congressional expression

[2] The Presiding Examiner takes official notice of Exh. No. 17 received in evidence in Docket No. RP63-2.

of fundamental national policy as bearing upon the question whether a particular certificate is required by the public convenience and necessity.[3]

In defense of its position as exclusive supplier to the St. Louis market, Mississippi alleges that if Oklahoma Illinois is certificated it will lose some 33,815,000 Mcf of direct industrial sales, a loss in excess of 20 percent of its total estimated 1964 sales volume. This, claims Fuel, would idle its existing capacity to the point where its overall load factor would decline by approximately 10 percent causing the remaining sales to carry all of the fixed costs of the pipeline. Secondly, it is stated that the loss of some 20 million Mcf of direct interruptible sales will subject Fuel to take-or-pay penalties on its annual purchases from United Gas Pipe Line Company by reason of its inability to maintain the required 72 percent purchase load factor.

Currently, Fuel contends that certification of Oklahoma Illinois would deprive Transmission's utility customers of substantial savings in the cost of gas purchased from Transmission and that certification of Natural-Fuel-Transmission, rather than Oklahoma Illinois would result in substantially lower rates to Transmission's utility customers due to greater utilization of capacity now available in Transmission's pipeline. As a further reason, Fuel contends that a lower price of gas purchased from Transmission by the utilities would result from the introduction of additional gas purchased from Natural at a lower price than is presently purchased from Trunkline. The net result, according to Mississippi's version, is that the certification of Oklahoma Illinois would cause an increase in Fuel's cost of service and a corresponding "adverse impact on Mississippi's utility customers of at least $4,368,080 annually."

However, unprejudiced recalculation of the $4,368,080 figure indicates that the actual impact on Mississippi's resale customers would be somewhat less. The method of calculation used by Mississippi to arrive at this figure is demonstrated in Exhibit 197, sponsored by the witness, Benjamin Miller. Analysis thereof raises questions which reflect on the basic accuracy thereof. In the first place, it is noted that the volumes of gas supplied from company-owned production and the costs incurred in connection therewith are considerably lower than that produced by Mississippi in recent years. Certainly the volumes of gas available from Mississippi's production would have a definite place in a complete impact study, particularly in relation to a possible cut-back in such company-owned production in order to avoid take-or-pay penalties from United. Secondly, on page 3, line 8 of Exhibit 197, it is noted that the quantity of 41,862,000 Mcf of gas purchased from "plants" does not vary whether Oklahoma Illinois is certificated or not. No reason is given why these purchases from "plants" should continue undiminished while Fuel, in the event Oklahoma Illinois is certificated, would be paying United Gas Pipe Line for gas which it allegedly could not dispose of. Reference to Fuel's Exhibit 141, showing estimates of gas purchases for the years 1963, 1964 and 1965, shows that Fuel projects a cut-back in plants purchases of 10,153,000 Mcf from 41,862,000 Mcf in 1964 to 31,709,000 Mcf in 1965. The question arises as to why this same cut-back in plant purchases of 10,153,000 Mcf could not be accomplished in 1964, thus reducing to this extent the estimated take-or-pay penalty volume of 17,928,674 Mcf, shown on Exhibit 197, to 7,775,674 Mcf. Since the total cost of 41,862,000 Mcf of gas purchased from "plants" is shown as $6,616,869 for an average cost of 15.81 cents per Mcf, the reduction in

[3] For a discussion of the "unsatisfactoriness of the existing bifurcated system of antitrust and other regulation in various fields" see the opinion of Mr. Justice Harlan, concurring in part and dissenting in part in *U.S.* v. *El Paso Natural Gas Co., et al.*, 376 U.S. 651, 662.

cost of "plant" purchases resulting therefrom would thus be $1,605,189 (15.81¢ x 10,153,000 Mcf).

The percentage of resale sales to total sales in the event Oklahoma Illinois is certificated is calculated from page 2 of Exhibit 197 as 80.62 percent (105,655,255 Mcf of resale sales divided by 131,056,865 of total sales). This percentage applied to the $1,605,189 reduction in cost of plants purchases results in a figure of $1,294,000 applicable to resale customers. Mr. Miller allocates all minimum bill penalty dollars to resale customers. Accordingly, any benefit derived by reason of the lesser penalty amount must be similarly so allocated.

On page 2, line 3 of Exhibit 197, commodity costs on Oklahoma Illinois' certification are shown as $26,605,523, which includes the $2,965,402 of minimum bill penalty charges. Subtracting the penalty charges from the total commodity sales cost gives the total purchase gas cost of $23,640,121 of which 80.62 percent, or $19,058,660 is allocated by Mr. Miller to resale customers. Mr. Miller then attributes 100 percent of the minimum bill penalty of $2,965,402 to the resale customers and then adds this amount to the commodity cost of gas for those customers to arrive at the $22,023,604 shown in line 4 of page 2. Again applying Mr. Miller's method, if the $1,605,189, which is the amount resulting from the reduction in cost of gas purchases from plants is subtracted from the $26,605,523 of total commodity gas purchases the result is a total revised commodity cost of $25,000,334. If, from this figure, the penalty charges incurred from failure to take 7,775,674 Mcf, or $1,286,096 is subtracted, the result is $23,714,238, representing the total commodity cost (less penalty) of which 80.62 percent or $19,118,419 is allocable to resale sales. Adding to this the $1,286,096, the revised penalty amount, results in a new total commodity cost of all resale sales of $20,404,515, which is $1,619,089 less than Miller's figure for total commodity cost shown on line 4 of page 2. Thus, the net effect on the reduction in plant purchases from the 41,862,000 Mcf for 1964 shown on Exhibit 58 to the 31,709,000 shown for 1965 more than offsets the purported $1,614,093 total increase in gas supply cost shown on page 2, line 5.[4] The effect claimed by Mississippi of the certification of Oklahoma Illinois on Fuel's "other costs" (Fuel's costs exclusive of gas supply) is shown on page 4 of Exhibit 197. The basic figures in this computation are the total costs shown on lines 1 and 3 of $16,665,574, which are the same costs used by Fuel in its cost presentation in connection with its application for a rate increase in Docket No. RP63–2. (An examiner's decision in this proceeding was issued on August 20, 1963.) Thereafter, on August 7, 1964, 32 FPC 547, the Commission approved a stipulation of settlement in that case. Comparison of the company's alleged "other costs" with those found by the Staff and by the Presiding Examiner in the rate proceedings is as follows:

	Demand	Commodity	Total
Fuel	$6,732,683	$9,932,891	$16,665,574
Staff	5,240,018	8,129,468	13,369,486
Examiner	5,297,509	8,579,723	13,877,232

Following the method of allocation used by Miller, but basing calculations on the lower costs found by the Presiding Examiner in Docket No. RP63–2, the total

[4] The foregoing computations with respect to the cost of gas purchased from United Gas Pipe Line Company were based on United's rates in effect on September 10, 1963, the date Mississippi's Exhibit 197 was received in evidence. On May 14, 1964, the Commission issued Opinion No. 428 in United Gas Pipe Line Company, Docket No. RP63–1, 31 FPC 1180, which substantially lowered the rate levels applicable to sales to Fuel and other customers. On July 15, 1964 United filed a rate increase in Docket No. RP65–1.

increase in "other costs" would have been $1,776,140 rather than the $2,096,121 computed by Miller and shown on line 5 of page 4 of Exhibit 197, a difference or reduction in impact of an additional $319,981.

It should be noted that these "other costs" derived from the test period ending April 30, 1962 are not necessarily those costs that would be incurred if Oklahoma Illinois were certificated in the future. The Presiding Examiner takes official notice of the annual reports filed by Fuel and Transmission for the years 1962 and 1963 (FPC Form 2). For the year 1962 there is shown an increase in the total amount of gas plant in service from $117,780,496 to $118,888,914, or an increase of $1,108,418, while the depreciation expense charged for the year is $4,056,163. For the year 1963, the total investment for gas plant in service increased to $119,470,228, an additional $581,314. For the same period depreciation expenses amounted to $4,098,754. Over the two-year period a decrease in net gas plant in service of $6,465,185 is shown. The decrease in revenue at 6¼ percent rate of return is calculated at $404,074. While this may not be a precisely accurate figure for an adjusted cost of service, it is nevertheless a reasonable estimate of the effect of a decreasing rate base.

The net effect of these two items would be to reduce Miller's calculated impact on Fuel to $1,367,070. The foregoing adjustments to Miller's impact study moreover do not take into account the lower costs of gas resulting from the rate reductions put into effect by Natural Gas Pipeline and Trunkline on January 1, 1964 and April 1, 1964, respectively, which reductions result in lower costs of $187,000 to Transmission and to Fuel. Additionally, it is quite certain that there would be an "upgrading" of direct sales to Fuel's remaining industrial customers in the event of Oklahoma Illinois' certification, as testified by Mr. Quinn, which would further reduce the amount of impact on the two companies by an estimated $897,000.

In summary, the total estimated impact on Fuel and Transmission in the event Oklahoma Illinois is certificated would be approximately $950,000, as shown by the foregoing.

In its discussion of impact on jurisdictional sales, Mississippi impractically fails to take into account the fact that the anticipated loss of industrial sales to a new pipeline could and would, to a substantial extent, be made up by additional sales to its remaining industrial customers, by initial sales to new customers, or by increased sales to its utility customers. In their respective impact studies, neither witness Miller[5] nor witness Benson, testifying for Laclede, acknowledged the possibility of increased sales to Mississippi's remaining industrial customers by reason of the availability of those volumes of gas hitherto served to the customers under contract to Oklahoma Illinois. Exhibit 245, prepared by Mississippi, demonstrates the high incidence of curtailment of gas sales to a number of Fuel's industrial customers in 1962. As a matter of fact, practically all Fuel's industrial customers are drastically curtailed during peak periods.

It logically follows that the availability of the 33,815,000 Mcf of gas sales which, according to Mr. Miller, Mississippi will lose by certification of Oklahoma Illinois, would result in an increase in the volume of sales to those customers so curtailed and an upgrading of interruptible sales generally. Even Mississippi's witness Quinn estimated that there would be increased sales of some 4 billion cubic feet annually to Mississippi's remaining industrial customers because of Fuel's ability to render improved service. Mr. Quinn further admitted that past volumes of sales did not fulfill customer requirements but represented

[5] Cross-examination disclosed that at the time of his testimony in this proceeding Mr. Miller was the owner of 200 shares of stock of Mississippi River Transmission Corp.

only those volumes that Mississippi chose to make available. An indicated by his estimate of total industrial sales by Fuel for 1962 of 55,822,255 Mcf as against 61,760,235 Mcf of actual sales, a difference of 5,937,980 Mcf, and estimated industrial sales for 1963 of 58,757,600 Mcf, as against 66,747,706 Mcf of actual sales, a difference of 7,988,106 Mcf, it would appear that Mr. Quinn's estimates are on the conservative side. Moreover, the advent of an additional pipeline and the consequent assurance of a reasonably priced, plentiful supply of gas, could well result in the influx of new industry to the area and an increase in the demand for natural gas. Proof thereof, appears in the fact that Fuel, itself, is in the midst of constructing a new cement plant which would purchase, according to Mr. Quinn, up to 3000 Mcf of interruptible gas per day. In Fuel's Annual Report to stockholders of 1963 [6] it was announced that such plant would be in production by mid 1965. Moreover, in Fuel's application filed April 30, 1964 [6] for a certificate of public convenience and necessity authorizing construction of facilities to serve the cement plant it is stated that applicant "proposes to utilize in the plant up to an average of 8000 Mcf of gas per day, averaged over the year." On the basis of even a 5-day week, this would give Fuel additional annual sales of 2,080,000 Mcf.

Insofar as sales to utilities are concerned, which under the present scheme of things would not be served by Oklahoma Illinois because of their refusal to make purchases from anyone but Mississippi, Exhibit 58, sponsored by Mr. Quinn, shows an estimated incremental increase in sales to utilities from 105,655,265 Mcf in 1964 to 111,117,790 Mcf in 1966, an increase in these two years of 5,462,525 Mcf. In Arkansas Louisiana Gas Company, *et al.*, Docket No. G–17567, *et al.*, 27 FPC 697, decided by the Commission on April 18, 1962, the Commission found that Fuel's utility customers had substantial need for additional supplies of gas and that Fuel "has not performed its utility obligation to its utility customers." It was therein further found that "Laclede, whose contract with Mississippi is in terms for its full requirements, has not been granted an increase in its stated demand by Mississippi since 1955." Further support for these statements were furnished in this proceeding by Laclede's vice president who testified that Laclede had endured a shortage of gas supply which lasted from approximately September 1949 until sometime in 1962, and his further testimony to the effect that during that period conversions in space heating from coal or oil to gas were not permitted. Coupled with the fact that the saturation in the St. Louis area for residential space heating is 50.6 percent as compared with 90.7 percent for Kansas City, and 94 percent for Cleveland, these factors would indicate a large potential for additional jurisdictional sales. Development of this potential market by Mississippi's utility customers must be reflected by increased sales from the pipelines. The evidence thus would further indicate that Mr. Quinn's estimates of incremental utility sales for future years are again on the extremely conservative side.

By order dated August 7, 1964, the Commission approved a settlement stipulation of the Mississippi rate case, Docket No. RP63–2. In the companion case, Docket No. CP63–12, the Commission, on the same date, approved an application by Transmission to acquire and operate Fuel's pipeline facilities and Fuel's on system production. The possible effect of several of the pertinent provisions of the settlement stipulation, hereinafter set forth, insofar as they relate to the impact on Transmission's resale customers in the event another pipeline should be certificated, merits some discussion.

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[6] Of which the Presiding Examiner takes official notice.

ARTICLE VI—TRANSMISSION'S RATES AFTER CLOSING DATE

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Section 2. Subject to the express understanding and reservations stated below, Transmission's Rate Schedule CD–1 as proposed to become effective on the Closing Date will not include Section 9, Minimum Bill Adjustments. Such understanding and reservations are outlined as follows:

* * * * * * *

(b) The agreement of Fuel and Transmission, its proposed successor in the pipeline operations, to forego the minimum bill provisions, solely in the interest of this compromise and settlement, shall not be construed under any circumstances as a recognition or admission by Fuel or Transmission that the minimum bill provisions are unnecessary or unreasonable in any respect whatever; and the agreement of Fuel and Transmission to forego such provisions under the instant circumstances shall never be used by any party hereto as a basis for opposition to such provisions in Docket No. RP63–2 if this settlement is not effected nor in connection with any future minimum bill provisions which Fuel or Transmission may propose.

* * * * * * *

(c) Transmission's agreement in Article IX hereof to a moratorium upon its filing of rate increases after the Closing Date shall in no event preclude its filing minimum bill provisions in connection with an actual loss of market to a new pipeline, or a potential loss of market if the Commission certificates a new pipeline to such market by others than Fuel or Transmission. Notwithstanding this agreement, the present resale customers of Fuel and Transmission acknowledge that in the event Fuel (or Transmission as the case may be) were to lose sales of a magnitude approaching a volume sufficient to support a new pipeline to the St. Louis area, Fuel (or Transmission) will be in a critical take-or-pay position with respect to its gas supply. This agreement shall not be construed as a waiver of the right of the present resale customers of Fuel and Transmission and other parties to oppose such minimum bill provision as may be filed by Transmission.

* * * * * * *

ARTICLE IX—MORATORIUM ON RATE FILINGS

Section 1. It is the intention and understanding of the parties in reaching the agreement set forth herein that there will be no change in the rates to be made effective by Transmission on the Closing Date, except for the contingent reductions provided for by Article VIII hereof, and except as hereinafter provided. Transmission agrees, therefore, if the Commission approves the terms and conditions of this Stipulation and Agreement without modification that it will not file for an increase in the rates and charges to be filed in Rate Schedule CD–1 pursuant to Article VI hereof, to become effective (allowing for notice and maximum suspension) prior to July 1, 1966 except that

* * * * * * *

(d) Transmission may file for increased rates to reflect any cost allocation impact to its jurisdictional customers resulting from the indicated loss of sales and for a minimum bill provision if the Commission certificates the construction of a new pipeline to the St. Louis area by any person or company other than Fuel or Transmission, but Transmission shall not file a motion under Section 4 of the Natural Gas Act to make such increased rates and minimum bill provision effective prior to the time such new pipeline goes into service.

Fuel's existing sales purchase agreement with United Gas Pipe Line Company requires Fuel to maintain an annual purchase load factor of 72 percent. It is Fuel's contention that the loss of some 20 million Mcf of interruptible sales in the event Oklahoma Illinois is certificated would make it impossible for Fuel to meet its minimum bill obligation and would result in a penalty payment to United in 1964 of $2,965,402. It is further contended that certification of Oklahoma Illinois would additionally cause an increase in the cost of gas purchased by the 3 utility customers of Transmission in the amount of $657,866 because of the reduced volumes which would then be purchased by Fuel from Transmission since Transmission would then "require a higher rate to recover its cost of service."

Assuming for the sake of argument that such is the case and that the Mississippi companies' cost of service would be increased by the amount indicated, the fact of the matter is that under the terms of the stipulation as it presently stands, such increase would not immediately, or in the near future, be passed on to Transmission's resale customers because Section 2 of Article VI of the said stipulation, as hereinabove set forth, eliminated the minimum bill provision from Mississippi's CD–1 rate schedule governing sales from Mississippi to its utility customers. Transmission reserves the right to file for increased rates and restoration of the minimum bill provision to its CD–1 rate in the event of the certification of another pipeline prior to the end of the moratorium period (July 1, 1966), but the application for such increase may not be filed before the new pipeline goes into service.

Moreover, if Transmission actually did file for such rate increase on certification of another pipeline, the burden would then be on Transmission to prove that such an increase was warranted. There is no assurance that the purported increase in the cost of service of $4,368,080 would necessarily trigger a proportionate upward variation in the CD–1 rate schedule and a restoration of the minimum bill provision since, in addition to the reasons hereinbefore discussed, Mississippi's witness Miller, in arriving at that amount, allocated the entire increase to Mississippi's utility customers, whereas the more appropriate method would have been to allocate a proportionate share thereof to Mississippi's industrial sales.

Insofar as the time element is concerned, even if a new pipeline were certificated, Transmission would not be in a position to place any rate increase into effect prior to expiration of the moratorium period in any case, since the elapsed time between the issuance of a Commission decision herein, plus the time required to construct and place the new pipeline in service, plus the five months suspension period between the filing of the rate increase and the time it would go into effect (subject to refund) would probably go beyond the moratorium date.

Assuming, nevertheless, for the purposes of this discussion, that there would in fact be an increase in rate to the domestic consumer in the event another pipeline were certificated, the problem then to be faced is whether it is in the public interest to maintain Mississippi's presently exclusive hold on the St. Louis market, and preserve the lower rate, or whether despite such increase it would be in the public interest to provide another source of supply. In *F.P.C.* v. *Transcontinental Gas Pipe Line Corp.*, 365 U.S. 1, 23 the Court reiterated the fact "that the term 'public convenience and necessity' connotes a flexible balancing process, in the course of which all the factors are weighed prior to final determination. *United States* v. *Detroit and Cleveland Navigation Co., supra.*"[1]

Except where the public interest dictates otherwise, the Courts and the Commission have consistently taken the view that two sources of supply are better

[1] 326 U.S. 236.

than one, and that competition was better than monopoly. *U.S.* v. *El Paso Natural Gas Co., et al.*, 376 U.S. 651, 661. As recently as June 26, 1964, Judge Washington, in his concurring opinion in *Lynchburg Gas Co.* v. *F.P.C., et al.*, 336 F. 2d 942, stated as follows:

> Whatever the relevance of the antitrust laws, the welfare of the ultimate consumer is the acknowledged desideratum of the Natural Gas Act. See, e.g., *Federal Power Commission* v. *Hope Natural Gas Co.*, 320 U.S. 591, 610 (1944): "The primary aim of this legislation was to protect consumers against exploitation at the hands of natural gas companies"; *Panhandle Eastern Pipe Line Co.* v. *Federal Power Commission*, 83 U.S. App. D.C. 297, 300; 169 F. 2d 881, 884 (1948), cert. denied, 335 U.S. 854 (1948): "[N]othing in the Natural Gas Act suggests that Congress thought monopoly better than competition or one source of supply better than two, or intended for any reason to give an existing supplier of natural gas for distribution in a particular community the privilege of furnishing an increased supply"; *Public Service Commission of New York* v. *Federal Power Commission*, 257 F. 2d 717, 720 (3d Cir. 1958), aff'd sub nom. *Atlantic Refining Co.* v. *Public Service Commission*, 360 U.S. 378 (1959); *Central Illinois Public Service Co.*, 4 F.P.C. 1043 at 1044–45 (1945); and *Lynchburg Gas Co.*, 24 F.P.C. 955 at 958 (1960). Investors in the natural gas industry, although granted an opportunity for a "fair return", are by no means guaranteed freedom from risk or competition.

In the instant proceeding little guidance is to be obtained from previously decided cases, nor are there any cases cited by the parties hereto which bear precisely on the present situation. There have been numerous cases where applications by a new pipeline to serve a territory exclusively served by another pipeline have been considered by the Commission and the Courts. Such applications have invariably been granted, based upon a finding, either that the existing pipeline was unable to adequately serve the area, or, if it was found that the existing pipeline could, and was willing to, expand its capacity to provide the necessary quantities of gas, the courts and the Commission have nevertheless permitted entry of the second pipeline on the premise that two sources of supply were better than one.

Where it was claimed that a loss in sales to the existing pipeline would result by reason thereof, the courts have pointed out that such loss, if any, would be made up by incremental sales. But it does not appear from a careful search of past decisions, that the Commission has ever been called upon to consider a case where the advantages to be gained by the entry of the new pipeline had to be weighed against a resultant increase in rates to the consumers.

Typical of cases heretofore adjudicated is *Home Gas Co.* v. *F.P.C.*, 231 F. 2d 253. Home purchased gas from The Manufacturers Light and Heat Company which it resold to the local distributors, Rockland Light and Power Company and Central Hudson Gas and Electric Corporation. Following the authorization of Tennessee Gas Transmission Company's entry into the New York market, the Commission certified sales by Tennessee to Rockland and Central Hudson to the extent of 5000 Mcf per day or 1,287,000 Mcf per year. Home and Manufacturers appealed from the Commission's order. The Court found that it was in the public interest to permit sales by Tennessee to Rockland and Central Hudson in that the consumer would be able to purchase gas at a lower rate than purchases from Home would permit and secondly, protection would be provided against failure of the gas supply in the event of an emergency breakdown on Home's pipeline. In response to Home's argument that purchases by Rockland and Central Hudson from Tennessee would result in a loss of profit by Home by reason

of reduced sales, the Court affirmed the Commission's finding that Home's total annual sales would be unaffected and would continue above the level on which Home's present rates were based. The Court further concluded that the issuance of a certificate of public convenience and necessity to serve an area not served by any other pipeline at the time did not confer any vested right to continue to serve that area exclusively, or preclude the Commission from granting a certificate "for service of an area already being served by another natural gas company." *Kentucky Natural Gas Corporation* v. *F.P.C.*, 159 F. 2d 215, 218.

In *Panhandle Eastern Pipe Line Co.* v. *F.P.C.*, 169 F. 2d 881, cert. denied 335 U.S. 854, there was an appeal from an order of the Commission authorizing the Michigan Wisconsin Pipe Line Company to construct a pipeline into the Michigan-Wisconsin area presently served by Panhandle, in which the largest market was the Detroit-Ann Arbor area in Michigan. There the Court, on page 882, affirmed the Commission's findings to the extent that

> The consuming public in Detroit and elsewhere has * * * been unable to receive natural gas in sufficient volume to meet its needs and desires by reason of the inability of distributing companies to obtain adequate quantities of such gas * * *.
>
> * * * * * * *

and at page 883,

> * * * entry of Michigan-Wisconsin will have advantages over service, however expanded, by Panhandle alone. It will result in competition there, and will also make "available to the Michigan market an alternative service and supply of natural gas from the area of the largest gas reserve in the United States. That such an independent additional and reliable source of supply will be of great value to the area to be served and benefit public convenience and necessity admits of no doubt."

The Court took cognizance of Panhandle's ability to expand its capacity so as to adequately serve the area, but nevertheless held that nothing in the Natural Gas Act guaranteed an existing supplier a perennially exclusive claim on the market so served. Moreover, the Court reiterated the fact that Section 7(e) of the Act requires the Commission to issue a certificate to any qualified applicant where the service to be furnished is required by the public convenience and necessity. Contrary to Panhandle's contention, the Court also found that there would be no detrimental effect on Panhandle's volume of sales because Panhandle's customers would continue to purchase their contract volumes, at least for the life of the existing contracts, and that at the expiration thereof, incremental sales would develop by reason of the rapidly expanding Detroit-Ann Arbor area.

The difference between the above cases and the instant case is that in the former, it was found that the entry of a new pipeline into the area would not adversely affect the existing pipeline and the prevailing consumer rate. To the contrary, in each case both the Court and the Commission found that the entry of an additional pipeline enhanced the status of the consumer. There is no indication in either of the above opinions as to whether the outcome would have been otherwise had the effect of the entrance of another pipeline into the area been to increase the consumer rate. This is a question which apparently remains to be answered in this proceeding. No case has been encountered, nor has any been cited by the parties hereto, where the Commission or the courts have denied entry of an additional pipeline into an area heretofore exclusively served.

In addition to the generally recognized advantages of the availability of a second source of natural gas, such as the presence of an alternate supply in the

event of an emergency, or the benefits to be derived from competition, there are additional benefits which inure, and are unique, to the public in the St. Louis area. Under present circumstances, as has been testified to by industrial witnesses supporting the Oklahoma Illinois application, the industrial companies are able to purchase only those limited quantities of gas which Fuel makes available.[8] These quantities have not kept pace with customer requirements. The net effect could well be to effectively atrophy further industrial expansion, in that large industrial companies requiring a constant, plentiful supply of gas, could not be expected to move into an area without any assurance thereof. There has been testimony during the course of this hearing to the effect that industrial activity in the St. Louis area is on the wane. If such be the case, it may well be that the controlled supply of limited quantities of gas at a pace and price dictated by the only supplier could be a contributing factor thereto. It obviously would not be in the economic welfare of the public as a whole to permit such a condition to persist.

It has further been testified to by the Owens-Illinois Glass Company witness that because of the highly competitive state of the glass market, the high fuel and freight costs incurred at its Alton Plant, and the fact that Owens-Illinois has been unable to sell its full production in the St. Louis area, it might be necessary to shift a substantial part of its production to newly constructed plants nearer its markets. The not inconsiderable loss of employment and consequent adverse effect on the economy of the greater St. Louis area which could result therefrom would again not react to the public benefit.

It is axiomatic that the industrial concerns in the area cannot fail to benefit from the competition generated by the incursion of another pipeline into the area. Historically, the fact is that since 1929 the industrials in the St. Louis area have been called upon to pay, not the market price of natural gas, or a price resulting from arm's-length negotiation, but a price pegged at whatever the traffic would bear, governed only to some slight degree by the price of other fuels. But to those of Fuel's industrial customers to whom natural gas is an indispensable requisite to production there is not even this slight controlling factor. The immediate effect of competition in the area is graphically illustrated by Exhibit 188, prepared at the request of the Presiding Examiner. Based on Fuel's actual volume of sales in 1962 to the industrial concerns which have contracted to buy gas from Oklahoma Illinois, which volumes are considerably below the volumes these same concerns have contracted to buy from Oklahoma Illinois, a minimum savings of $966,471 would have been effected had their gas requirements for that year been purchased from Oklahoma Illinois rather than Fuel. Based on projected full requirements the estimated savings is purported to be $2,354,239.[9]

Essentially, Fuel's reply to the possible invasion of another pipeline and the industrial concerns' demand for cheaper and more plentiful natural gas as here-

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[8] This statement is based on the testimony of witnesses who support the Oklahoma Illinois application. Fuel has presented no witnesses from any of its other industrial customers who might have testified that Fuel was in fact meeting its customer requirements. To such extent it is considered that the testimony of the industrial witnesses supporting the Oklahoma Illinois application stands unrefuted.

[9] *Granite City Steel Co.* v. *F.P.C.*, 320 F. 2d 711, was decided on May 23, 1963 during the course of this hearing. The Court there reversed the Commission's allocation of Fuel's available gas supply which had given the utilities a greater share thereof and correspondingly diminished the volumes theretofore allotted to the industrials. The effect of the court's decision was to place the industrial concerns, supporting the Oklahoma Illinois application in the "status quo" they had enjoyed prior thereto. Following the issuance of the *Granite City* decision the Presiding Examiner in this proceeding thereupon polled the industrial concerns as to whether there would be any change with respect to their position in this proceeding. It is significant that they unanimously affirmed their support of the Oklahoma Illinois application.

inbefore discussed, is that if compelled to compete with another pipeline, and reduce its price to industrial customers, the result would be an increase in rate to the private consumer. The converse of this proposition is then that the more Fuel charges its direct industrial customers, the less will be the price to domestic or jurisdictional consumers. The absurd extremes to which such an argument could be carried is obvious. While the purpose of the Act is to prevent exploitation of the ultimate consumer at the hands of natural gas companies, *F.P.C.* v. *Hope Natural Gas Co.*, 320 U.S. 591, it could hardly have been the intention of Congress, in enacting the Natural Gas Act, to permit the uncontrolled exploitation of industry for the benefit of the domestic consumer. Section 1(b) of the Natural Gas Act provides that:

> The provisions of this Act shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption, for domestic, commercial industrial, or any other use, and to natural-gas companies engaged in such transportation or sale, * * *

As originally enacted on June 21, 1938, (Public Law No. 368, 75th Cong.) Section 7(c) of the Natural Gas Act, in pertinent part read as follows:

> In passing on applications for certificates of convenience and necessity, the Commission shall give due consideration to the applicant's ability to render and maintain adequate service at rates lower than those prevailing in the territory to be served, it being the intention of Congress that natural gas shall be sold in interstate commerce for resale for ultimate public consumption for domestic, commercial, industrial, or any other use at the lowest possible reasonable rate consistent with the maintenance of adequate service in the public interest. (52 Stat. 825 (1938).)

That this statement in the original Natural Gas Act is looked upon with approval by the courts, and is still considered as the prevailing purpose of the Act, even after the 1942 amendment which eliminated this section, is confirmed by the following statement from *Atlantic Refining Company* v. *Public Service Commission of New York*, 360 U.S. 378, 388 (1959.)

> The purpose of the Natural Gas Act was to underwrite just and reasonable rates to the consumers of natural gas. *Federal Power Com.* v. *Hope Natural Gas Co.*, 320 U.S. 591, 88 L ed 333, 64 S Ct 281 (1944). As the original § 7(c) provided, it was "the intention of Congress that natural gas shall be sold in interstate commerce for resale for ultimate public consumption for domestic, commercial, industrial, or any other use at the lowest possible reasonable rate consistent with the maintenance of adequate service in the public interest." 52 Stat. 825.[7] The Act was so framed as to afford consumers a complete, permanent and effective bond of protection from excessive rates and charges.

[7] The 1942 amendments to § 7, 56 Stat. 83, were not intended to change this declaration of purpose. See Hearings, House Interstate and Foreign Commerce Committee, on HR 5249, 77th Cong, 1st Sess 18–19; HR Rep No. 1290, 77th Cong., 1st Sess; S. Rep. No. 948, 77th Cong, 2d Sess.

To this same effect see also *F.P.C.* v. *Transcontinental Gas Pipe Line Corp.*, 365 U.S. 1, 19; *Sunray Mid-Continent Oil Co.* v. *F.P.C.*, 364 U.S. 137, 147.

In *Colorado Interstate Gas Co.* v. *F.P.C.*, 324 U.S. 581, 596, Mr. Justice Rutledge, speaking for the majority, stated as follows:

> A substantial part of that gas is sold to Colorado Interstate for resale to direct industrial customers. Canadian maintains that the Commission has no authority to fix the rate on the sale of that portion or class of gas to Colorado Interstate. § 1(b) of the Act, however, provides, as we have noted, that the provisions of the Act apply "to the sale in interstate com-

merce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use." Canadian, however, seeks support for its position in the declaration in § 1(a) of the Act that "the business of transporting and selling natural gas for ultimate distribution to the public is affected with a public interest." But we find no warrant for saying that the words "ultimate distribution to the public" imply distribution to domestic users alone. Industrial users are as much a part of the "public" as domestic users and other commercial users. And the distribution to one is as "ultimate" as the distribution to the other. Moreover, that declaration of policy may not be used to take out of § 1(b) of the Act the express provision subjecting to regulation gas sold for resale for "industrial use."

This conception was recently followed in *Granite City Steel Co.* v. *F.P.C.*, *supra*, where the Court apparently equated non-jurisdictional direct sales to industrials, to jurisdictional sales for private consumption when it reversed the Commission's action allocating to the consumers gas volumes previously sold to the industrials.

It is thus indisputable that direct sales by pipelines to industrial concerns are included in the term "ultimate public consumption" as used in the original Section 7(c) of the Act, and that the Court in the *Atlantic Refining Co.* case, *supra*, intended to include industrial concerns when it referred to "consumers" in that portion of the text hereinabove cited.

A further consideration in the determination of whether the public interest in the St. Louis area would be better served by the availability of an additional source of supply, rather than the existing single source, is whether the single supplier, if permitted to remain such, would in the future be sufficiently motivated by concern for the public interest to the extent that it would give priority to the increased gas requirements of its utility customers rather than to the admittedly more profitable increased volumes of direct sales to its industrial customers at unregulated rates. In *Northern States Power Co.* v. *F.P.C.*, 118 F. 2d 141, 144, quoted in *Alabama Power Company* v. *F.P.C.*, 128 F. 2d 280, 288, the Court stated:

> The grant of a license, being a privilege from the sovereign, can be justified only on the basis of benefit to the public.

Speaking of the purpose of the Natural Gas Act, the Supreme Court in *Panhandle Eastern Pipe Line Co.* v. *Public Service Commission of Indiana, et al.*, 332 U.S. 507, 521, stated:

> It could accomplish neither that protective aim nor the comprehensive and effective dual regulation Congress had in mind, if those companies could divert at will all or the cream of their business to unregulated industrial uses.

This view was also expressed in *United Fuel Gas Company, et al.*, v. *Railroad Commission of Kentucky, et al.*, 278 U.S. 300, 309, where it was stated:

> The primary duty of a public utility is to serve on reasonable terms all of those who desire the service it renders. This duty does not permit it to pick and choose and to serve only those portions of the territory which it finds most profitable, leaving the remainder to get along without the service which it alone is in a position to give.

The Court's unanimity of opinion on this score is demonstrated by the almost identical language used in *Northeastern Gas Transportation Company* v. *F.P.C.*, 195 F. 2d 872:

> It is inconceivable that anyone desirous of promoting the public good should urge that we now authorize one engaged in a business affected with the public interest to pick and choose whom it wishes to serve without proper regard for the public good.

and in *People ex rel. New York Gas Company* v. *McCall*, 245 U.S. 345, 351, where the Supreme Court reiterated:

> Corporations which devote their property to a public use may not pick and choose, serving only the portions of the territory covered by their franchises which it is presently profitable for them to serve. * * *

See also *Panhandle Eastern Pipe Line Company*, 6 FPC 196; 7 FPC 984; 9 FPC 1330; 10 FPC 328.

There is little purpose to be gained by repetition of the long history of contention between Mississippi and its utility customers. The facts with relation thereto are graphically set forth in the Presiding Examiner's decisions of September 13, 1960, 27 FPC 713, and December 1, 1961, 27 FPC 748, Docket No. G–17567, *et al.*, resulting from the complaint proceeding, brought by these same utility customers, which culminated in the Commission's opinion in *Arkansas Louisiana Gas Company, et al.*, 27 FPC 697 (Opinion No. 355) rehearing denied 27 FPC 1257.[10] The Presiding Examiner's decisions are replete with excerpts from the testimony registering complaints by the utilities concerning the lack of gas supply, statements made by Mississippi's executive officers to the effect that Fuel had no intention of expanding its own capacity, and further statements by these same executives to the effect that the primary concern of the company was service to its industrial customers and secondarily to the utilities to which it makes sales of gas subject to this Commission's jurisdiction.[11]

The conclusions of the Presiding Examiner in that proceeding were in the main affirmed in Commission Opinion No. 355, *supra* (reversed in the *Granite City Steel* case, *supra*, but only insofar as the allocations of gas made therein were abrogated) by the following findings of fact at 27 FPC 703:

> The record shows that Mississippi has not met the demands of its utility customers, and they have waiting lists of consumers desiring service. Laclede, whose contract with Mississippi is in terms for its full requirements, has not been granted an increase in its stated demand by Mississippi since 1955.
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> * * * * * * *
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> While Mississippi continued to serve its industrial customers, the record shows that it would not extend additional service to its utility customers except through Transmission at the high costs of a new pipeline. As noted above, the Commission authorized the Transmission project, but in the light of the present record we are of the opinion that it was not in the public interest to establish this separate supplier of gas and to impose the high costs of the new pipeline wholly on Laclede and Illinois Power. Ordinarily, the costs of pipeline extensions are "rolled-in" so that all customers bear the new costs consistent with the principles of cost allocation employed by the Commission.
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> * * * * * * *
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> On the basis of the record and within the scope of the proceeding we agree with the examiner that a remedy is required. Mississippi has retained and extended its service to its industrials including those served under contracts which it claims are firm but which are, in effect, interruptible while its utility customers have been greatly restricted except for service through Transmission. Mississippi, in effect, has not performed its utility obliga-

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[10] Affirmed in part and reversed in part by the Court of Appeals for the District of Columbia in *Granite City Steel Company, et al.* v. *F.P.C.*, 320 F. 2d 711.

[11] 27 FPC 716, 724 725, 726, 735, 740, 748, 750, 755—footnote 6 thereon, 756, 757, 761, 764, 772, 773, 780, 782.

tion to its utility customers including the domestic and commercial consumers served by them.

* * * * * * *

In this regard, Mississippi must give first consideration to the requirements of its utility customers to meet the needs of domestic and commercial users of natural gas.

It was freely admitted by Mississippi's Chief Executive officer in the complaint proceeding that the only purpose for which Transmission was created was to avoid the diminution of profits from industrial sales which would result from expansion of Fuel's capacity. The fact that the domestic consumer would thereby be compelled to pay a higher rate because the price to be received by Transmission from its utility customers was 46.3 cents per Mcf at 75 percent load factor, in contrast to Fuel's price to those same utilities, of 31.7 cents per Mcf at 60 percent load factor, was of little consequence or concern to Fuel. It is obvious that Fuel's only interest was the preservation of its inordinately high industrial sales profit margin. It is realized that the profit motive is perfectly proper and that Mississippi, or any other pipeline, is by no stretch of the imagination because of the fact that it is regulated, required to operate as an eleemosynary institution. However, the profits of an industrial concern in the public service licensed to do business by the Government must be tempered by its primary obligation to adequately serve the needs of the public. The following excerpt from *Dayton-Goose Creek Railroad Company* v. *U.S.*, 263 U.S. 456, 461 confirms this principle:

> By investment in a business dedicated to the public service the owner must recognize that, as compared with investment in private business, he cannot expect either high or speculative dividends but that this obligation limits him to only fair or reasonable profit.

It has been said that "what is past is prologue."[12] This aphorism is particularly applicable to the present situation. Under the circumstances, and based on past performance, the conclusion is not warranted that the "leopard will change its spots" and that Mississippi's primary objective in the future under its present management will be public service rather than profit.

Consideration of all the facts hereinabove discussed therefore leads to the conclusion that perpetuation of a monopoly insofar as natural gas supply is concerned, when competition is available, would not further the economic welfare of the public in the St. Louis area; would not provide the economic relief to the industrial concerns in the area which free competition would foster; and would not give the utilities that freedom from domination by a single supplier which the presence of another and competing pipeline in the area would furnish. It is therefore found (1) that public convenience and necessity require the presence of a competitive pipeline in the St. Louis area, and (2) that the increase in rates to the consumers, if any, which may result from the entry of another pipeline in the St. Louis area is more than offset by the benefits to be derived therefrom.

THE PANHANDLE APPLICATION

Details of the Panhandle proposal have hereinbefore been set forth. Briefly, Panhandle proposes to construct 53 miles of supply line running from its existing mainline facilities at a point near Glasgow, Illinois to a point in the St. Louis area near Alton, Illinois so as to transport and deliver 65,800 Mcf per day

[12] Inscription on the National Archives Building in Washington, D.C.

of natural gas for sale in the St. Louis area on a firm basis. The gas is intended to be taken by displacement from Panhandle's Howell Storage Field, the capacity of which will be increased to accommodate the required increased volumes. The estimated cost of the project is $6,036,000 which will be financed from funds on hand.

No specific customer designation is made for delivery of any or all of the proposed volumes, but the fact is that Panhandle's application in its present form would permit sales to none other than Fuel. In the first place, Panhandle's new LS–2 rate pursuant to which Panhandle proposes to make sales in the St. Louis area is restricted to partial requirements customers purchasing gas for resale. There is no indication in the application that any other sales, jurisdictional or otherwise, are contemplated. Secondly, it is shown that Panhandle's proposed line will terminate at a point in the Alton-East Alton area where the only facilities purportedly capable of receiving the gas Panhandle proposes to bring to market are owned by Fuel. However, there is no evidence in the record showing that it would be possible for even Fuel to take the gas at that point in the volumes proposed to be delivered by Panhandle, either on a peak day or annually. Panhandle's Exhibits 71 and 72 demonstrate only those connecting facilities proposed for service to Fuel near Alton, Illinois. No other exhibits are in the record which would indicate any intention to connect up to other customers. The conclusion is thus warranted that at the time of filing its application, Panhandle contemplated sales only to Fuel.

Casual reference was made by Mr. Schomaker, Panhandle's design witness, to possible industrial sales, and there was further mention thereof in Panhandle's reply brief and during oral argument. But, ignored in connection therewith is Mr. Schomaker's further testimony on cross-examination that in order for Panhandle to make direct industrial sales it would be necessary to construct an industrial distribution system in addition to the facilities Panhandle proposes to construct under the instant application. No mention thereof appears in such application, nor is the cost of the contemplated industrial distribution system included in the $6,036,000 total estimated cost of the Panhandle project.

It appears that the matter of industrial sales insofar as Panhandle's application is concerned constitutes nothing more than an afterthought, and, as such, little consideration can be given thereto at this point. It has been aptly stated that:

> These comparative contests must turn on a concrete proposal tested through the hearing process, not upon facile and untested afterthoughts. *W. S. Butterfield Theaters* v. *FCC*, 237 F.2d 552, 559.

Thus in the absence of any statement in Panhandle's application as to the specific type of authorization desired, the new LS–2 rate schedule and the intended point of delivery of the proposed facilities effectively eliminate all but Fuel as a potential customer of Panhandle. Fuel, however, has rejected the possibility of any service from Panhandle and the industrial concerns mentioned by Mr. Schomaker as possible customers, which concerns are under contract to Oklahoma-Illinois and presently buy gas from Fuel, have also indicated no intention to discontinue service from Mississippi in the event Oklahoma-Illinois' application is denied.

Panhandle's suggestion that the Commission certify its project, subject to the filing of firm commitments within a reasonable time after issuance of the Commission order, is without merit. There would be no purpose to certification of a pipeline which has not identified or undertaken to show a market for the gas it proposes to transport. While a firm commitment for the sale of a proposed gas supply need not in all cases be submitted, *Midwestern Gas Transmission Company* v. *F.P.C.*, 258 F. 2d 660, 665, an applicant in a certificate pro-

ceeding must nevertheless show that there exists in the territory intended to be served a reasonable expectation that there are customers who will purchase the gas brought to market. *Kansas Pipe Line and Gas Company, et al.*, 2 FPC 29, 45. It is not the Commission's function to act as Panhandle's sales agency and find customers for Panhandle's gas. In *Northern Natural Gas Company, et al.*, Docket No. CP62–85, *et al.*, 30 FPC 859, 864, Opinion No. 404, the Commission stated that:

> The general rule which has developed for expansion which includes sales to large volume industrial customers is that firm commitments will be required only where the contemplated sales appear to have a strong bearing on the economic feasibility of the project, and where there is reason to question whether in fact the sales will be made. See *Kansas-Nebraska Natural Gas Company, Inc.*, 29 FPC 1058, 1067, Opinion No. 389 (1963); *City of Grant City, Missouri*, 29 FPC 754, 758, Opinion No. 386 (1963); *Midwestern Gas Transmission Company*, 22 FPC 775.

In the instant case it is found that the contemplated sales by Panhandle will have a direct bearing on the economic feasibility of its project, and that on the evidence in the record there is substantial reason to doubt that the industrial sales will be made. Panhandle has failed to demonstrate that the public convenience and necessity warrant certification.

There are additional deficiencies to be found in Panhandle's application. Some question has been raised with respect to the ability of the Howell Storage Field to sustain daily withdrawals of 65,000 Mcf in addition to the 65,000 Mcf per day presently certificated. In *American Louisiana Pipe Line Company, et al.*, Docket No. G–2306, *et al.*, 28 FPC 211, 223, the Presiding Examiner in a decision adopted by the Commission stated:

> Panhandle indicated that with the number of wells it projects having available at Howell it would not run into a problem of hydrate formation until the withdrawal rate is at least 70,000 Mcf per day (Tr. 28,611).[17] Consequently hydrates would cause no problem in delivering the required 65,000 Mcf per day. Panhandle further indicated that with compression it could deliver about 64.5 MMcf from Howell when the field is drawn down to 15.6 billion cubic feet[18] (Tr. 28,682). This approximates the required amount. There does not appear to be any reason that Panhandle would be unable to meet the demand which it indicates it would put upon Howell. The delivery of 65,000 Mcf per day on any day during the winter season would appear to be the limit of the ability for Panhandle to depend upon Howell; no more than this amount of contract demand should be placed upon it with the proposed facilities and working storage gas.

To achieve the expansion necessary to overcome the limitation on deliverability therein referred to, Panhandle proposes to drill 20 additional injection-withdrawal wells and to install 2000 hp additional compression. But there is considerable reason to doubt whether these additional facilities will accomplish the desired result. It is Panhandle's claim that with the additional wells and compression it will be possible to make successive daily withdrawals of 130,000 Mcf of gas as long as the reservoir gas content therein is maintained at 18 billion cubic feet. However, it was readily admitted by Mr. King, Panhandle's manager of underground storage, on cross-examination, that data in addition to that presented in Panhandle's Exhibit 69 (the exhibit principally relied upon by Panhandle with regard to the capacity of the Howell Storage Field) would be necessary before it would be possible to determine the capability of the Howell Field to receive the injection volumes and deliver the required withdrawal volumes as scheduled. The additional information lacking from the

Panhandle presentation which would be necessary to determine the validity of the projections in Exhibit 69, includes, among other things, data with respect to the permeability porosity, and thickness of the reservoir and individual back pressure curves for each well. Without these figures the speed with which the reservoir could transmit gas to the wellbores to replace the quantities withdrawn cannot be determined. Similarly lacking is the data requisite to a determination of the actual size of the reservoir such as the delineation of its outer limits and the exact location of the "fault." In the absence of such data, it is concluded that the evidence of record is insufficient to support a finding that the Howell Storage Field is capable of furnishing sustained withdrawals of 130,000 Mcf per day.

It must also be noted that Panhandle has failed to comply with the requirements of Section 157.14(10)(iv) of the Commission's Regulations which require submission of a deliverability study showing the daily volumes which can, or are proposed to be obtained each year from each source of supply; nor did Panhandle furnish any evidence as to the volumes of gas required to meet the peak-day requirements of the proposed new service.

Aside from the technical objections to the Panhandle application, consistent with the discussion hereinbefore set forth with respect to the monopoly situation in the St. Louis area, perhaps the most cogent reason for disapproval thereof is that with Fuel as Panhandle's only customer the monopoly situation in that area would continue to exist. The reasons why it is not deemed to be in the public interest to perpetuate this monopoly have been hereinbefore discussed at length. These reasons apply with equal force to the Panhandle application. No purpose would be served by a reiteration thereof at this point. Accordingly, the Panhandle application is denied.

THE OKLAHOMA ILLINOIS APPLICATION

The ramifications of the Oklahoma Illinois project have hereinbefore also been described in detail. In brief, Oklahoma Illinois proposes to construct transmission, supply and gathering facilities which would enable transportation of up to 105,000 Mcf per day of natural gas from dedicated leaseholds in newly developed fields in northwest and southeast Oklahoma, respectively, through Oklahoma, Kansas and Missouri to Alton, Illinois at an estimated cost for the entire project of $64,000,000.

The original application presented three types of contracts: (1) industrial gas purchase contracts between the producers and the industrial concerns with title to pass and deliveries to be made at the wellhead at an initial price of 18 cents per Mcf for the first five years with escalations of 2½ cents for each five years thereafter. In turn, the industrial concerns executed agreements with Oklahoma Illinois for transportation of the gas from the delivery point in the field to their respective industrial plants in the St. Louis area. (2) Contracts (designated P–2) for the sale of gas, from the same acreage dedicated to the industrial gas purchase contracts, to Oklahoma Illinois which contracts were expressly made subordinate to the industrial gas purchase contracts at the same 18-cent price and escalation provisions. (3) Contracts (designated P–1) between Oklahoma Illinois and the producers for the sale of firm gas from acreage other than that dedicated to the industrial and P–2 contracts, also, at 18 cents per Mcf and including the same escalation provisions.

As hereinbefore noted, the Oklahoma Illinois application was modified during the course of the hearing in that counsel for Oklahoma Illinois and the producers advised that there would be no objection by the parties concerned to the issuance of a certificate which would authorize only jurisdictional sales from the producers

to Oklahoma Illinois at the interim area guideline price established by the Commission of 17 cents per Mcf for 1000 Btu gas from northwest Oklahoma and 15 cents per Mcf for gas produced from the Red Oak Field in southeast Oklahoma. The producers, with the exception of Shell, thereafter agreed to waive any demand for upward adjustment in price for gas having more than 1000 Btu content. At the direction of the Presiding Examiner, and in order to conform the record, details in connection therewith were presented in what has been designated as the "C" series of exhibits.

It takes no more than a cursory inspection of the Oklahoma Illinois proposal as presently constituted, and as detailed in the "C" series of exhibits, to arrive at the conclusion that such proposal encompassing jurisdictional sales from producer to pipeline at prices set by the Commission is obviously more in the public interest and therefore infinitely more palatable to the Commission than the original proposal. In the consideration by the Commission of alternate proposals by the same applicants, one of which on its face would be more acceptable, to the exclusion of the other, there would be little purpose to be gained by extended discussion of the less attractive alternate. In view of the above modification in the Oklahoma proposal, it is therefore deemed unnecessary to devote either time or space to consideration of the Oklahoma Illinois application in its original form. The Oklahoma Illinois application, as modified by the "C" series of exhibits, and as hereinafter conditioned, is approved, and the discussion following setting forth the reasons therefore will be limited to that proposal.

It is the contention of the parties opposed to the Oklahoma Illinois application that the requirements of due process preclude issuance of a certificate of public convenience and necessity to Oklahoma Illinois because of the revisions to the project originally proposed as reflected in the "C" series of exhibits. In support of this contention there is cited the following excerpt from *American Louisiana Pipe Line Company, et al.*, 20 FPC 575, 586 (1958):

> Nor would it be proper in this case to undertake by conditions to revise any of these projects in an attempt to support their authorization. Even extensive conditions may be found reasonable in the circumstances of particular cases. See *e.g.*, *Houston Texas Gas & Oil Corp.*, 16 F.P.C. 118, affirmed, *Florida Economic Advisory Council* v. *F.P.C.*, 251 F. 2d 643 (CADC) certiorari denied, 356 U.S. 959. However, the conditions that would be required here would necessarily be so far-reaching as to redesign the projects entirely. The effect would be to preclude proof that the projects are required by the public convenience and necessity. And in this competitive case, it would deny the competitors the hearing on the new projects to which they are entitled under the law.

But it is to be noted in the above cited case first, that the Court limits its remarks to *this* "case" and secondly, that it is specifically stated therein that "even extensive conditions may be found reasonable in the circumstances of particular cases." In the opinion of the Presiding Examiner this is such a "particular case" and it is further found that the conditions to be attached are not so extensive as to redesign the project. The physical facilities involved and the basic issues remain the same; still for determination is the primary question as to whether the present or future public convenience and necessity will be served by providing an additional source of natural gas supply in the St. Louis area.

Assuming that the question posed in the preceding paragraph is answered in the affirmative, and that Oklahoma Illinois had stood on its originally proposed project, there would be nothing to prevent the Commission from molding such proposal, if otherwise acceptable, to that shape and form which would best

serve public convenience and necessity, by the imposition of the very conditions volunteered by Oklahoma Illinois and its supporters. The courts have even gone so far as to sanction transformation by the Commission of a defective proposal to a valid one by "the addition of curative conditions," *Florida Economic Advisory Council* v. *F.P.C.*, 251 F. 2d 643, 646, cert. denied 356 U.S. 959. Moreover, the changes effected, and the Presiding Examiner's elimination from consideration of any proposal by Oklahoma Illinois other than that which it is deemed best serves the public convenience and necessity, actually resolve the very issues which would be, and have been, raised by the opposing parties in connection with the "A" and "B" proposals, *i.e.*, the Mississippi, Natural, Laclede and Staff, *et al.* attack on Oklahoma Illinois' "A" and "B" proposals insofar as Oklahoma Illinois attempted to prove that direct non-jurisdictional sales from producer to industrials are in the public interest.

The project in its present form, in any case, is essentially the same as the project originally presented insofar as the physical facilities involved are concerned. Remaining the same are the quantum of proof required with respect to reserves and deliverability; each condition under the "C" proposal was tested by cross-examination; the volumes proposed to be sold, the prices to be charged, the parties to the proceeding, the pipeline to be constructed and the estimated cost thereof are the same. In a similar situation where the issue of due process was raised, the Court in the *Florida Economic Advisory Council* case, *supra*, stated on pages 648, 649:

> *Conditions.* The Commission found that the plan was defective as it then stood, but it found that if certain conditions were complied with, the defects would be cured. It granted the certificate subject to these curative conditions, without hearing what petitioner had to say about them. Petitioner says it should have been heard, because the conditions transformed the proposal into an entirely new proposition. We think not. The conditions only resolved issues raised, argued and briefed in the hearing. They involved no surprises except insofar as they may have gone farther or not so far as petitioner would have wished. * * *
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> * * * * * * *
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> No useful purpose would have been served by reopening the proceedings to hear petitioner argue that 15% was not proper. * * *

Here, as there, no useful purpose would be served by limiting the hearing to a consideration of the original Oklahoma Illinois application. The only result thereof, in the event of a denial of such application, would have been a second hearing involving the same physical facilities and the same parties. Under the circumstances it is therefore found that none of the parties hereto have been deprived of due process by reason of the changes effected in Oklahoma Illinois' original proposal.

Corporate structure and affiliation

Oklahoma Illinois is a Delaware Corporation organized in May 1961, having three stockholders with the ownership interest divided among them as follows:

Pan American Petroleum Corporation, 46.5 percent.
Shell Oil Company, 33.5 percent.
Fish Engineering Corporation, 20 percent.

All of the Oklahoma Illinois directors and officials are also officials of one of the three stockholder companies.

In addition to their ownership interests in Oklahoma Illinois, Pan American and Shell also act in other capacities with regard to the Oklahoma Illinois project. Pan American is a major producer in the dedicated acreage in northwest Oklahoma as is Midwest Oil Company in the acreage in South-

east Oklahoma. These are the two fields from which the gas to be transported to the St. Louis area by means of the Oklahoma Illinois pipeline would be produced. Shell owns gas leases in both fields. Together, all three producers will provide 86 percent of the gas supply contracted for the project. Pan American is a wholly-owned subsidiary of Standard Oil Company of Indiana which also owns 30.14 percent of the stock of Midwest with an additional 30.13 percent of Midwest stock being owned by Standard Oil Foundation, Inc. Two of the largest industrial customers to which the gas transported by Oklahoma Illinois would be delivered are Shell and American Oil Company, another wholly-owned subsidiary of Standard Oil of Indiana.

Pursuant to the agreement between Fish and Oklahoma Illinois, Fish will negotiate in good faith to agree upon a contract covering the complete detailed design, engineering and construction of the facilities certificated by the Federal Power Commission. Fish is to receive for such services "no more than the actual cost of the work to be performed, plus a fee for its services" as computed in the agreement. With regard to gas transmission lines, laterals and gas gathering systems the fee provided is 1½ percent of total costs if the total cost is less than $60 million, 1¼ percent if such cost is $60 million or more but less than $100 million and 1 percent if the total cost is $100 million or more. The fee for compressor stations, meter stations and dehydration facilities runs from 7½ percent if the total cost is $500,000 or less, to 4½ percent if $15 million or more. No executive salaries are included in the costs upon which the fee is based. Fish would not actually construct the main pipeline laterals and gathering facilities; such work would be let out to a sub-contractor on a competitive bid basis, the successful bidder to be awarded the contract by the Board of Directors of Oklahoma Illinois. Affiliated firms on the list of bidders are barred by the insurance companies lending money for the project. Based on the foregoing facts, it is found that the relationship between the present stockholders of Oklahoma Illinois and the services to be rendered by each fall within Section 5(A) Associated Companies, 5(B) Control and (8) Cost, of the Commission's Uniform System of Accounts Prescribed for Natural Gas Companies.

Markets

The markets proposed to be served by Oklahoma Illinois consist of (1) proposed sales to communities; (2) sales to Laclede Gas Company; and (3) sales to industrial customers. Total projected sales for the third year, both firm and interruptible, are estimated at 52,168,583 Mcf at 14.65 psia.

The route of the proposed Oklahoma Illinois pipeline would traverse a section of Missouri that is without natural gas service. A primary reason for certification of the Oklahoma Illinois application is the fact that natural gas would be supplied to an area of closely concentrated communities having a combined population of more than 80,000, presently without such service. As was stated by Mr. Barry, the marketing and engineering witness for several of the intervening communities in this proceeding, "Anyone could take this Federal Power Commission map which is brought up to date every six months showing the location of natural gas pipelines in this country, and see a blank hole staring you in the face in the middle of Missouri."

"The speedy provision of natural gas to communities which need it is a proper administrative objective." *Midwestern Gas Transmission Company* v. *F.P.C.*, 258 F. 2d 660, 665. In a similar situation the courts have further upheld findings by the Commission that a pipeline company seeking permission to construct a natural-gas pipeline from Texas to Michigan, would, in addition to supplementing service in the Detroit area rendered by another pipeline company, provide natural gas for various communities in Wisconsin, Iowa, Missouri and

Michigan which the other company could not serve, establishes that the proposed pipeline was required by "public convenience and necessity", *Panhandle Eastern Pipe Line Company* v. *F.P.C.*, 169 F. 2d 881, cert. denied 335 U.S. 854.

Presented herein are requests for allocations of gas from Oklahoma Illinois which would bring natural gas service to 13 communities in central Missouri to whom gas service is presently not available.

The Gas Service Company, a distributor of natural gas in Missouri, Kansas, Oklahoma and Nebraska, an intervenor in these proceedings, seeks an allocation of natural gas from Oklahoma Illinois to serve the towns of Bolivar and Lebanon in Missouri.

Section 1.8(c) of the Commission's Rules of Practice and Procedure provide that where the purpose of the intervention is to obtain an allocation of natural gas "for sale and distribution by a person or municipality * * *" the petition shall comply with the requirements of Part 156 of this chapter. Section 156.5 of the Commission's Regulations under the Natural Gas Act requires, *inter alia*, that the intervenor submit with his application "a copy of any franchise or similar authorization which applicant has obtained from each of the municipalities in which applicant engages or proposes to engage in the local distribution of natural gas;" among other things.[13] Also required is a flow diagram and a detailed estimate of the total capital cost of the proposed facilities. Gas Service has submitted neither.

There is no authority in the Presiding Examiner to waive the requirements of the Commission's Regulations.[14] However, where the application is otherwise acceptable, it is logical to assume that the Commission would not wish to deprive the towns of Bolivar and Lebanon of a supply of natural gas because of the failure to comply with minor technical requirements of the pertinent regulations. It is considered that the evidence presented in support of the application, aside from its technical deficiencies, is to say the least, marginal. However, public financing is not required and the financial risk involved will be borne by The Gas Service Company and not by the consumer. Gas Service being one of the largest gas distributing companies in the country, is in a position to assume such risk without detrimental effect to its other customers. Accordingly, inasmuch as franchises have been granted to Gas Service Company by Lebanon and Bolivar, it is recommended to the Commission that the regulation concerned be waived and a certificate issued granting the required allocations of natural gas.

Associated Natural Gas Company, having been granted a franchise from the City of Buffalo, Missouri, similarly seeks an allocation of gas from Oklahoma Illinois to enable such service, but has also failed to furnish a flow diagram or detailed estimate of costs as required by the regulation. The remarks hereinabove made with respect to Gas Service Company apply with equal force here. Accordingly, it is recommended that the same action be taken by the Commission with respect to the Associated Natural Gas Company and the City of Buffalo, Missouri.

The Cities of Bourbon, Cuba, Pacific, St. Clair, Steelville, Sullivan, Washington and Waynesville have each filed an application pursuant to Section 7(a) of the

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[13] Gas Service's original application requested an allocation to construct and operate distribution systems in some 17 communities along the Oklahoma Illinois route in Missouri and to Fort Leonard Wood, an active military installation also in Missouri. On motion by the opposing parties all evidence with respect to these 17 communities was stricken from the record by reason of Gas Service's failure to acquire franchises from the respective communities. It was further ruled with request to the proposed service to the military installation at Fort Leonard Wood that Gas Service had not made out a *prima facie* case.

[14] *Cf.*, *Southern Natural Gas Co., et al.*, Docket No. CP63-26, Opinion No. 424, issued April 6, 1964, 31 FPC 789.

Natural Gas Act for an order by the Commission directing Oklahoma Illinois to construct appropriate facilities to provide initial natural-gas service and are each intervenors in this proceeding. Each city desires to construct its own municipally-owned distribution systems. All own their own water systems and the Town of Sullivan also owns its own electric system.

The exhibits with respect to economic feasibility include maps reflecting the location of each city in relation to Oklahoma Illinois' proposed transmission line and the location of the proposed distribution system within each city. The data submitted indicated the number of customers by classification proposed to be attached in the first, second and third year as well as the estimated annual requirements, maximum day requirements and the basic day factors used in estimating each class and number of customers. Also shown is the estimated cost of each distribution system, the proposed method of financing, the proposed rate to be charged, estimates of cash flow, revenues, expenses and income and the estimated earnings and debt service coverage. In no instance was the debt coverage less than 1.64 times and in one instance ran as high as 2.5 times thus adequately meeting the minimum Commission requirements of at least 1.5 times, *Re Village of Franklin*, 17 FPC 119. Witness John S. Ranson, of Ranson and Company, Inc., a firm engaged in the investment banking business, testified that his company has agreed to purchase the bonds required to finance the individual proposals and that it was highly improbable that there would be any difficulty in carrying out their agreement.

It appears from the evidence that, although the projects are deemed otherwise acceptable, it would be more economical for the Cities of Bourbon, Sullivan, St. Clair and Washington to derive the necessary gas supplies from a common lateral. As a matter of fact, the Cities of Steelville and Cuba, lying south of the Oklahoma Illinois pipeline, have already entered into an agreement to share the cost of a common lateral. Accordingly, on the basis of the evidence of record, it is found that the foregoing projects are feasible and financeable and a certificate granting an allocation of natural gas to the municipalities of all eight communities will be granted, conditioned however upon (1) elections to be held approving the issuance of bonds to finance the projects as proposed and advising the Commission thereof and (2) the execution of an agreement by the municipalities of Bourbon, Sullivan, St. Clair, and Washington for the construction and use of a common lateral from the Oklahoma Illinois mainline.

The municipalities of Rolla and St. James, intervenors in this proceeding, also seek an allocation of natural gas from Oklahoma Illinois. Each plans a municipally-owned distribution system and each presently owns and operates its own water and electrical system. On the basis of the engineering reports submitted in connection with the application indicating the economic feasibility of the project and the commitment by an investment banking firm to buy the proposed bonds of both municipalities at a discount of 5 to 6 percent, it is ordered that a certificate be issued granting an allocation of natural gas to those municipalities conditioned upon elections to be held approving the issuance of bonds to finance the project as proposed with advice to the Commission as to the result of such election.

Oklahoma Illinois proposed to make available for purchase by Laclede Gas Co. volumes of up to 15,000 Mcf maximum daily delivery at an annual load factor of 30 percent for the first year, 40 percent for the second year and 66⅔ percent for each year thereafter, with firm winter peaking service of 15,000 Mcf per day available for the period November 15 through March 15. Laclede, however, has positively expressed no interest in the purchase of gas from Oklahoma Illinois and has actively supported the Natural-Transmission-Fuel applic tion.

Laclede was one of the prime movers in the complaint proceedings heretofore brought against Fuel which resulted in a reallocation by the Commission in Opinion No. 355, *supra*, of Mississippi's total gas supply so as to give the utilities a larger share thereof with a corresponding reduction in the portion allotted to the industrials. In the *Granite City Steel* case, *supra*, the Court reversed the Commission insofar as the reallocations of gas were concerned. This would appear to leave Laclede and the other utilities in the same position they were in prior to instituting the complaint proceeding. Laclede's answer, and the reason given for its support of the Mississippi application and refusal to buy from Oklahoma Illinois in the event Oklahoma Illinois were certificated, is that its increased requirements will be met from the supplies of propane under its 10-year contract with Phillips Petroleum Company, the increased development of storage facilities, and its reliance upon a contract with Fuel to use its "best efforts" to provide the required quantities. Laclede's Exhibit 62, Schedule 1, shows an increase in total maximum day requirements of 84,000 Mcf in 1963, 45,000 Mcf in 1964, 40,000 Mcf in 1965 and 20,000 Mcf in 1966. It is intended that such increases will be met by increased purchases of 15,000 Mcf per day from Fuel until 1966. Reliance is thus necessarily placed on Fuel to use its "best efforts" to provide the increased requirements of pipeline gas.

When questioned as to the basis of Mississippi's "best efforts" in view of the past stormy relationship between them, Laclede's vice-president testified that "we think with the Commission's help we have brought them to heel" and that "I don't think they want to go through another complaint case and I think they will perform," to which was added, "My judgment may be very bad, I don't know." It thus appears that some doubt as to Fuel's best efforts still lingers in the mind of Laclede's directorate and on the basis of past history as hereinbefore discussed it is possible such misgivings may well be justified.

In the complaint proceeding in 1960, *supra*, Laclede's President testified as follows:

> Q. Tell me, Mr. Derrick, what is your position with respect to Mississippi's obligation to supply Laclede with its increasing gas needs?
>
> A. We believe that Mississippi * * * has the responsibility to make every reasonable effort to supply our actual gas requirements. But whatever the reason, Mississippi has failed to do so. We believe that in these circumstances we are entitled to seek the assistance of this Commission in increasing our stated demand if any of the gas is available on Mississippi's system and in modifying Mississippi's tariff to the extent that it will make it possible for us to take more gas without subjecting ourselves to the payment of outrageously high penalties.
>
> Q. Now, if Mississippi is not able or is unwilling to meet your requirements, then what do you plan to do?
>
> A. In that event we would feel that we have no alternative but to look elsewhere for part of the gas supply which we simply must have if we are going to continue meeting our public utility obligations to the people of St. Louis.

In view of the above, it does not appear that the situation has changed so drastically since that time as to presently preclude the possibility of sales to Laclede, in the event another source of supply should appear on the scene.

The record shows that at one time negotiations were carried on between Oklahoma Illinois and Laclede with respect to participation as a stockholder of Oklahoma Illinois. It appears that the deal collapsed by reason of Laclede's insistence on ownership of more than 50 percent of the Oklahoma Illinois stock. The mere fact that negotiations for participation took place would indicate that Laclede at least considered doing business with Oklahoma Illinois. The

circumstances herein appear very similar to the situation which existed in *Midwestern Gas Transmission Co.* v. *F.P.C.*, 258 F. 2d 660, 666 where the court said:

> As we have shown above, Midwestern solicited commitments from the various distributors in Natural's service area. Peoples, the largest of the distributors and Natural's parent company, flatly refused to buy gas from Midwestern. Natural's other distributors, though in need of additional gas and willing to buy it from any certificated supplier, quite naturally would not commit themselves to Midwestern's proposal while Natural was still in competition for the certificate. To say that they would not buy gas from Midwestern even if it became a certificated supplier is unrealistic.

Industrial Sales

The 14 industrial concerns which contracted with Oklahoma Illinois for supplies of natural gas are each nationally prominent and among the leaders in their respective industries. Listed below are the individual concerns and a comparison of the firm and interruptible gas purchases projected for each by Fuel and Oklahoma Illinois in 1964.

PROPOSED ANNUAL VOLUMES FOR 1964

	Mississippi River Fuel (exh. 58) mcf at 14.9 psia		Oklahoma Illinois (exh. 89) mcf at 14.65 psia	
	Firm	Interruptible	Firm	Interruptible
American Oil Co.		3,506,000	2,745,000	2,671,000
American Steel	200,000	181,000	419,000	104,900
American Zinc Co.	800,000		366,400	58,500
Cerro Corp.	900,000	33,000	934,000	182,500
Dow Chemical		633,000	1,220,000	328,000
Granite City Steel	4,600,000	3,779,000	8,500,000	2,750,000
Laclede Steel	2,150,000	1,815,000	3,263,200	1,095,000
National Lead Co.	300,000	50,000	175,000	
National Lead Titanium		2,762,000	2,555,000	2,007,500
Olin Mathieson	675,000	200,000	846,300	248,000
Owens Illinois Glass	2,000,000	1,700,000	4,380,000	460,000
Pittsburgh Plate Glass	1,650,000	200,000	1,058,500	441,000
Shell Oil Co.		5,681,000	6,588,000	3,300,000
C. K. Williams & Co.	180,000		227,200	
	13,455,000	20,540,000	33,277,600	13,646,400

Total Mississippi River Fuel firm and interruptible at 14.9 psia, 33,995,000.
Total Mississippi River Fuel firm and interruptible at 14.65 psia, 34,574,955.
Total Oklahoma Illinois firm and interruptible at 14.65 psia, 46,924,400.

Fuel argues that the industrial sales volumes estimated by Oklahoma Illinois are grossly overstated. But on the evidence of record such contention cannot be sustained. Each of the industrials presented a responsible officer of the company, each of whom testified with regard to their respective gas requirements. In rebuttal, Fuel's witness, Miller testified that the historical load factors of these 14 industrial customers were considerably less than the anticipated 89 percent load factor for all industrial sales reflected by the projected Oklahoma Illinois volumes.

In the first place, it is assumed that the industrial company officials who testified are more familiar with the operations and the gas requirements of their respective companies than Fuel's witness. Secondly, it should be pointed out that the historical load factors referred to by Mr. Miller would of necessity be lower than the Oklahoma Illinois projected load factors, since the former are based on gas purchases of only those volumes made available to the industrials by Fuel in past years, whereas the latter are based on anticipated actual requirements.

Had Fuel in the past made available the actual natural gas requirements of the industrials, the historical load factor, based on the resulting increased volume of sales, would have been considerably higher. Fuel points to the fact that the projected gas requirements of several of the industrial concerns are speculative since they are based on contemplated future expansions and new uses for gas not yet fully researched. But what Fuel does not take into account is that without the possibility and availability of increased volumes these expansions and the application of natural gas to new processes, with the resultant benefits to the economic welfare of the public in the St. Louis area, would be completely frustrated. It is therefore found that the projected volumes of gas sales to the industrial concerns are reasonable.

Financeability

As set forth under the "C" series of exhibits, it is contemplated that the total cost of the proposed facilities will be approximately $61,798,000, which will be financed by issuance of the following securities:

First

	Principal amount	Percent
First mortgage pipeline bonds, 5½ percent	$46,500,000	74.4
6 percent subordinated debentures	6,000,000	9.6
Common stock	10,000,000	16.0
Total	62,500,000	100.0

Oklahoma Illinois presently has no commitments for the sale of the proposed securities and a definite plan of financing has not as yet been established. It is proposed that the common stock be distributed as follows:

	Shares	Amount
Initial sale at $1 per share (outstanding)	300,000	$300,000
In units with debentures at $10 per share	240,000	2,400,000
Sale to shareholders at $10 per share	730,000	7,300,000
Total	1,270,000	10,000,000

The 300,000 shares of common stock presently outstanding are owned as follows:

	Shares	Percent
Pan American Petroleum Corp	139,500	46.5
Shell Oil Co	100,500	33.5
The Fish Engineering Corp	60,000	20.0
Total	300,000	100.0

The present stockholders are also committed to purchase, at the price offered to the public, over 60 percent of the common stock to be issued in the same proportions in which the stock is presently held by them.

It is intended that the bonds will be sold privately to financial institutions under a contract providing for the take-down of the money and the sale of bonds as construction proceeds. Mr. Francis Kernan, a partner in the firm of White Weld & Company, investment bankers with long experience in the financing of pipelines, testifying in support of the financeability of the Oklahoma Illinois project, stated that interest would have to be paid at the rate of 5½ percent on the first mortgage bonds and 6 percent on the subordinated debentures. The $6 mil-

lion in debentures would be sold to the public in units consisting of a $100 debenture and either four or five shares of common stock at $10 per share, depending on the market conditions at the time of issuance. The balance of the stock is to be offered to the public at $10 per share with approximately $5 million thereof being purchased by the original stockholders. Mr. Kernan testified, with respect to the necessity for satisfactory coverage of the interest on the proposed subordinated debentures, that as a "rule of thumb", earnings should be about one and one-half times the interest coverage after taxes and two times before taxes, although financial institutions preferred a better proportion. Mr. Kernan stated that he considered the total interest coverage in the fifth year, shown in Exhibit 176 as 1.42 times, adequate and thought the financing might be accomplished with 1.25 times. He stated:

> I think that would be very lean, but you are selling a unit, and assuming that the purchaser of the units can consider that he has got a reasonable chance to make some money out of his common stock, you can sell this debenture on a basis where you couldn't without the common stock. It is not a very fine art, but around those ratios I think would permit this to be done, particularly with the company being controlled by strong stockholders with presumably good management which I think has a substantial effect too.

It is estimated that the rate of return in the third year of operation will be 7.45 percent with an interest coverage ratio after taxes of 1.49 times and before taxes of 2.04 times. Without sales to Laclede it is estimated that the coverage ratio of the project, after taxes, will be approximately 1.32 times and, in the opinion of Mr. Kernan, would still be financeable.

It is anticipated that the first mortgage bonds will be retired in 35 semi-annual installments of $1,290,000 beginning in the third year of operations and one final installment of $1,350,000. The debentures will be retired in 21 years after date of issuance. The first $200,000 semi-annual payment applied thereto to be made in the sixth year of operations. It was recommended by Mr. Kernan that the sinking fund to retire the bonds should be reduced to 80 percent of the maturity value and the annual amounts to the sinking fund for the subordinated debentures should be reduced from $400,000 to $200,000. In addition, it was further recommended that provision for conversion of the subordinated debentures, after six months at the option of the company, would be financially feasible.

The total long-term debt proposed by Oklahoma Illinois represents 84 percent of the total capitalization for the project. This is in excess of the 75 percent limit which the Commission has used as a standard in prior certificate cases.[15] Where the excess amount, however, was represented by securities which could be converted at the option of the pipeline company, the Commission has permitted long-term debt to exceed 75 percent.

Accordingly, the certificate to be issued to Oklahoma Illinois will contain a condition that the common equity be maintained at not less than 15 percent of the total capitalization; that the subordinated debentures be convertible at the option of the company without restriction; that the long-term debt, exclusive of the subordinated debentures not exceed 75 percent; and that no dividends be paid on the common stock as long as the subordinated debentures are outstanding, unless the total long-term debt, including the debentures is less than 75 percent of the total capitalization.

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[15] *San Juan Pipe Line Company*, 9 FPC 170, 187, *Virginia Gas Transmission Corporation, et al.*, 9 FPC 453, 455, *Transcontinental Gas Pipe Line Corporation*, 9 FPC 32, 61, *Permian Basin Pipeline Company, et al.*, 12 FPC 85, 93, *Houston Texas Gas and Oil Corporation, et al.*, 16 FPC 118, 140.

The staff expresses concern with Oklahoma Illinois' intention to sell stock and debt securities in unit as a "package deal." The present plan is for White Weld & Company to act as the underwriter with a sale of the unit at a price which will be determined by the parties at the time of sale, the money to be paid by the underwriters to Oklahoma Illinois. The unit will then be sold by the underwriting group to the public who will then be able to split the unit and sell the debentures or common stock separately.

Also remaining to be settled is the question of accounting for the allocation of the proceeds received from the underwriters between the common stock and the debentures, which question it is intended will also be determined at the time of sale of the units. Staff proposes that since there will be no free market for the common stock when the units are sold, the difference between the offering price per unit to the public and the price per unit received by Oklahoma Illinois should be taken as a percentage of the offering price and treated as the rate of discount on the debenture. This method has previously been employed by the Commission[16] and it will therefore be required that the discount on the debentures sold as a part of a unit be determined in the manner suggested by staff.

In view of the absence of any definitive plan of financing, the Oklahoma Illinois certificate will further be conditioned to require that Oklahoma Illinois submit to the Commission for approval the plan which Oklahoma Illinois proposes to use to finance its project before putting it into effect. Such plan will contain detailed information on all securities to be issued or assumed, including estimated cost, the manner of financing and copies of any prospectus which is intended to be used. Upon approval by the Commission, and after execution of the plan, Oklahoma Illinois will immediately notify the Commission of the result and the actual costs of financing.

Economic Feasibility

Based on projected third year sales of 52,168,583 Mcf, Oklahoma Illinois' Exhibit 94–C shows an overall rate of return of 7.45 percent. In arriving at this figure, Oklahoma Illinois calculated the revenues to be derived from the following proposed rate schedules, more fully explained in its proposed tariff:

(a) The CD–1 schedule which would be available to any gas distributing company when the contract demand specified in an executed service agreement is 5,000 Mcf or higher. This rate contains a demand charge of $3.10 per month per Mcf of billing demand and a commodity charge of 25¢ per Mcf. The minimum bill is on an annual basis consisting of the annual demand charge and 66⅔% of the contract demand times the number of days in the year times the commodity charge.

(b) The G–1 schedule which would be available to any gas distributing company when the contract demand specified in an executed service agreement is less than 5,000 Mcf. The rate is set at 49¢ per Mcf. The minimum bill is $1,000 per month for each delivery point having a contract demand of more than 2,000 Mcf. If the contract demand is less than 2,000 Mcf, then the minimum bill is $500 per month for each delivery point.

(c) The WPS–1 schedule which would be available to any gas distributing company purchasing gas under the proposed rate schedules CG–1 or G–1. Service under this schedule would be firm but limited to the period November 15 through March 15. There is no minimum bill and the rate is set at 70¢ per Mcf.

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[16] *Florida Gas Transmission Co., et al.*, Docket No. G–9262, *et al.*

Since the Oklahoma Illinois revised project, as reflected in the "C" series of exhibits to which the discussion herein is limited eliminates any consideration of transportation contracts between Oklahoma Illinois and the industrials, the proposed T–1 rate schedule was not utilized in the computation of overall rate of return. Instead, Oklahoma Illinois utilized a demand and commodity component equal to that proposed in the CD–1 schedule. The result is to equate the total cost to the industrial customers to what they would have paid to the producers and to the pipeline under the so-called non-jurisdictional contracts.

Based on the testimony of Mr. Kernan, Oklahoma Illinois' financial witness, that in order for a project to be economically feasible it is necessary to have at least a 7 percent overall rate of return and a minimum return of 12 percent on common equity (which figures are not disputed) it would appear that the Oklahoma Illinois project, based on total sales of 52,168,583 Mcf annually is economically feasible.

Mississippi, however, points to the fact that the total sales upon which these return percentages are calculated, include sales to Laclede with whom Oklahoma Illinois has no contract. Exhibit 89–C indicates projected sales to Laclede in the third year, of 2,838,600 Mcf. Eliminating these sales to Laclede from the total projected third year sales and calculating the rate of return on sales of 49,329,983 Mcf, the balance remaining, results in an overall rate of return of 6.62 percent and a rate of return of 7.55 percent on common equity which according to the standards enunciated by Mr. Kernan would appear to make the Oklahoma Illinois project not economically feasible. None of the briefs supporting the Oklahoma Illinois application address themselves to this point. Staff's brief notes that at the end of the third year Oklahoma Illinois would have a net cash buildup of approximately $11 million, the income from which would to some extent increase the rate of return on common equity, but not sufficient to raise the rates of return, both overall and on common equity, above or equal to the standards set out by Mr. Kernan.

It is realized that Oklahoma Illinois' proof of economic feasibility, without the sales to Laclede, is somewhat less than marginal. These facts to the contrary notwithstanding, since the Oklahoma Illinois project is in other respects considered acceptable and required by the public convenience and necessity a certificate herein will not be denied because of this defect.

There is reason to believe that Laclede's firm denial of any intention to make purchases from Oklahoma Illinois may not be as resolute as it appears. As recognized by the court in the *Midwestern Gas Transmission Company* v. *F.P.C.* case, *supra*, a situation on all fours with the instant case insofar as the relationship between distributor and pipeline is concerned, to say that Laclede would not buy gas from Oklahoma Illinois even if it became a certificated supplier is unrealistic.

Assuming further that there would be no sales to Laclede, a considerable potential for additional sales would appear in the application of Gas Service Company to serve additional towns and Fort Leonard Wood, an active military establishment, all evidence with respect to which was stricken from the record by reason of Gas Service Company's failure to secure franchises from the towns in question as required by the regulations and because of the paucity of evidence with respect to Fort Leonard Wood. It is presumed that a more appropriately supported application with respect to these towns and Fort Leonard Wood will be presented within a reasonable time. The sales to be derived therefrom would no doubt help to offset the apparent deficit in the rate of return purportedly necessary to make this project economically feasible.

Also to be considered is the fact that the principal stockholders in Oklahoma Illinois are two of the largest oil and gas producers in the world, namely Pan

American Petroleum Corp., which is 100 percent owned by Standard Oil Company of Indiana, and the Shell Oil Company. It would not appear to be within the realm of reason that companies as financially well situated as these, having a large investment in the Oklahoma Illinois project, would permit such project to go by the boards in the event that the rate of return during the formative years thereof were not up to expectations, or in fact even operated at a loss. Under the circumstances, it is considered that the Oklahoma Illinois project is both economically feasible and financeable.

Reserves

Oklahoma Illinois' Exhibits 86, 86–A, 166 and 167 indicate the reserves and deliverability of the Oklahoma Illinois project. Exhibits 86 and 86–A establish that as of January 1, 1963 there was available to the Oklahoma Illinois project proven contracted for remaining recoverable reserves of 1,072,288 MMcf at 14.73 psia from the Red Oak-Norris Field and northwest Oklahoma area combined. Not included are the reserves in the so-called "unaccounted for but available to Oklahoma Illinois" category. The available amounts are summarized below:

	As of July 1962 (exh. 86, Tabs 15, 32, 36)	As of Jan. 1, 1963 (exh. 86–A)	As of Jan. 1, 1963 (total)
Red Oak-Norris Field	808,925	905,608 (total)	905,608
Northwest Oklahoma	100,556 plus	12,690	113,246
Pipeline	45,471 plus	7,963	53,434
Total			1,072,288

For the 6-month period ending January 1, 1963 the reserves available to the Oklahoma Illinois project were increased by 117,336 MMcf by the addition of 7 new well completions in the Red Oak-Norris Field.

Mr. Robert W. Harrison, a consulting engineer and geologist with long experience in the appraisal of oil and gas properties, limited his calculation of the reserves in the northwest Oklahoma committed area to an 11 township reserve area only, thereby eliminating those reserves contained within the remaining 31 townships of the "committed area." He estimated that a total of 367,458 MMcf which he presently classifies as "probable reserves" will also be available to the Oklahoma Illinois project when the 11 township area is fully developed. The amount of 24,853 MMcf was placed in the "probable" category for the Red Oak-Norris Field.

Consistent with Commission precedent only proven, contracted for, reserves will be relied upon in determining the proposed requirements of the Oklahoma Illinois project. However, the 42 township committed area in northwest Oklahoma lies in a portion of the Anadarko Basin where exploration is continuing and ultimate reserves are presently unknown. Moreover, the extent of the localized deposits of hydrocarbons already discovered have not been completely defined. Practically every 640 acres (section) requires the drilling of a well before it can be eliminated as non-productive of gas, unlike other areas where accumulations of gas are controlled by, and confined to, major structural features found only at widely scattered locations. Inspection of the lithographic characteristics of the geological formations and the frequent occurrences of gas within these formations leads to the conclusion that the area must be classified as a "gas area."

Oklahoma Illinois' Exhibit 167 presents a deliverability study reflecting scheduled deliveries from proven reserves under contract as of January 1, 1963 from its various sources of supply to meet the daily and annual requirements of

customer classifications. Revision of the Oklahoma Illinois original project, eliminating non-jurisdictional sales, further eliminated any issue with respect thereto concerning the availability and duration of specific supplies of gas from specific acreage to meet specific customer classification requirements. With the dedication of all the acreage for sales of gas to Oklahoma Illinois, the deliverability study on its face reflects an ability to meet the totality of customer requirements for a period beyond the twelfth year.

On August 27, 1962 Oklahoma Illinois entered into a contract with Colorado Interstate Gas Company for the purchase of up to 40,000 Mcf of natural gas in the field where produced on an interruptible basis. The Presiding Examiner has taken official notice of the application filed January 18, 1963 in connection therewith. While this supply of gas has not been included in the available reserves relied upon by Oklahoma Illinois for this project, or in consideration of the Oklahoma Illinois project as a whole, this agreement does demonstrate the availability of alternate sources of supply.

THE MIDWEST MISSOURI APPLICATION

Midwest Missouri Gas Company, pursuant to its application in Docket No. CP63–6, filed pursuant to Section 7(a) of the Natural Gas Act, seeks an order directing Mississippi Fuel to establish a physical interconnection of its transportation facilities with those facilities proposed to be constructed by the applicant and to sell and deliver to the latter its natural gas requirements. Fuel has responded that when authorized to do so by this Commission, it will serve the applicant, or any other gas distributor, certificated to render natural gas service to the northern area of Jefferson County, Missouri. The Application was opposed by Missouri Natural Gas Company and Laclede.

Since conclusion of the instant hearing, Laclede has entered into an option agreement to acquire all of Midwest Missouri's stock from its present owner and has agreed to sell 40 percent thereof to Missouri Natural, all subject to approval by the Missouri Public Service Commission. The Commission has been advised that following receipt of such regulatory authority, Laclede and Missouri Natural will file with this Commission applications to withdraw Midwest's pending application.

In view of the foregoing, the issues raised by Midwest Missouri's application and the opposition filed thereto would appear to be moot. Therefore, pending the action of the Missouri Public Service Commission with respect to a sale of Midwest Missouri stock to Laclede, no further action will be taken at this time in this proceeding with respect thereto. It is directed that, should the Missouri Public Service Commission fail to act favorably on the aforementioned proposed sale, the Commission and the Presiding Examiner be so advised and appropriate action will thereafter be taken.

ADDITIONAL FINDINGS AND CONCLUSIONS

Upon consideration of the entire record herein, the evidence adduced, and the briefs filed, it is found and concluded, in addition to the findings and conclusions heretofore set out, that:

(1) Oklahoma Illinois Gas Pipeline Company (Oklahoma Illinois), applicant in Docket No. CP62–260, a Delaware corporation, having its principal place of business in Tulsa, Oklahoma, and authorized to do business in the States of Oklahoma, Kansas, Missouri, Illinois, Arkansas, and Texas, upon commencement of operations of the facilities authorized herein, will be engaged in the trans-

portation and sale of natural gas in interstate commerce for resale and will be a "natural-gas company" within the meaning of the Natural Gas Act.

(2) The proposed facilities of Oklahoma Illinois, as fully described in its application and as herein authorized and conditioned will be used in the transportation of natural gas in interstate commerce and in the sale of natural gas in interstate commerce for resale for ultimate public consumption, and the construction and operation thereof, as herein authorized and conditioned, are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Natural Gas Pipeline Company of America (Natural), applicant in Docket Nos. CP62–243 and CP63–99, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission. The proposed facilities of Natural, as more fully described in its application, would be used in the transportation of natural gas in interstate commerce and in the sale in interstate commerce for resale for ultimate public consumption, and the construction and operation thereof, as proposed by Natural would, if authorized, be subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(4) Mississippi River Transmission Corporation (Transmission) is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission, and, upon commencement of the operation of facilities and sales as proposed by Transmission in Docket Nos. CP62–242 and CP63–100, and as proposed in motions to amend the certificate issued in Docket Nos. CP61–339 and CP62–76, would be engaged in the transportation of natural gas in interstate commerce and in the sale of natural gas in interstate commerce for resale for ultimate public consumption, and the operation thereof, if authorized, would be subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(5) Mississippi River Fuel Corporation (Fuel) is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission, and, upon commencement of operation of facilities and sales as proposed in Docket No. CP63–105 and as proposed in a motion to amend a certificate issued in Docket No. CP61–341, would be engaged in the transportation of natural gas in interstate commerce and in the sale of natural gas in interstate commerce for resale for ultimate public consumption, and the operation thereof, if authorized, would be subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(6) Panhandle Eastern Pipe Line Company (Panhandle) is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission, and the facilities proposed, as more fully described in the application in Docket No. CP63–106, would be used in the transportation of natural gas in interstate commerce and in the sale of natural gas in interstate commerce for resale for ultimate public consumption, and the construction and operation thereof would, if authorized, be subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(7) The applications of Oklahoma Illinois, Natural, Transmission, Fuel and Panhandle are mutually exclusive, since each proposal includes the sale and delivery of natural gas to substantially the same persons in the same marketing area, namely, metropolitan St. Louis, and the granting of a certificate to Oklahoma Illinois, or to Natural-Transmission-Fuel, or to Panhandle, renders the applications of the others infeasible.

(8) Public convenience and necessity require that initial natural gas service be rendered to the central Missouri area, as hereinafter authorized, and that additional supplies of natural gas be provided to the metropolitan St. Louis area by means of an additional source of supply, as hereinafter authorized, to meet the present unsatisfied natural gas requirements and to assure that the increasing future domestic needs of that area will be satisfied. The increase in rate, if any, which may inure to the consumers by reason of the entry of an additional source of supply in the St. Louis area will be offset by the advantages to be gained thereby as hereinbefore more fully discussed.

(9) The independent producer applicants, in Dockets consolidated with Docket No. CP62-260, proposing to sell natural gas to Oklahoma Illinois, will, upon commencement of such sales, as hereinafter ordered and conditioned, be engaged in the sale of natural gas in interstate commerce for resale and each will be a "natural-gas company" within the meaning of the Natural Gas Act.

(10) The transportation, sale, and delivery of natural gas by Oklahoma Illinois, as depicted in the "C" series of exhibits and other exhibits related thereto to the extent authorized herein, are required by the public convenience and necessity, and a certificate therefor should issue, as hereinafter ordered, upon the terms and conditions in such order.

(11) The construction and operation of facilities and rendering of service as proposed by Oklahoma Illinois as herein authorized and conditioned are required by the public convenience and necessity and a certificate therefor should issue, as hereinafter ordered and conditioned, authorizing the sales of natural gas on an interruptible basis as therein proposed, and the following maximum day firm service:

ESTIMATED MAXIMUM DAY NATURAL GAS REQUIREMENTS FOR THIRD YEAR OF OPERATION

SERVICE CLASSIFICATION

	Mcf
Sales for resale:	
Firm:	
Associated Natural Gas Company, Buffalo, Missouri	408
The Gas Service Company:	
Bolivar	1,935
Lebanon	4,770
Laclede Gas Company, St. Louis	15,000
Municipal Systems:	
Bourbon	642
Cuba	1,319
Pacific	1,600
Rolla	4,990
St. Clair	1,166
St. James	1,796
Steelville	902
Sullivan	2,166
Washington	3,642
Waynesville	1,038
Total—Firm	41,374
Peaking service: Laclede Gas Company, St. Louis	15,000
Total—Resale	56,374

Direct sales:	Mcf
American Oil Company, The	7,500
American Steel Foundries Inc	1,440
American Zinc Company of Illinois	1,135
Cerro Corporation	3,200
Dow Chemical Company, The	5,000
Granite City Steel Company	28,000
Laclede Steel Company	12,000
National Lead Company (Granite City)	570
National Lead Company (Titanium Div.)	7,000
Olin Mathieson Chemical Corporation	2,600
Owens-Illinois Glass Company	12,000
Pittsburgh Plate Glass Company	3,500
Shell Oil Company	18,000
C. K. Williams & Co	925
Total—Direct sales	102,870
Total, all classes (14.65 psia)	159,244
Total, all classes (14.73 psia)	158,379

(12) Public convenience and necessity requires the construction and use of a common lateral by the municipalities of Sullivan, St. Clair, Pacific and Washington.

(13) As hereinbefore discussed the project of Oklahoma Illinois is economically feasible.

(14) Oklahoma Illinois has an assured and adequate supply of natural gas sufficient to meet the present and projected requirements of central Missouri and the present unsatisfied and reasonably foreseeable future requirements of the metropolitan St. Louis area.

(15) Oklahoma Illinois proposes to finance the cost of the project through issuance of first mortgage bonds aggregating $46,500,000, debentures convertible into preferred stock at the option of the company six months after the commencement of operation aggregating $6,000,000, and shares of common stock aggregating $10,000,000, providing total cash proceeds of $62,500,000; subject to the provisions and conditions hereinafter set forth, such plan is adequate and reasonable and the project can be financed in accordance therewith.

(16) The participation of Pan American Petroleum Corporation, Shell Oil Company, and The Fish Engineering Corporation in the furtherance of the Oklahoma Illinois project, as more fully set forth in their respective contracts, falls within the Definitions 5(A) and 5(B) of the Commission's Uniform System of Accounts Prescribed for Natural Gas Companies. Consequently, any finding herein relating to the economic feasibility of the Oklahoma Illinois project shall not be construed as a determination, or waiver, of the proper accounting procedures applicable to profits realized by these affiliated interests nor in the treatment to be accorded such profits in future rate making proceedings.

(17) Oklahoma Illinois is able and willing properly to do the acts and to perform the service herein authorized and to conform to the provisions of the Natural Gas Act, as amended, and the requirements, rules and regulations of the Commission thereunder.

(18) The proposed sales of natural gas to Oklahoma Illinois by the independent producers, as more fully described in their respective applications, consolidated herein with Docket No. CP62-260, as heretofore noted, will be sales of natural gas in interstate commerce for resale for ultimate public consumption

and such sales are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(19) Public convenience and necessity require that the applications of independent producers consolidated herein with Docket No. CP62–260 to sell natural gas to Oklahoma Illinois be granted, conditioned, however, so that the initial contract rate shall not be in excess of the interim area price as herein determined by the Commission, and subject also to the order or orders of the Commission to be issued in Rule Making Docket No. R–199.

(20) The construction and operation of facilities proposed by Natural in Docket Nos. CP62–243 and CP63–99 would continue the status of Mississippi as the sole supplier in the St. Louis area and as hereinbefore discussed are not required by the public convenience and necessity.

(21) The construction and operation of the facilities proposed, and service to be rendered thereby as more fully stated in the docketed applications of Fuel and Transmission are not required by the public convenience and necessity for the reasons more fully hereinbefore set forth.

(22) The construction and operation of the facilities proposed by Panhandle in Docket No. CP63–106 as hereinbefore discussed are not required by the public convenience and necessity.

ORDER

WHEREFORE, *It is ordered*, subject to review by the Commission on appeal, or upon its own motion, as provided by the Commission's Rules of Practice and Procedure, that:

(A) All applications consolidated in the proceedings of Natural Gas Pipeline Company of America, Mississippi River Transmission Corporation and Mississippi River Fuel Corporation, and the related motions to amend previously issued certificates of public convenience and necessity, are hereby denied.

(B) The application of Panhandle Eastern Pipe Line Company, is hereby denied.

(C) Subject to the terms and conditions of this Order a certificate of public convenience and necessity is hereby issued to Oklahoma Illinois Gas Pipeline Company to construct and operate the facilities hereinbefore described, all as more fully depicted in the "C" series of exhibits and other exhibits related thereto in these proceedings, for the transportation of natural gas in interstate commerce and sale of natural gas in interstate commerce for resale, and direct sales to industrial customers as more specifically set forth in Finding of Fact No. 11. The granting of this certificate is conditioned upon the acceptance of, and full compliance with, all of the following conditions found to be required by the public convenience and necessity:

(i) Rescission of the transportation agreements between the pipeline and the industrial customers herein and the filing of proof thereof with the Commission.

(ii) Execution of agreements, satisfactory and acceptable to the Commission, between Oklahoma Illinois and all of the industrial customers involved herein within 30 days of final authorization by the Commission, to be accompanied also by the above-mentioned rescission under condition (i). Such agreements shall set forth the requirements of the industrial customers and the prices to be charged by Oklahoma Illinois in full conformance with the representations made in the "C" series of exhibits. Such agreements shall clearly state that in the event of an emergency the service to be rendered to the industrial customers shall be subservient to the requirements of the pipeline's existing or future resale markets, and to that extent the instant industrial service will be curtailable.

(iii) All capacity available on the proposed system over that required to meet the resale market's requirements and the industrial requirements herein author-

ized other than sales of interruptible gas, shall be, and is, reserved for a period of three years, from the date of completion of construction, for present or future resale markets.

(iv) Filing proof, satisfactory to the Commission, within 30 days of final Commission authorization, that all natural gas heretofore committed by the independent producers to industrial customers under acreage heretofore dedicated to the producer-industrial contracts has been committed to Oklahoma Illinois.

(v) Separate detailed accounts will be kept relating to the costs of construction of lateral lines to the plants of industrial customers. The grant of a certificate to Oklahoma Illinois here, wherein the pipeline does not propose to contribute toward the cost of construction of resale customers' lateral lines, shall not be deemed dispositive of that issue insofar as future proceedings are concerned.

(vi) Oklahoma Illinois will submit to the Commission for its approval and before putting it into effect, the plan which Oklahoma Illinois proposes to use to finance its project. Such plan will contain, among other things, detailed information on all securities to be issued or assumed, including estimated costs, the manner of financing, and copies of any prospectuses which are to be used. At such time as a plan of financing is approved by the Commission and after execution of said plan Oklahoma Illinois will immediately notify the Commission of the result of the plan and the actual costs of financing.

(vii) In addition to the conditions set forth above in (vi) relating to financing, Oklahoma Illinois will:

(a) Maintain its common equity at not less than 15% of the total capitalization.

(b) Make its Subordinated Debentures convertible at the option of the company, without restriction.

(c) Not allow its long-term debt, exclusive of the Subordinated Debentures, to exceed 75%.

(d) Not pay dividends on the common stock as long as the Subordinated Debentures are outstanding unless the total long-term debt including the debentures is less than 75% of the total capitalization.

(e) Determine the discount on the debentures, sold as a part of a Unit, in the following manner. If there is no free market for the common stock when the Units are sold, the difference between the offering price per Unit to the public and the price per Unit received by Oklahoma Illinois will be taken as a percentage of the offering price and treated as the rate of discount on the debenture.

(D) The certificates issued to Oklahoma Illinois herein shall be accepted in writing by a responsible official of Oklahoma Illinois, and the general terms and conditions set forth in paragraphs (a), (c) and (e) of Section 157.20 of the Commission's Regulations under the Natural Gas Act shall attach to the issuance of such certificate, and to the exercise of the rights granted thereunder.

(E) Any contract entered into between The Fish Engineering Corporation and Oklahoma Illinois for engineering and construction of facilities herein authorized shall be submitted to this Commission for approval thereof.

(F) Construction of the facilities herein authorized shall be commenced on or before February 28, 1965.

(G) Oklahoma Illinois will file, within 30 days of final Commission authorization, an appropriate tariff, acceptable to the Commission, consistent with the certifications herein granted.

(H) Certification of the Oklahoma Illinois proposal above is further conditioned on the acceptance of, and compliance with, by the producer-applicants herein, all of the conditions applicable thereto as set forth below.

(I) Consistent with the presentation of Oklahoma Illinois' "C" series of exhibits, certification of the applications of the producers herein is hereby authorized conditioned upon the acceptance of, and full compliance with, all of the

following conditions found to be required by the public convenience and necessity and supported by the evidence of record:

(i) Rescission of the producer-industrial contracts and the filing of proof thereof with the Commission within 30 days of final Commission authorization.

(ii) Excision of the proposed 18¢ per Mcf initial price and the substitution thereof of 17¢ per Mcf in those contracts dedicating acreage in the Northwest Oklahoma counties of Ellis and Woodward, 15¢ per Mcf in those contracts dedicating acreage in Dewey County, and 15¢ per Mcf in those contracts dedicating acreage in the Red-Oak Norris field, as the total initial price for the respective areas in those existing contracts between the producers and Oklahoma Illinois. Proof thereof shall be submitted to the Commission within 30 days of final Commission authorization.

(iii) All of the producer contracts are subject to the Commission's ultimate determination in the proceeding designated Docket No. R-199.

(iv) Certification here shall not be deemed dispositive of any issues to be raised in future proceedings relating to the affiliations existing between the Oklahoma Illinois pipeline and certain producer suppliers.

(J) Certification of the producer applications as conditioned above is further conditioned on Oklahoma Illinois' acceptance of, and compliance with, all of the conditions applicable to its certification.

(K) Due to the uncertainty at this time as to who shall construct and operate any plant for the processing of the volumes of gas to be produced from the acreage dedicated herein, all of the above certifications are further conditioned on the submission, for Commission approval and imposition of any conditions found to be required by the public convenience and necessity, of any definitive plan for construction and operation of said plant or plants.

(L) Subject to waiver by the Commission of the pertinent Regulations as hereinbefore discussed the request for an allocation of gas for the City of Buffalo, Missouri, by Associated Natural Gas Company and the application of The Gas Service Company for an allocation of gas to serve the Cities of Lebanon, Missouri, and Bolivar, Missouri, are hereby granted.

(M) With the acceptance of, and compliance with, all of the above conditions, allocations of gas are hereby granted, to the extent requested, to the Municipalities of Bourbon, Cuba, Pacific, St. Clair, Steelville, Sullivan, Washington, Waynesville, Rolla, and St. James, conditioned on the submission of proof, by each municipality, within 30 days of final Commission authorization, of elections having been held approving the issuance of bonds to finance the respective projects, provided further, that the Municipalities of Sullivan, St. Clair, Pacific and Washington, submit proof within the same period of the execution of an agreement for the construction and use of a common lateral.

MARTIN E. RENDELMAN,
Presiding Examiner.

OPINION NO. 451-A

SOUTHWESTERN PUBLIC SERVICE COMPANY, DOCKET NO. E-7038

OPINION AND ORDER ON REHEARING

(Issued September 9, 1965)

Syllabus

Upon rehearing, Commission *rejects*, as inappropriate, Southwestern's proposed substitute demand and energy charges for investor-owned customers; and *modifies* and *reaffirms* prior order.

Commissioner Bagge *not participating.*

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

Ross, *Commissioner:*

On March 2, 1965, 33 FPC 343, the Commission issued Opinion No. 451 and Order, "Opinion and Order Allowing Suspended Rates to Become Effective and Finding Just and Reasonable Wholesale Rates", in this proceeding. Applications for rehearing were filed on March 30, 1965 and April 1, 1965, by Southwestern Public Service Company (Southwestern) and Community Public Service Company (Community) respectively. In an order on rehearing issued April 26, 1965, 33 FPC 891, the Commission denied Community's application as well as Southwestern's application insofar as it proposed a rate increase for Lea County Electric Cooperative (Lea County), while granting rehearing for the purpose of considering whether, (1) Southwestern's proposed rate schedule for its investor-owned customers is an appropriate and equitable method of bringing the rates of such customers down to the level in Opinion No. 451; and (2) whether the rate schedule prescribed in Opinion No. 451 for Southwestern's sales to Lea County should be modified to provide for the retention of the demand ratchet provision now applicable to the Denver City delivery point (FPC Electric Rate Schedule No. 35) and to prescribe a rate schedule for the Plains delivery point similar to that applicable to the Denver City point of delivery.

The order permitted the other parties to the proceeding to file comments on the rate schedule proposed by Southwestern, as well as Southwestern to file comments on the suggested revision in the Lea County rate schedule within 30 days. Comments were filed by Southwestern, Community and Lea County on June 1, 1965. Pursuant to an order of the Commission, issued June 21, 1965, Southwestern filed a reply to the comments of Community and Lea County on June 29, 1965.

In its application for rehearing Southwestern, while accepting the Commission's determination of overall revenue, states that the charges to its three investor-owned customers under the rate schedule prescribed by the Commission do not reflect a reasonable distribution of revenue, being too low as to Community and Cochran Power Lighting Company (Cochran). It contends that with the impending loss as a customer in 1967 of New Mexico Electric Service Company (New Mexico), which is constructing its own generating facilities, the overall rate of return on Community and Cochran will be well below the rate of 6% approved by the Commission in Opinion No. 451. Southwestern proposes a substitute rate schedule whose rate design is intended to render more equal the respective rates of return on its investor-owned customers.

Community, in its comments objects to Southwestern's proposed rate schedule, expressing the view that a revision of the Commission's rate schedule because of Southwestern's projected loss of the New Mexico load in 1967 is unnecessary since the resultant rates of return earned under the Commission's schedule will be at a fair level and, in any event, a change now would be premature.

While the record before us indicates that New Mexico has acquired a site and is proceeding toward construction of its own generating facilities for completion in 1967, this fact is not determinative of the rate design. Both the Commission's prescribed rate schedule and Southwestern proposed substitute are based on 1962 test year figures, and that five years will have elapsed when Southwestern presumably ceases service to New Mexico. Considerable change in Southwestern's operations may take place during this period. As we stated in Opinion No. 451, *supra*, pp. 351, 352, "it is significant that Southwestern is now adding

large, efficient generating units to its system and undoubtedly will meet its future growth with even more efficient and economic facilities." We believe that such improvements in operation, load growth and other factors should result in providing a greater return in 1967 from the remaining two investor-owned customers than is now anticipated. In any event, Southwestern will have an opportunity when it ceases service to New Mexico to submit for filing with the Commission new rate schedules based on a revised cost of service study. We therefore, conclude that the adoption now of the substitute demand and energy charges proposed by Southwestern would be inappropriate.

In addition to a change in the demand and energy charges, Southwestern proposed the following modifications of the Commission's prescribed rate schedule: (1) Limit the service to that available from the existing facilities; (2) Provide for billing of individual points of delivery on a non-conjunctive basis; (3) Provide for purchase of entire requirements, and not for standby service; (4) Establish 13 kv as the minimum delivery voltage; (5) Provide for the contract demand to be a billing demand determinant; (6) Establish a power factor clause providing for adjustments if the power factor is below approximately 90%; and (7) Provide for an initial contract period of not less than five years.

In view of our determination that an adjustment of demand and energy charges of the schedule prescribed by the Commission would not be appropriate at this time, we are not inclined to undertake the extensive alteration of the prescribed schedule sought by Southwestern, particularly since these changes were not in issue during the course of the proceedings and are therefore not the subject of a record upon which these matters could be determined. We believe the rate schedule which we prescribed in Appendix C of Opinion No. 451 is just and reasonable and need not be modified except as hereinafter provided, with respect to power factor adjustment and the provision for a minimum delivery voltage.

Our disposition of Southwestern's proposed schedule modifications makes it unnecessary to consider Community's objections thereto except insofar as they relate to Southwestern's proposed power factor adjustment clause, the submission of which was permitted by the Commission in Opinion No. 451. In opposing its adoption, Community contends that the power factor adjustment is not imposed on cooperatively-owned customers, that the proposed adjustment differs from the standard heretofore used by Southwestern and that Southwestern has not made a showing that the adjustment is required in accordance with Opinion No. 451. In its reply to Community's objections, Southwestern points out that Community's power factor in 1962 ranged from a low of 94.3% to a high of 100% with an average monthly figure during the year of 99.218%, and that if Community's usage continues as in the past the proposed power factor adjustment will have no effect on Community's charges. As we indicated in Opinion No. 451, we believe that the incorporation of a power factor adjustment clause into the ordered rate schedule would be appropriate.

On the basis of data submitted by Southwestern in support of its proposed power factor adjustment provisions, we conclude that it is reasonable and appropriate and we shall order its incorporation into the Commission's prescribed rate schedule as follows:

> Demand will be increased one kw for each whole ten kvar by which the 30-minute reactive demand exceeds one-half the 30-minute kw demand at the time of maximum 30-minute kw demand.

With regard to Southwestern's proposal for a minimum delivery voltage under the rate schedule, we agree that one should be established for the prescribed

rate. However, since Southwestern reports several deliveries at the 12 kv level, we would establish it at 12 kv rather than at 13 kv. Accordingly, we are revising the schedule and adding a provisions that service at less than 13 kv will be at a charge of $1.50 per kw for the first 5,000 of monthly billing demand in lieu of $1.15 per kw. The additional 35¢ per kw would cover the cost of additional transformation investment calculated on the basis of 15% fixed charges on substation investment of $28 per kw.

The Commission in its order on rehearing, issued April 26, 1965, proposed two modifications of Southwestern rate schedule for Lea County and afforded Southwestern and Lea County an opportunity to express their views thereon. Southwestern and Lea County have indicated in their comments that the first modification which provides for the retention of the demand ratchet provision now applicable to the Denver City delivery point (FPC Electric Rate Schedule No. 35) would be acceptable. We believe that the demand ratchet provision is just and reasonable and should be retained in the Lea County schedule for the Denver City delivery point; we shall so order.

The second modification which would prescribe a rate schedule for the Plains delivery point similar to that applicable to the Denver point of delivery while acceptable to Southwestern is opposed by Lea County. Lea County contends that the service at the Plains point is not standby and supplementary as it is at Denver City but rather that it is firm service to a small section of its system. Southwestern maintains that it is standby and supplementary service. Since this matter was not in issue during the course of the hearings in this proceeding there is little evidence of record upon which to resolve the issue. Under the circumstances, we conclude that this modification should not be adopted.

The Commission finds:

(1) Southwestern's proposed rate schedule for its investor-owned customers is inappropriate except as hereinafter provided.

(2) The rate schedule prescribed in Opinion No. 451 for Southwestern's sales to its three investor-owned customers should be modified to incorporate a power factor adjustment clause and a provision for a higher demand charge for service at less than 12 kw as hereinafter provided.

(3) The proposed modification of the rate schedule ordered by the Commission for Southwestern's sales to Lea County, providing for the retention of the demand ratchet provision now applicable to the Denver delivery point (FPC Electric Rate Schedule No. 35), is just and reasonable.

(4) The proposed modification of the rate schedule ordered by the Commission for Southwestern's sales to Lea County prescribing a rate schedule for the Plains delivery point similar to that applicable to the Denver City delivery point is unsupported by the evidence of record and should not be adopted.

The Commission orders:

(A) Southwestern's application for rehearing with respect to its proposed rate schedule for sales to its three investor-owned customers is denied, except to the extent that it proposes modifications of the Commission's prescribed rate schedule in Opinion No. 451, ordered as follows:

(1) Add the following Power Factor clause:

POWER FACTOR

Demand will be increased one kw for each whole ten kvar by which the 30-minute reactive demand exceeds one-half the 30-minute kw demand at the time of maximum 30-minute kw demand.

(2) Substitute the following Demand Charge:

For service at 12 kv and above, $1.15 per kw for the first 5,000 kw of monthly billing demand; $0.95 per kw for all additional kw of monthly billing demand.

For service at less than 12 kv, $1.50 per kw for the first 5,000 kw of monthly billing demand; $0.95 per kw for all additional kw of monthly billing demand.

(B) The demand ratchet provision now applicable to Lea County at the Denver City delivery point (FPC Electric Rate Schedule No. 35) shall be retained in the revised schedule.

(C) Southwestern shall file within 30 days from the date of this order new schedules of rates and charges for the transportation and sale of electric energy to New Mexico Electric, Community and Cochran in accordance with the schedule set out in Appendix C of Opinion No. 451, as modified by this order, such new schedules of rates and charges shall be effective as of April 2, 1965.

(D) Southwestern shall file within 30 days from the date of this order new schedules of rates and charges for the transportation and sale of electric energy to Lea County in accordance with Findings 11 and 12 set out in Opinion No. 451, as modified by this order with respect to the Denver City delivery point, such new rate schedules shall be effective as of April 2, 1965.

Commissioner Bagge *not participating.*

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

TRANSWESTERN PIPELINE COMPANY, ET AL., DOCKET NO. G–20464, ET AL.; ARKANSAS LOUISIANA GAS COMPANY, DOCKET NOS. CP62–219 (PHASE I) AND CP62–219 (PHASE II)

ORDER GRANTING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND DENYING TEMPORARY CERTIFICATE

(Issued September 9, 1965)

On July 7, 1965 Arkansas Louisiana Gas Company (Arkla) filed a request for temporary authorization to construct and operate the 4,000 hp additional compression facilities at its Dunn station, included in its application of December 2, 1963 in Docket No. CP62–219 which is consolidated with Transwestern Pipeline Company, *et al.*, Docket No. G–20464, *et al.* In the alternative, Arkla requested that the proceedings in Docket No. CP62–219 be severed from the consolidated proceedings in Docket No. G–20464, *et al.* and set for immediate hearing. Arkla alleges the need for this added compression to enable it to take additional gas from producers in the Arkoma Basin.

We do not believe that the reason set forth by Arkla constitutes an emergency situation requiring the issuance of a temporary certificate within the meaning of our Regulations. However, none of the parties to the consolidated proceedings in Docket No. G–20464, *et al.* has filed opposition to Arkla's request herein to construct and operate the additional 4,000 hp, and Arkla has demonstrated in the supplemental data filed with its request for a temporary authorization that the facilities are useful to Arkla even if we were to deny its application for the remainder of Docket No. CP62–219 and all of CP64–125. Thus, there is no reason why this portion of Docket No. CP62–219 cannot be severed from the overall contested aspects of that proceeding and permanently certificated at this time. The remainder of the facilities being requested can be considered as Docket No. CP62–219 (Phase II) in the further proceedings to be held in accordance with our

Opinion No. 472 issued August 31, 1965, in *Transwestern Pipeline Company, et al.*, Docket No. G-20464, *et al.*, 34 FPC 659.

The Commission orders:

(A) Arkansas Louisiana Gas Company's request for temporary certificate is denied.

(B) A certificate of public convenience and necessity is granted to Arkansas Louisiana Gas Company in Docket No. CP62-219 (Phase I) for the construction and operation of 4,000 hp additional compression at its Dunn compressor station.

(C) The certificate issued by paragraph (B) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

(D) The facilities authorized in paragraph (B) above shall be constructed and placed in actual operation as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act within twelve months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; Charles R. Ross, David S. Black and Carl E. Bagge.

AREA RATE PROCEEDING, DOCKET NO. AR61-1; CLAUDE E. AIKMAN, ET AL., G-18466, ET AL.; NORTH CENTRAL OIL CORPORATION (OPERATOR), ET AL., CI60-435, ET AL.

ORDER PROVIDING FOR JOINT CONSIDERATION OF APPLICATIONS FOR REHEARING

(Issued September 10, 1965)

On August 5, 1965, the Commission issued its Opinion No. 468, 34 FPC 159, in the above-entitled proceeding. A number of participants have submitted applications for rehearing. The first duly verified application was filed by Skelly Oil Company on August 11, 1965; a number of others were not filed until some three weeks later near the end of the statutory period provided for such applications which expired on September 7.

In considering the numerous petitions filed on different dates by numerous respondents in the consolidated area proceeding it is obvious that considering the applications on a seriatim basis would greatly complicate the proceeding. Such a course of action might well lead to the disposition of particular issues without the benefit of the presentation of all the parties and could even result in the Commission's denial of one application for rehearing but granting a later application which may have presented different considerations with respect to the same issue. The possibility for such confusion is eliminated by considering and disposing of all petitions simultaneously.

It is thus apparent that an orderly conclusion of the proceeding will be facilitated by a consolidated, simultaneous disposition of the overlapping and in some instances mutually inconsistent points made in the numerous applications for rehearing of the opinion and order herein. The Natural Gas Act does not require the Commission to finally dispose of applications for rehearing within 30 days under such circumstances but merely provides that in the absence of any Commission action on the application within such period they may be deemed to have been denied.

ACCORDINGLY, we are hereby acting to defer completion of our consideration of the Skelly application and all other applications filed prior to the expiration of

the statutory period, to permit all timely filed applications for rehearing of Opinion No. 468 to be considered and passed upon together, and it is so ordered. This action is not to be deemed a grant or denial of such petitions on their merits in whole or in part.

Before Commissioners: Joseph C. Swidler, Chairman; Charles R. Ross, David S Black and Carl E. Bagge.

PAN AMERICAN PETROLEUM CORPORATION AND SOUTHLAND ROYALTY COMPANY

ORDER REJECTING RATE FILINGS

(Issued September 10, 1965)*

Pan American Petroleum Corporation (Pan American) and Southland Royalty Company (Southland) on August 13, 1965 and August 20, 1965, respectively, tendered for filing proposed rate increases for sales in the Permian Basin Area of Texas which exceed the just and reasonable ceilings prescribed by Opinion No. 468, issued August 5, 1965, 34 FPC 159. Both of the producers herein are producer-respondents in the Area Rate Proceeding, (Permian) in Docket No. AR61–1, *et al.*

Pan American proposes a rate increase from 16.0¢ to 20.5¢ per Mcf for a sale of residue gas obtained from gas-well gas and oil-well gas to Transwestern Pipeline Company under its FPC Gas Rate Schedule No. 329. The contract involved was executed on March 8, 1962, and thus covers a sale for "new gas" under Opinion No. 468. The contract conforms to the quality standards prescribed in Opinion No. 468 for pipeline quality gas, with the exception of delivery pressure. The contract provides that the delivery pressure shall not exceed 600 psig, whereas Opinion No. 468 prescribes a minimum delivery pressure of 800 psig. The proposed increased rate exceeds the 16.5¢ per Mcf ceiling for residue gas obtained from new gas-well gas and the 14.5¢ per Mcf ceiling for residue gas obtained from casinghead gas. Pan American seeks to make its proposed rate effective as of September 1, 1965, the contractually provided effective date.

Southland proposes a rate increase from 15.6488¢ to 16.6584¢ per Mcf for a sale of gas-well gas and low pressure flash gas to El Paso Natural Gas Company under its FPC Gas Rate Schedule No. 14. The contract involved was executed on February 16, 1952, and thus covers a sale for "old gas" under Opinion No. 468. The contract conforms to the quality standards prescribed in Opinion No. 468 except for total sulphur content and delivery pressure. The contract provides for a maximum of 1000 grains of total sulphur per 100 cubic feet of gas whereas Opinion No. 468 provides for a maximum of 20 grains per 100 cubic feet. As for pressure, the contract provides that the delivery pressure shall be at the natural wellhead flowing pressure not to exceed, however, 1000 psig. If the average well-head flowing pressure declines to less than 1000 psig, then the buyer agrees to lower the pressure of its gathering system or install compression facilities to permit the delivery of gas at wellhead flowing pressure down to 250 psig. The proposed rate exceeds the 14.5¢ per Mcf ceiling for gas-well gas sold under contracts executed before January 1, 1961. Southland requests an effective date of August 20, 1965, for its proposed rate increase.

For the reasons set forth in our order rejecting rate filing issued on August 26, 1965, in the matter of *Socony Mobil Oil Company, Inc. (Operator), et al.*, 34

*See orders granting rehearing re Pan American Petroleum Corp., Docket No. RI66–154 issued November 5, 1965, 34 FPC 1250; Southland Royalty Co., Docket No. RI66–231 granting reconsideration issued January 3, 1966, 35 FPC 11.

FPC 595, which matter presented similar circumstances as involved here, we conclude that Pan American and Southland's subject rate increases should be rejected as hereinafter ordered.

The Commission orders:

Pan American's proposed rate increase under its FPC Gas Rate Schedule No. 329, and Southland's proposed increased rate for sales under its FPC Gas Rate Schedule No. 14, tendered for filing on August 13, 1965 and August 20, 1965, respectively, are hereby rejected.

Before Commissioners: Joseph C. Swidler, Chairman; Charles R. Ross, David S. Black and Carl E. Bagge.

ARKANSAS LOUISIANA GAS COMPANY, DOCKET NO. CP61-311

ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND ACCEPTING SUPERSEDING TARIFF SHEET FOR FILING

(Issued September 13, 1965)

On July 12, 1965, Arkansas Louisiana Gas Company (Applicant) filed in Docket No. CP61-311 an application to amend the order of the Commission issued November 21, 1961, 26 FPC 749, as heretofore amended July 23, 1962, 28 FPC 204, July 22, 1963, 30 FPC 364, and September 4, 1964, 32 FPC 700, authorizing among other things the sale of natural gas to Texas Eastern Transmission Corporation.

Applicant requests by the instant application that the authority for the sale to Texas Eastern Transmission Corporation (Texas Eastern) be extended for another year, to July 22, 1966, as more fully stated in the application to amend.

Applicant concurrently filed with the application for an extension of time its First Revised Sheet No. 131 of its FPC Gas Tariff Original Volume No. 3 in order that its rate schedule XFS-19, which covers this sale will be conformed to the new termination date.

Due notice of the filing of the application to amend and opportunity for hearing thereon have been given by publication in the Federal Register on August 18, 1965 (30 F.R. 10261). No protest, petition to intervene or notice of intervention has been filed in the proceeding concerning this amendment.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that (1) the Commission's order issued November 21, 1961, in Docket No. CP61-311 be amended as hereinafter ordered and (2) Applicant's First Revised Sheet No. 131 of its FPC Gas Tariff Original Volume No. 3 be accepted for filing.

The Commission orders:

(A) The Commission's said order issued in Docket No. CP61-311 is further amended so as to extend the authorization for the sale of natural gas by Applicant to Texas Eastern Transmission Corporation to July 22, 1966, as requested in the application to further amend.

(B) Applicant's proposed First Revised Sheet No. 131 Superseding Original Sheet No. 131 to its Rate Schedule XFS-19 is accepted for filing effective as of July 22, 1965.

(C) In all other respects said order shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; Charles R. Ross, David S. Black and Carl E. Bagge.

BLUEBONNET GAS CORPORATION, DOCKET NO. CP65-417

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued September 13, 1965)

On June 28, 1965, Bluebonnet Gas Corporation (Applicant), filed in Docket No. CP65-417 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of natural gas facilities and the transportation and sale of natural gas to Florida Gas Transmission Company (Florida), all as more fully set forth in the application.

Applicant proposes to construct and operate metering, regulating and interconnecting facilities in St. Landry Parish, Louisiana, and sell gas to Florida in accordance with the terms and conditions of Applicant's Rate Schedule X-1 which governs service to Florida heretofore authorized by the Commission in its order issued May 21, 1965, in Docket No. CP65-326.

The gas will be acquired from George J. Despot, Operator (Despot). Despot will construct a 4-inch gathering line from which Applicant's facilities will extend to Florida's transmission system. The estimated reserves dedicated to Applicant under the Despot contract are 6,755 MMcf. Estimated initial deliveries are 1,500 Mcf per day.

Applicant estimates its cost of construction to be $14,000, which will be financed through the sale of common stock.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing on September 10, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorization sought, and upon consideration of the record,

The Commission finds:

(1) Applicant, Bluebonnet Gas Corporation, a Texas corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of May 21, 1965 in Docket No. CP65-326 (33 FPC 1032).

(2) The proposed construction and operation of facilities and transportation and sale of natural gas by Applicant as hereinbefore described, and as more fully described in the application and exhibits in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid construction and operation of facilities and transportation and sale of natural gas are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to the Applicant in this proceeding, authorizing the construction and operation of facilities and transportation and the sale of natural gas as more fully described in the application and exhibits in this proceeding, subject to the jurisdiction of the Commission, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities authorized shall be completed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the aforesaid Regulations within 6 months of the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; Charles R. Ross, David S. Black and Carl E. Bagge.

LONE STAR GAS COMPANY, DOCKET NO. CP66-32

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued September 13, 1965)

On July 29, 1965, Lone Star Gas Company (Applicant) filed in Docket No. CP66-32 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities, all as more fully set forth in the application.

Applicant proposes to construct and operate approximately five miles of 3-inch transmission pipeline in Harmon County, Oklahoma, in order to supply its proposed natural gas distribution system in the Town of Gould, Oklahoma. Applicant will utilize its existing A-System to provide the proposed service. The estimated third year annual and peak day requirements of Gould, Oklahoma are 13,393 Mcf and 314 Mcf respectivley.

Total estimated cost of the proposed facilities is $42,880. Applicant's distribution and related measuring facilities will cost an estimated $30,939. The total, $73,819, will be financed with working capital.

Inasmuch as the project will result in revenues exceeding the incremental costs for the service involved, the proposal will have no adverse effect on Applicant's existing customers.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on September 10, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits thereto, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Lone Star Gas Company, a Texas corporation having its principal place of business in Dallas, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission.

(2) The proposed construction and operation of facilities by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed construction and operation of facilities are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commisison thereunder.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Applicant, Lone Star Gas Company, authorizing construction and operation of the facilities hereinbefore described, as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities authorized shall be constructed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the aforesaid Regulations, within one year from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

CHANGES BY NATURAL GAS PIPELINE COMPANIES IN A TARIFF, DOCKET NO. R-281

ORDER NO. 304

AMENDING §154.63 OF REGULATIONS UNDER THE NATURAL GAS ACT

(Issued September 15, 1965)*

This order amends § 154.63(e)(4)(i) of the Commission's Regulations under the Natural Gas Act to omit the requirement that an additional set of working papers be furnished to the Head, Houston Field Office. This requirement for change in a tariff has become unnecessary by reason of the abolition of the Houston Field Office.

The Commission finds:

(1) Compliance with the notice provisions of section 4 of the Administrative Procedure Act is unnecessary since the amendment herein adopted is of a clarifying nature in that it merely deletes a requirement which can no longer be complied with.

(2) The amendment adopted herein is necessary and appropriate for the purposes of administration of the Natural Gas Act.

The Commission, acting pursuant to the authority granted by the Natural Gas Act, as amended, particularly sections 4(d) and 16 thereof (52 Stat. 822, 830; 15 U.S.C. 717c(d), 717o) *orders:*

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*Published in the Federal Register on September 22, 1965 (30 F.R. 12069).

(A) Section 154.63(e)(4)(i), Part 154, Subchapter E of Chapter I, Title 18 of the Code of Federal Regulations, is amended by deleting the last sentence, which reads "An additional set of the working papers is to be furnished to the Head, Houston Field Office." As thus amended the subdivision will read as follows:

§ 154.63 changes in a tariff, executed service agreement or part thereof.

* * * * * * *

(e) * * *

(4) *Working papers and supporting data.* (i) In the Statements described in paragraph (f) of this section, certain items are designated as being included in working papers. There is to be furnished to the Chief, Pipeline Division (Bureau of Natural Gas) upon filing the rate increase, one set of working papers for use by the staff and six additional copies of such working papers to be available to intervenors according to their needs after intervention, has been approved by the Commission.

(B) The amendment prescribed herein shall become effective on October 21, 1965.

(C) The Secretary shall cause prompt publication of this order to be made in the Federal Register.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

PAN AMERICAN PETROLEUM CORPORATION, DOCKET NO. CI65-584

ORDER GRANTING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued September 15, 1965)

On December 21, 1964 Pan American Petroleum Corporation (Pan American) filed in Docket No. CI65-584 an application for a certificate of public convenience and necessity to sell natural gas to Florida Gas Transmission Company (Florida) pursuant to the terms and conditions of a gas sales contract dated November 20, 1964 between Pan American and Austral Oil Company, Inc. (Austral) as sellers and Florida as buyer.[1] While the contract does not provide for the present commitment or dedication to Florida of specific leases or fields, under the terms of the contract, the sellers agree to sell a total of 584,400,000 Mcf of gas over the life of the contract. In the event specific acreage were dedicated, as provided in the contract, the contract would terminate on January 1, 1987. Pursuant to a supplement to its application filed May 13, 1965, Pan American indicated that a substantial part of initial deliveries under the gas sales contract would originate from its interests and those of Austral in the North Fresh Water Bayou Field, Vermilion Parish (on-shore), within the taxing jurisdiction of the State of Louisiana and Off-shore Block 14 Field, Vermilion Parish, Louisiana, not subject to state production taxes. Under the contract, the initial price for the gas will be 19.25 cents at 15.025 psia. The price escalates by 1¢ per Mcf on January 1, 1972, and on each of the succeeding two five-year periods. The contract also provides for a 6 percent annual penalty payment for gas not taken as required. There is a five-year make-up period during which this gas can be taken without further penalty payment.

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[1] The application as supplemented provides that Pan American is filing as "Seller's Representative" under the gas sales contract, on behalf of Austral and other parties whose shares of gas may from time to time be delivered to Florida pursuant to the contract.

Notice of the application was issued on December 31, 1964, 30 F.R. 179. No petitions to intervene or protests to the granting of the certificate were filed.

Florida will use the gas which is the subject of this application for its system needs. Authorization to construct the facilities to attach this gas was granted in the certificate issued in Florida Gas Transmission Company, Docket No. CP65–165, order issued June 8, 1965, 33 FPC 1223. Under the terms of the contract, Florida is required to take a daily contract quantity of 80,000 Mcf. Florida agreed to take-or-pay for each month a quantity of gas equal to 60 percent of the effective daily contract quantity multiplied by the number of days in each month. The sellers are required to have available for delivery on any day 125 percent of the daily contract quantity. Florida is obligated to take a yearly minimum of 80 percent of the daily contract quantity multiplied by the number of days in the year with a five-year make-up period for deficient takes. As noted above, Florida must pay the sellers an annual penalty payment equal to 6 percent of the deficient gas multiplied by the price at the end of the year in which the deficiency occurred. The gas is to be delivered to Florida in Vermilion Parish or such other points on the buyers line as may be agreed upon at a delivery pressure not in excess of 1,000 psig. The contract provides for the delivery of pipeline quality gas with a specific downward Btu adjustment from 1,000 Btu's and no upward Btu adjustment. Commencing with the 6th contract year, Florida is obligated to reimburse the sellers for ¾ of any applicable tax in excess of 2.3¢/Mcf. Pan American stated in its supplement that it is currently intended that initial deliveries under the contract will originate wholly from the North Freshwater Bayou Field and the Off-shore Block 14 Field, with the North Freshwater Bayou Field contributing an estimated 50 percent of total initial deliveries; it is presently intended that the remainder of initial deliveries will originate from the Off-shore Block 14 Field.

Pan American's proposed sale is another in a series of producer warranty-type sales of gas from southern Louisiana which have become more prevalent in recent years.[2] In these cases the producers have generally warranted to make available to the pipeline purchaser specific quantities of gas for a limited term. In at least one instance no specific fields or reservoirs were dedicated to the contract. *Gulf Oil Corporation*, 30 FPC 1559. In the other cases definite volumes were contracted to be sold over a limited term with certain fields or reservoirs being named as the principal source for gas and other as yet unnamed sources could be attached. In the latter instance when the presently unknown sources are attached, we have required that the producer file a statement with this Commission specifying which fields have been attached. In each of the earlier cases, as here, the producers who warranted to have the reserves available showed to the satisfaction of the Commission that there were in the area involved either known reserves, estimates of which appeared reasonable, or that current exploration activities in the area justified a conclusion that the total warranted reserves would be available.

In each of these cases the pipeline customers must depend upon the producer's obligation to deliver gas in planning to meet their market requirements. Were there not some assurance of the ability of the producer to fulfill his obligation, there would be a substantial chance that the pipeline's requirements could not be met, all to the detriment of the consumer. In the present case adequate reserve information has been made available to the Commission staff to justify the warranty approach adopted by Pan American.

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[2] *Cf.: Humble Oil & Refining Co., et al.*, 30 FPC 1297; *Gulf Oil Corporation*, 30 FPC 1559; *Texaco Inc.*, 31 FPC 1125.

The warranty-type sale presented here does have the advantage of assuring to the pipeline definite quantities of gas over a specific period of time. By use of this technique pipelines can safely attach reserves without fear of overly rapid development of a dedicated field, which might result in expensive prepayments for gas. The technique has a potential disadvantage in that existing as well as yet undiscovered fields may be attached to a pipeline and abandoned without regulatory action in future years. Here Pan American has indicated that the sales will be made from two specific fields, at least initially; namely, the North Freshwater Bayou Field and Off-shore Block 14 Field. Pan American is an established company with a good record of continuing gas exploration and development. In the circumstances, and without intending a broad precedent, we believe the proposed sale may be approved, but a better understanding of the implications of this type of sale may lead to a different view in the future.

The initial price for this gas under the contract is 19.25¢ per Mcf at 15.025 psia. This indicates a blend of gas sold from on-shore (within the state tax jurisdiction) and off-shore (within the federal domain) sources resulting in sales not in excess of the price "line" for south Louisiana as long as more than 50 percent of the gas comes from on-shore sources in south Louisiana. We note that if more sales were to come from off-shore sources, the result would be that Florida would be paying a price in excess of the line we have previously found for the area, *Union Texas Petroleum, et al.*, Opinion No. 436, 32 FPC 254. We shall, consequently, require that all of the gas for sale hereunder shall come from sources in south Louisiana and that no more than 50 percent of the gas sold under this contract in any contract year shall come from off-shore sources.

At a hearing held on September 1, 1965 the Commission on its own motion received and made a part of the record in these proceedings, all evidence, including the application, supplement, and exhibits thereto, submitted in support of the authorization sought herein. Upon consideration of the record,

The Commission finds:

(1) Pan American Petroleum Corporation is or by the sale of gas hereunder will be a "natural-gas company" within the meaning of the Natural Gas Act.

(2) The sale of natural gas hereinbefore described, as more fully described in Pan American's application and supplement thereto, will be made in interstate commerce subject to the jurisdiction of the Commission and such sale, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The sale of natural gas by Pan American together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, as herein conditioned are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Pan American is able and willing properly to do the acts and perform the service proposed and conform to the provisions of the Natural Gas Act and requirements of the rules and regulations thereunder.

The Commission orders:

(A) A certificate of public convenience and necessity is issued, upon the terms and conditions of this order, authorizing the sale by Pan American of natural gas in interstate commerce for resale, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, all as described above and as more fully described in the application, supplement and exhibits in this proceeding.

(B) The certificate granted in paragraph (A) above is not transferable and shall be effective only so long as Pan American continues the acts or operations hereby authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations and orders of the Commission.

(C) The grant of the certificate issued in paragraph (A) above shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act or of Part 154 or Part 157 of the Commission's Regulations thereunder, and is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against Applicant. Further, our action in this proceeding shall not foreclose or prejudice any further proceedings or objections relating to the operation of any price or related provisions in the gas purchase contract herein involved.

(D) The certificate issued by paragraph (A) above is subject to the following conditions:

(1) At such time as deliveries of gas by applicant to Florida Gas Transmission Company commence from any particular field, Pan American shall file as a supplement to its related rate schedule, a letter notifying the Commission as to (a) the identity of each particular field involved and (b) the identity of each party whose share of gas produced therefrom is being delivered to Florida, including, where applicable, copies of the appropriate instruments of ratification of said contracts by such party or parties;

(2) Pan American shall file a statement with the Commission as a supplement to its related rate schedule indicating any change which may occur in the identity of any party whose share of gas is being delivered under the contract;

(3) Pan American shall file a statement at such time as there is a cessation of deliveries of gas from any particular field notifying the Commission of the identity of the producers involved and the occurrence of cessation of such deliveries;

(4) The sale of gas under this certificate shall be limited to fields or reservoirs located within the south Louisiana area, as defined by the Commission's Statement of General Policy No. 61–1, as amended. In no event shall more than 50 percent of the gas sold under this certificate in any contract year originate from areas outside the tax jurisdiction of the State of Louisiana.

(E) The certificate herein is conditioned upon its acceptance, in writing, by Pan American Petroleum Corporation within 30 days of the issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; Charles R. Ross, David S. Black and Carl E. Bagge.

SOUTHERN TIER GAS CORPORATION, DOCKET NO. CP66-26

DECLARATION OF EXEMPTION

(Issued September 15, 1965)

Southern Tier Gas Corporation (Applicant) filed an application on July 22, 1965, for exemption from the provisions of the Natural Gas Act, pursuant to Section 1(c) thereof.

Applicant is engaged in the transportation and distribution of natural gas in the State of New York. Pursuant to certificate authorization Consolidated Gas Supply Corporation (formerly New York State Natural Gas Corporation) sells and delivers natural gas to Applicant for resale in the State of New York.

Applicant serves its market by means of a twenty-two mile gas transmission line extending from a point of connection with Consolidated Gas Supply Corporation, its sole supplier at Woodhull, New York, to the Village of Bath, New York. In addition Consolidated can supply gas to the Applicant through an emergency connection authorized by the Commission in Docket No. G–17544, 21 FPC 796, from a point of delivery midway between Woodhull and Bath. Sales of natural gas are made (1) to the Village of Bath for resale and distribution by the Village of Bath, and (2) to Applicant's customers in the vicinity of the Village of Bath, all in the State of New York.

All natural gas received by Applicant for transportation and distribution through its system is consumed ultimately within the State of New York, and all of its facilities are located within said State.

The New York Public Service Commission has certified to the Federal Power Commission that it has regulatory jurisdiction over the rates and services and facilities of the Applicant and is exercising such jurisdiction.

Wherefore, the Commission declares, by reason of the foregoing:

Southern Tier Gas Corporation is exempt from the provisions of the Natural Gas Act, and the orders, rules and regulations of the Commission issued thereunder.

Before Commissioners: Joseph C. Swidler, Chairman; Charles R. Ross, David S. Black and Carl E. Bagge.

EASTERN MAINE ELECTRIC COOPERATIVE, INC., PROJECT NO. 2501

ORDER ISSUING PRELIMINARY PERMIT

(Issued September 16, 1965)

Application was filed on December 14, 1964, by Eastern Maine Electric Cooperative, Inc. (Applicant) of Calais, Maine, for a preliminary permit under Section 4(f) of the Federal Power Act (Act) for proposed Project No. 2501, to be known as the Stratton Rips Project, to be located on the Mattawamkeag River a principal tributary of the Penobscot River, in Penobscot and Washington Counties, Maine, in the vicinity of Mattawamkeag, Kingman, and Winn.

The Secretary of the Army and the Chief of Engineers have advised that they have no objection to the issuance of a permit.

The Department of the Interior, in commenting on the application, recommended for inclusion in any preliminary permit special conditions in the interests of fish and wildlife and archeology, in addition to the conditions set forth in attached Form P–1. The special conditions are included herein as Articles 10 and 11.

The Department of Health, Education, and Welfare, in commenting on the application requested that due consideration be given to potential water quality problems that may be affected by the project and that Applicant maintain liaison with the Public Health Service in regard thereto, as herein provided for by Article 12.

The Mattawamkeag River has been used for the transportation of forest products by water from points upstream from the proposed Stratton Rips project to points downstream on the Penobscot River.

Applicant requests a preliminary permit for a period of 36 months. It appears appropriate, however, that the initial period of the permit should be 24 months as hereinafter provided.

No construction is authorized under a preliminary permit. Such a permit gives the permittee, during the period of the permit, the right of priority of application for license over other non-Federal entities, while the permittee undertakes the necessary studies and examinations required by Section 9 of the Federal Power Act in order to determine the economic feasibility of the proposed project, the means of securing the necessary financial arrangements for construction, the market for power, and all other information necessary for inclusion in an application for license, should one be applied for under the permit. A license would authorize construction of a project.

The Commission finds:

(1) Applicant is a corporation organized under the laws of the State of Maine.

(2) Public notice of the filing of the application has been given as required by the Act. No protests or petitions to intervene have been received. No conflicting application is before the Commission.

(3) The proposed Stratton Rips project would be located in and along a navigable water of the United States.

(4) The proposed project would not affect a Government dam.

The Commission orders:

(A) This preliminary permit is hereby issued to Eastern Maine Electric Cooperative, Inc. (Permittee) of Calais, Maine, for a period of 24 months, effective as of September 1, 1965, for the sole purpose of maintaining priority of application for license for Project No. 2501, to be located on Mattawamkeag River, in Penobscot and Washington Counties, Maine, in the vicinity of Mattawamkeag, King and Winn, subject to the terms and conditions of the Act which is incorporated herein by reference as a part of this permit, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) The project, as tentatively proposed in the application, would consist of: (1) an earth-fill dam about 100 feet high located about 3.85 miles above the confluence of the Mattawamkeag River and the Penobscot River; (2) a forebay excavated in the right bank crossing an ox-bow in the river; (3) a reservoir with a usable storage of about 16,000 acre-feet; (4) an intake structure; (5) penstocks; (6) a gated spillway from the forebay; (7) a powerhouse with an installation of about 30,000 kilowatts; (8) a control structure to control releases from Baskahegan Lake located on a tributary of Mattawamkeag River; and (9) appurtenant facilities.

(C) This preliminary permit is also subject to the terms and conditions set forth in Form P–1 entitled "Terms and Conditions of Preliminary Permit" (16 FPC 1303–1305) which terms and conditions, designated as Articles 1 through 8, are attached hereto and made a part hereof; and further subject to the following special conditions set forth herein as additional articles:

Article 9. The Permittee shall submit at the close of each six-month period from the effective date of this permit to the Regional Engineer, Federal Power Commission, New York, New York, having supervision over the project, or to such other officer as the Commission may designate, accurate statements of the work accomplished during the period and of the work contemplated under this permit for the ensuing period.

Article 10. The Permittee shall, during the period of project planning, cooperate with the United States Fish and Wildlife Service and the Maine Department of Inland Fisheries and Game for the purpose of planning and designing adequate conservation measures: (1) to prevent loss or damage to existing fish

and wildlife resources, (2) to mitigate and compensate for the loss or damage to those resources, and (3) to develop and improve those resources where practicable.

Article 11. The Permittee shall employ a representative designated by the Board of Directors of the Farnsworth Museum, Rockland, Maine, to conduct a preliminary archeological survey of the project area to determine the cost of salvage, if any. The cost of making such preliminary survey shall be paid by the Permittee, in an amount not exceeding $1,000.

Article 12. The Permittee shall, during the period of project planning, maintain liaison with the Public Health Service, Department of Health, Education, and Welfare, in order that due consideration be given to any potential water quality problems that may be affected by this project.

Article 13. The Permittee shall, during the period of project planning, consult with the appropriate State and local agencies to determine any necessary mosquito control measures.

Article 14. The Permittee shall, during the early period of project planning, consult with Federal, State, and local agencies having an interest in outdoor recreation on project lands and waters, in the preparation of an "Exhibit R" required for the filing of an application for license pursuant to Section 4.41 of the Commission's Regulations under the Federal Power Act.

Article 15. The Permittee shall, for the purpose of assuring the cooperation required by the terms of the permit, designate a liaison officer to act for the Permittee in keeping the several agencies specified in this permit currently informed, and such liaison officer shall communicate with such agencies within 60 days from the date of issuance of this permit.

(D) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this preliminary permit. In acknowledgment of the acceptance of this preliminary permit, it shall be signed for the Permittee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; Charles R. Ross, David S. Black and Carl E. Bagge.

THE EMPIRE DISTRICT ELECTRIC COMPANY, DOCKET NO. E-6711

DETERMINATION OF ANNUAL CHARGES FOR HEADWATER BENEFITS

(Issued September 16, 1965)

Pursuant to Section 10(f) of the Federal Power Act and in accordance with provisions of Section 11.27 of the Commission's Regulations under the Federal Power Act, the staff of the Bureau of Power has investigated the possibility of headwater benefits accruing in calendar year 1964 to the Ozark Beach hydroelectric plant of The Empire District Electric Company as a result of streamflow regulation by the upstream Table Rock and Beaver reservoir projects of the United States. All three projects are in the White River basin in Arkansas and Missouri.

Both Federal projects were constructed for the primary purposes of flood control and the generation of hydroelectric power. The Table Rock project has an installation of 200,000 kilowatts and has been in commercial operation since August 1961. Closure of the Beaver dam was completed in January 1964. The

powerhouse has an ultimate capacity of 112,000 kilowatts in two 56,000-kilowatt units both of which went into commercial operation in May 1965.

Empire's Ozark Beach hydroelectric development, licensed project No. 2221, is located about 23 miles downstream from the Table Rock project and 103 miles downstream from the Beaver project. It is essentially a run-of-river development with an installed generating capacity of 16,000 kilowatts and about 9,000 acre-feet of usable pondage. The plant has been in operation since 1913.

The staff's investigation indicates that the two federally-owned projects provided no headwater benefits to the Ozark Beach plant in 1964, either by increasing the generation of energy or the dependable capacity.

Using the same method for computing energy gains and losses at the Ozark Beach plant in 1964 resulting from regulation of streamflow by the Table Rock and Beaver reservoirs as was used in computing gains and losses resulting from Table Rock in the 1960–1963 period, the staff estimated that the amount of energy actually generated in 1964 (31.3 million kilowatt-hours) was less by more than a million kilowatt-hours than it would have been without regulation by the upstream reservoirs. The method of computing energy gains and losses is described in the staff report of November 1964, on Investigation of Headwater Benefits, White River Basin, Arkansas and Missouri, September 9, 1956, through December 31, 1963. The staff also made a study of the dependable capacity of Ozark Beach and found that it was not affected by the operation of the Table Rock and Beaver projects. Average annual generation at Ozark Beach without upstream regulation has been estimated by the staff to be 58.4 million kwh. The very low generation in 1964 was due largely to the adverse streamflow available during that year, and in part to the initial filling of the upstream Beaver reservoir.

The staff report on its investigations was sent to the Company, the Chief of Engineers of the Department of the Army, and the Secretary of the Interior, all of which have submitted comments.

Both the Company and the Corps of Engineers concur in the results of the staff's investigations. However, the Department of the Interior takes issue with the staff's method of computation.

Interior comments that regulation of streamflow by Table Rock produced some gain in generation at Ozark Beach in 1964. The staff did not compute the effect of regulation by the individual Table Rock reservoir on Ozark Beach generation in 1964, but considered Table Rock and Beaver as a unit and computed the net effect of regulation by the two reservoirs.

Interior's position is that the effects of regulation by the Table Rock and Beaver reservoirs on Empire's Ozark Beach plant should be treated individually. Interior contends that losses in generation at Ozark Beach caused by the filling of the Beaver reservoir should be offset only by benefits subsequently received from Beaver. However, under the circumstances, the Commission deems it appropriate to consider the two upstream federal installations as one integrated headwater improvement for purposes of computing energy gains to Ozark Beach resulting from streamflow regulation by federal installations. Subsection 10(f) does not define the term "headwater improvement", and the Commission may therefore give that phrase a meaning which is reasonable in view of the facts of the case at hand. The facts here are that both of the upstream reservoirs are owned and operated by the federal government, that both were built by the Army Engineers as part of a comprehensive plan for the development of the river basin and that both will be used primarily for flood control and power production. These federal projects are geographically con-

tiguous, and it is inconceivable that they could operate successfully without close working interrelationship. For these reasons, it is reasonable and proper to regard the two federal reservoirs as one headwater improvement.

Upon consideration of the staff report and the aforesaid comments the Commission determines:

During the calendar year, 1964, the value of any power gains received by Empire District Electric Company's Ozark Beach project from the upstream federal Table Rock and Beaver projects was offset by the value of power losses caused by the filling of the Beaver Reservoir and as a result the Company's Ozark Beach project was not directly benefited by the headwater improvements of the United States during the calendar year 1964.

Before Commissioners: Joseph C. Swidler, Chairman; Charles R. Ross, David S. Black and Carl E. Bagge.

ILLINOIS POWER COMPANY, DOCKET NO. E–7245

ORDER PROVIDING FOR INVESTIGATION AND HEARING

(Issued September 16, 1965)

By this order we shall institute an investigation and provide for hearing to determine whether certain of the filed wholesale rates and charges of Illinois Power Company (Illinois Power) are lawful within the meaning of Sections 205 and 206 of the Federal Power Act. Illinois Power's schedules of these rates and charges to the Villages of Fithian, Ladd, Ogden, Oglesby, and Sawyerville, Illinois, Cedar Point Light and Water Company, and Central Illinois Electric and Gas Company are set forth in the attached Appendix.

Examination and analysis of the rate schedules and other data currently available to the Commission indicate that Illinois Power's wholesale rates and charges to the seven customers named in the preceding paragraph may result in excessive rates or charges; may place an undue burden upon ultimate customers; and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful within the meaning of the Federal Power Act.

As we held in our opinion in the *Southwestern Public Service Company* proceeding,[1] rate of return from service to one group of wholesale customers can not be considered in isolation from the return on the Company's other wholesale business. Accordingly, while we are not placing in issue in this proceeding any question as to the validity of the rates charged for other sales, we are sending a notice of our order in this proceeding to each of Illinois Power's wholesale customers.

The Commission further finds:

In view of the foregoing, it is necessary and appropriate for the purposes of carrying out the provisions of the Federal Power Act, and particularly, but not in limitation of the foregoing, Sections 205, 206, 208, 301, 307, 308 and 309, that an investigation and hearing be instituted to determine the lawfulness of Illinois Power's rates and charges for wholesale electric service to the seven purchasers set forth in the Appendix hereto.

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[1] Opinion No. 451, *Southwestern Public Service Company*, Docket No. E–7038, issued March 2, 1965, 33 FPC 343 at p. 354.

The Commission orders:

(A) A public hearing shall be held concerning the lawfulness of Illinois Power's rate schedules for wholesale electric service to the seven purchasers referred to in the finding paragraph above and all as set forth in the Appendix hereto, at a time and place and before a hearing examiner to be specified.

(B) A prehearing conference shall be held before a presiding examiner at a time to be specified by notice of the Secretary in a hearing room of the Federal Power Commission, 441 G Street, N.W., Washington, D.C. 20426, for purposes as specified in the Commission's Rules of Practice and Procedure.

(C) In order that the issues involved herein may be properly determined, an investigation is hereby initiated and Illinois Power is hereby directed pursuant to the provisions of Sections 301(b), 307 and 309 of the Federal Power Act to grant to authorized members of the staff of the Federal Power Commission during regular business hours, free access to its property and access to and the right to inspect and examine all of its accounts, records and memoranda including, but not limited to, the following: books, papers, correspondence, contracts, agreements, maps, reports of engineers, meter readings, and log sheets upon their request; and shall either furnish copies of such material at the request of the staff, or make such material available for reproduction by the staff or shall produce such material for use by the staff prior to and during said hearing at the Offices of the Commission, 441 G Street, N.W., Washington, D.C. 20426.

(D) Notices of intervention or petitions to intervene in this proceeding may be filed with the Federal Power Commission, Washington, D.C. 20426, on or before October 8, 1965, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.37).

(E) Illinois Power shall within 45 days from the date hereof, submit a special report setting out cost and revenue data using 1964 as the test year, showing Illinois Power's costs of rendering service to each of the seven purchasers referred to in Paragraph (A) above, calculated in accordance with applicable Commission precedents and submitted in the form as prescribed in Statements A through O, Section 35.13(b) (4) (IV) of the Commission's Regulations under the Federal Power Act. An original and nine conformed copies of the report shall be submitted.

APPENDIX

Rate schedule designation	Other party	Instrument date
Rate Schedule FPC No. 25	Village of Fithian	Nov. 10, 1958 and July 7, 1954.
Supplement No. 1 to Rate Schedule FPC No. 25	do	July 2, 1964.
Rate Schedule FPC No. 26	Village of Ladd	Nov. 10, 1958 and July 7, 1954.
Supplement No. 1 to Rate Schedule FPC No. 26	do	July 2, 1964.
Rate Schedule FPC No. 27	Village of Ogden	Nov. 10, 1958 and July 7, 1954.
Supplement No. 1 to Rate Schedule FPC No. 27	do	July 2, 1964.
Rate Schedule FPC No. 28	Village of Oglesby	Nov. 10, 1958 and July 7, 1954.
Supplement No. 1 to Rate Schedule FPC No. 28	do	July 2, 1964.
Rate Schedule FPC No. 29	Village of Sawyerville	Nov. 10, 1958 and July 7, 1954.
Supplement No. 1 to Rate Schedule FPC No. 29	do	July 2, 1964.
Rate Schedule FPC No. 30	Cedar Point Light and Water Co.	Nov. 10, 1958 and July 7, 1954.
Supplement No. 1 to Rate Schedule FPC No. 30	do	July 2, 1964.
Rate Schedule FPC No. 31	Central Illinois Electric & Gas Company.	Mar. 8, 1954.

Before Commissioners: Joseph C. Swidler, Chairman; Charles R. Ross, David S. Black and Carl E. Bagge.

LAKE SUPERIOR DISTRICT POWER COMPANY, PROJECT NO. 2430

ORDER ISSUING LICENSE (MAJOR)

(Issued September 16, 1965)

Application was filed on December 2, 1963 by Lake Superior District Power Company (Applicant) of Ashland, Wisconsin, for a license under Section 4(e) of the Federal Power Act (Act) for constructed major Project No. 2430, known as the Ladysmith Hydro Plant, located on the Flambeau River, in the City of Ladysmith, Rusk County, Wisconsin. No lands of the United States are affected by the project.

The original dam was built in 1903, the forebay of which directed the water into several flumes serving small turbines which furnished power for pulp and paper mills on the south and north banks of the river. In 1940, the old turbines were replaced by the existing turbines and generators. No substantial alteration has been made to the project since 1940.

Project No. 2430 is located on the Flambeau River approximately 16 miles downstream from Applicant's Big Falls Hydro Plant Project No. 2390, a license for which was issued on May 25, 1965 (33 FPC 1067). Based upon the facts set forth in our May 25 order, and in accordance with the criteria set forth in our April 25, 1962 Opinion No. 357 (27 FPC 830), the license herein granted shall have an effective date of January 1, 1940 and a termination date of December 31, 1989, since the replacement of the original project turbines in 1940 with new turbines and generators constituted a substantial alteration to the project after 1935.

The Secretary of the Army and the Chief of Engineers have approved the plans of the project structures insofar as the interests of navigation are concerned, pursuant to Section 4(e) of the Act.

The Department of the Interior, in reporting on the application, has advised that the project as currently operated does not affect adversely the fish and wildlife resources and no fishways or other specific measures are required at this time, and recommendation was made that the provisions contained in attached Form L–3 in the interests of fish and wildlife and recreational resources should be included in any license for the project.

The Department of Health, Education, and Welfare (H.E.W.) has advised that while the operational procedure followed at the project does not cause a pollution problem at present, there is a potential problem with the paper mill effluent discharged on the south side of the river below the dam, and the Department suggested that one of the flood gates on the dam be partially opened to insure a steady current along the south bank of the river. The Wisconsin Conservation Department has advised that while the recreational use of the project flowage is adequate at present, it noted that daily pond fluctuations amounted to as much as three feet, and the suggestion was made that daily fluctuations be limited to one foot on any given day. Following exchanges among H.E.W., the Wisconsin Conservation Department, the Wisconsin Committee on Water Pollution, the Wisconsin Public Service Commission and our staff on the fluctuation problem, Applicant is agreeable to a license provision requiring a 1.5 feet maximum allowable daily fluctuation of the Ladysmith reservoir. This provision is included herein as Article 31.

While Applicant submitted as a part of its application for license an Exhibit R outlining the present recreational use and development of the project area, which we are herein approving, the exhibit does not show the nature and extent of

Applicant's cooperation with State and local agencies, nor does the exhibit show any future plans for development of outdoor recreation potential should such a need arise. By Article 33 herein we are requiring Applicant to cooperate with State and local agencies in future recreational planning and to submit within a stated period for Commission approval a revised Exhibit R in conformance with the Commission's Regulations.

Although we are herein approving Exhibit K as a part of this license the exhibit shows only that portion of the project boundary in the vicinity of the dam, and we are by Article 32 herein requiring the filing of a revised Exhibit K in conformity with our rules and regulations. Article 32 also requires the filing of a revised Exhibit F showing the ownership of the lands within the project boundary. Commission approval of the latter exhibit is not required.

The Commission finds:

(1) The project is situated on navigable waters of the United States.

(2) Applicant is a corporation organized under the laws of the State of Wisconsin, and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effectuate the purposes of a license for the project.

(3) Public notice of the filing of the application has been given. No protests or petitions to intervene have been received. No conflicting application is before the Commission.

(4) The project does not affect a Government dam, nor will the issuance of a license therefor, as hereinafter provided, affect the development of any water resources for public purposes which should be undertaken by the United States.

(5) Subject to the terms and conditions hereinafter imposed, the project will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, and for other beneficial public uses, including recreational purposes.

(6) The installed horsepower capacity of the project hereinafter authorized for the purpose of computing the capacity component of the administrative annual charge is 2,400 horsepower, and the amount of annual charges, based on such capacity, to be paid under the license for the project, for the cost of administration of Part I of the Act is reasonable.

(7) The generator leads, the 33-kv step-up substation, the 33-kv short transmission line to the Big Falls-Bruce 33-kv line, and the appurtenant facilities mentioned in paragraph (B) below are parts of the project and are included under this license.

(8) The exhibits designated in paragraph (B) below conform substantially to the Commission's Rules and Regulations and should be approved as part of this license.

(9) Exhibit R filed as part of the application conforms substantially to the Commission's Rules and Regulations, insofar as it indicates present recreational use, and should be approved as a part of this license.

The Commission orders:

(A) This license is hereby issued to Lake Superior District Power Company (Licensee) of Ashland, Wisconsin, under Section 4(e) of the Federal Power Act (Act) for a period effective January 1, 1940, and terminating December 31, 1989, for the continued operation and maintenance of constructed Project No. 2430, located on the Flambeau River, a navigable water of the United States, subject to the terms and conditions of the Act, which is incorporated herein by

reference as a part of this license, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) Ladysmith Hydro Plant Project No. 2430 consists of:

(i) All lands constituting the project area and enclosed by the project boundary or the limits of which are otherwise defined, and/or interests in such lands necessary or appropriate for the purposes of the project, whether such lands or interests therein are owned or held by the United States; such project area and project boundary being more specifically shown and described by certain exhibits which formed part of the application for license and which are designated and described as follows:

Exhibit J: (FPC No. 2430–1) General Map.

Exhibit J–1: (FPC No. 2430–2) General Map.

Exhibit K: (FPC No. 2430–3) Map of Project in Vicinity of Dam and Powerhouse Area.

(ii) Project works consisting of: A dam consisting of two sections separated by an island, one, a rock-filled timber crib spillway section tying to the right bank with eight flood gates (16 ft. x 10 ft.) and a smaller sluice gate (12 ft. x 10 ft.); and the other a powerhouse intake section tying to the left bank; a reservoir with an area of about 236 acres extending 3.7 miles upstream and pondage; a powerhouse containing two 1,500-horsepower turbines each connected to a 900-kilowatt generator; a substation; a short 33-kv transmission line extending to the 33-kv Big Falls-Bruce transmission line; and appurtenant electrical and mechanical facilities; the location, nature and character of which are more specifically shown and described by the exhibits hereinbefore cited and by certain other exhibits which formed part of the application for license and which are designated and described as follows:

Exhibit L: Sheet 1 (FPC No. 2430–4) Generator Floor Plan; Sheet 2 (FPC No. 2430–5) Section through Turbine and Generator; Sheet 3 (FPC No. 2430–6) Powerhouse Plan and Sections; Sheet 4 (FPC No. 2430–7) Powerhouse Elevations; and

Exhibit M: Two typewritten pages, giving a general description of mechanical, electrical and transmission equipment of the project, filed in the Commission on December 2, 1963.

(iii) All of the structures, fixtures, equipment or facilities used or useful in the maintenance and operation of the project and located on the project area, including such portable property as may be used or useful in connection with the project or any part thereof, whether located on or off the project area, if and to the extent that the inclusion of such property as part of the project is approved or acquiesced in by the Commission; also, all riparian or other rights, the use or possession of which is necessary or appropriate in the maintenance or operation of the project.

(C) This license is also subject to the terms and conditions set forth in Form L–3 (Revised August 1, 1964) entitled "Terms and Conditions of License for Constructed Project Affecting Navigable Waters of the United States" (32 FPC 1114), which terms and conditions, designated as Articles 1 through 29, are attached hereto and made a part hereof, except Article 25 thereof, and subject to the following special conditions set forth herein as additional articles:

Article 30. The Licensee shall pay to the United States the following annual charge, effective as of January 1, 1940:

For the purpose of reimbursing the United States for the costs of administration of Part I of the Act, a reasonable annual charge as determined by the Commission in accordance with the provisions of its regulations, in effect from

time to time. The authorized installed capacity for such purposes is 2,400 horsepower.

Article 31. The Licensee shall operate the project in such a manner that the maximum daily pool level fluctuation will not exceed 1.5 (one and one-half) feet, and shall cooperate with the Wisconsin Conservation Department in regard to project operations during fish spawning season in the interest of conserving the fishery resources of the project reservoir. In the interest of water quality control below the dam, when additional water is available for such purpose, the Licensee shall periodically open the spillway gates to prevent an accumulation of waste in the pool area below the flood gates.

Article 32. The Licensee shall within one year from the date of issuance of this license file for Commission approval revised Exhibits F and K prepared in accordance with the Commission's Rules and Regulations.

Article 33. Licensee shall cooperate with State and local agencies and individuals in the development and maintenance of access areas and roads and such other facilities necessary for full recreational utilization by the public of project lands and waters, consistent with the terms of the license and the operation of the project and shall within a period of three (3) years from the date of issuance of this license file for Commission approval a revised Exhibit R in conformance with Section 4.41 R of Commission Regulations under the Federal Power Act.

Article 34. On the application of any person, association, corporation, Federal agency, State or municipality, the Licensee shall, after notice and opportunity for hearing, permit such reasonable use of its reservoirs or other project works or parts thereof as may be ordered by the Commission in the interest of comprehensive development of the waterway or waterways involved and the conservation and utilization of water resources of the region for water supply for steam-electric, irrigation, industrial, municipal or similar purposes consistent with the primary objective of the project. The Licensee shall receive such reasonable compensation as may be appropriate for use of its reservoirs or other project works or parts thereof for such purposes, any such compensation to be fixed either by Commission approval of an agreement between the Licensee and the party or parties benefiting or by the Commission in the event the parties are unable to agree. Applications shall contain information in sufficient detail to afford a full understanding of the proposed use, including satisfactory evidence that the applicant possesses necessary water rights pursuant to applicable State law, or a showing of cause why such evidence cannot be submitted, and a statement as to the relationship of the proposed use to any State or municipal plans or orders which may have been adopted with respect to the use of such waters.

(D) The exhibits designated and described in paragraph (B) above are hereby approved as a part of this license.

(E) The Exhibit R referred to in finding (9) above is hereby approved as part of this license.

(F) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgment of the acceptance of this license, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; Charles R. Ross, David S. Black and Carl E. Bagge.

PACIFIC POWER & LIGHT COMPANY, DOCKET NO. E-7238

ORDER AUTHORIZING THE ISSUANCE OF FIRST MORTGAGE BONDS

(Issued September 16, 1965)

Pacific Power & Light Company (Applicant), a corporation organized under the laws of the State of Maine and doing business in the States of Oregon, Washington, Wyoming, California, Montana and Idaho with its principal business office at Portland, Oregon, filed an application on August 13, 1965, seeking an order pursuant to Section 204 of the Federal Power Act authorizing it to issue and sell at competitive bidding $30,000,000 principal amount of First Mortgage Bonds.

Applicant proposes to issue the Bonds pursuant to its presently existing Mortgage and Deed of Trust between Applicant and Guaranty Trust Company of New York (now Morgan Guaranty Trust Company) and Oliver R. Brooks (Wesley L. Baker, Successor), dated as of July 1, 1947, as heretofore supplemented and as to be further supplemented by a proposed new Eighteenth Supplemental Indenture. The new Bonds are to be dated October 1, 1965, are to bear interest at the rate per annum to be fixed by competitive bidding, and are to mature on October 1, 1995.

Applicant proposes on or about September 17, 1965 to invite sealed, written bids for the purchase of the proposed Bonds by newspaper publication and by distribution of a public invitation for bids together with a statement of terms and conditions related thereto and a form of purchase contract.

Each bid whether made by a single bidder or a group of bidders must be for the purchase of all of the Bonds and must be in writing on the Form of Bid provided by the Applicant. Each bid for the Bonds must specify: (1) the coupon rate to be borne by the Bonds, which rate shall be a multiple of ⅛ of 1%; and (2) the price of said Bonds plus accrued interest, from October 1, 1965 to the date of delivery thereof and payment thereof, which price shall be expressed as a percentage of the principal amount of the Bonds and shall not be less than 98½% nor more than 102¾% of the principal amount thereof. Each bid for the Bonds must be accompanied by a certified bank check or checks in the aggregate amount of $900,000.

Unless postponed, all bids for the purchase of the proposed Bonds must be received by Applicant before 11:00 a.m. New York Time on September 29, 1965 at Room 2033, Two Rector Street, New York, New York, 10006. Unless Applicant rejects all bids for the proposed issuance of Bonds or excludes a bid or bids for reasons specified in the terms and conditions it will accept the bid which will provide it with the lowest annual cost of money.

The net proceeds from the issuance and sale of the new Bonds are proposed to be applied (a) to payment of all promissory notes (not expected to exceed $15,000,000 in principal amount) outstanding under a Credit Agreement dated October 1, 1963, as supplemented by a Letter Agreement dated March 10, 1965[1] at the time of the consummation of the issuance and sale of the new Bonds; and (b) to finance in part Applicant's 1965, 1966, 1967 construction program. Applicant's construction expenditures for the years 1965, 1966 and the first half of 1967 are presently estimated at $110,654,000, approximately $14,734,000 of which

[1] Order authorizing issuance of promissory notes under the Credit Agreement was issued Feb. 14, 1964, in *Pacific Power & Light Company*, Docket No. E-7129, 31 FPC 414, and supplemented by order issued June 3, 1965, 33 FPC 1207.

had been expended through June 30, 1965. The proposed construction program is the same as described in detail in the Commission's order issued June 3, 1965, *Pacific Power & Light Company* in Docket No. E–7129, with one minor change, the deletion of the Libby-Trego 115 kv transmission lines. In completing the financing of said construction program, Applicant expects to use funds available from the sale of the New Bonds in the approximate amount of $15,000,000 funds to be borrowed under the Credit Agreement, as supplemented, funds to be generated internally, and funds to be derived from additional financing expected to be undertaken prior to June 30, 1967, when notes issued under the Credit Agreement as supplemented, will mature. The precise amount, nature and timing of such further financing is not now determinable.

Written notice of the application has been given to the Public Utilities Commission of the State of Maine, the Public Utilities Commissioner of Oregon, the Wyoming Public Service Commission, the Washington Utilities and Transportation Commission, the Public Utilities Commission of the State of California, the Public Service Commission of Montana and the Idaho Public Utilities Commission and to the Governor of each of those States. Notice has also been given by publication in the Federal Register on August 25, 1965 (30 F.R. 11004), stating that any person desiring to be heard or to make any protest with reference to the application should on or before September 3, 1965, file a petition or protest with the Federal Power Commission, Washington, D.C., 20426. No protest, petition or request to be heard in opposition to the granting of the application has been received.

The Commission finds:

(1) Applicant, a corporation, is a public utility within the meaning of Section 204 of the Federal Power Act, subject to the jurisdiction of the Commission, as heretofore determined and set forth in the Commission's order issued March 28, 1962, *Pacific Power & Light Company*, Docket No. E–7025 (27 FPC 620).

(2) The proposed issuance and sale of Bonds, as described above, will constitute an issuance of securities within the purview of Section 204 of the Act.

(3) Applicant is not organized and operating in a State under the laws of which the security issue here involved is regulated by a State commission within the meaning of Section 204(f) of the Act; and the proposed issuance of securities is, therefore, not exempt by virtue of that Section from the requirements of Section 204 of the Act.

(4) The proposed issuance and sale of Bonds, as hereinafter authorized, will be for a lawful object, within the corporate purposes of Applicant and compatible with the public interest, which is appropriate for and consistent with the proper performance by Applicant of service as a public utility and which will not impair its ability to perform that service, and is reasonably necessary and appropriate for such purposes.

(5) The period of public notice given in this matter is reasonable.

The Commission orders:

(A) The proposed issuance and sale of Bonds upon the terms and conditions and for the purposes specified in the application, as described above, is hereby authorized, subject to the provisions of this order.

(B) The proposed issuance and sale of Bonds at competitive bidding shall not be consummated until:

(1) Applicant shall have amended its application pursuant to the requirements of Section 34.2(g) of the Commission's Regulations under the Federal Power Act relating to compliance with competitive bidding requirements, and Section 34.2(h) of those Regulations relating to affiliation, and shall have either filed

such amendments or shall have mailed them and advised the Commission by telephone and telegraph, as contemplated in Section 34.9 of the Regulations;

(ii) The Commission, by a further order, shall have approved the price to be received by Applicant for the proposed issuance of Bonds and the interest rate thereof.

(C) This authorization shall expire unless the transactions hereby authorized are consummated within 90 days from the date of issuance of this order.

(D) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations of cost, or any other matter whatsoever now pending or which may come before this Commission.

(E) Nothing in this order shall be construed to imply any guarantee or obligation on the part of the United States with respect to any securities to which this order relates.

Before Commissioners: Joseph C. Swidler, Chairman; Charles R. Ross, David S. Black and Carl E. Bagge.

CITY OF PETERSBURG, ALASKA, PROJECT NO. 2521

ORDER ISSUING PRELIMINARY PERMIT

(Issued September 16, 1965)

Application was filed on May 10, 1965, by City of Petersburg, Alaska (Applicant) for a preliminary permit under Section 4(f) of the Federal Power Act (Act) for proposed Project No. 2521, to be known as the Thomas Bay Project, to be located on Cascade Creek within the Swan Lake and Falls Lake Drainage Basin in the First Judicial District, Alaska, about 16 miles northeast of Petersburg, Alaska, and affecting lands of the United States within the Tongass National Forest.

The Secretary of the Army and the Chief of Engineers have reported that the plans of the project structures affecting navigation are satisfactory insofar as the interests of navigation are concerned.

The Department of the Interior, in commenting on the application, recommended for inclusion in any preliminary permit for the project special conditions in the interest of fish and wildlife and Archeology, in addition to the conditions set forth in the attached Form P–1. The special conditions are set forth herein as Articles 10 and 11.

The Department of Health, Education, and Welfare, has advised that the project is not expected to have any adverse effects on water supply or pollution control and that the Alaska Division of Health concurs with the Department.

The Chief, Forest Service, acting for the Secretary of Agriculture, who has supervision over the Tongass National Forest, in commenting on the application, recommended for inclusion in any preliminary permit for the project, the terms and conditions for the protection of National Forest interest as set forth in attached Form P–1 and Article 12 herein.

No construction is authorized under a preliminary permit. Such a permit gives the permittee, during the period of the permit, the right of priority of application for license over other non-Federal entities, while the permittee undertakes the necessary studies and examinations required by Section 9 of the Federal Power Act in order to determine the economic feasibility of the proposed project, the means of securing the necessary financial arrangements for construction, the market for power, and all other information necessary for inclusion in an ap-

plication for license, should one be applied for under the permit. A license would authorize construction of a project.

The Commission finds:

(1) Applicant is a municipality organized under the laws of the State of Alaska.

(2) Public notice of the filing of the application has been given. No protests or petitions to intervene have been received. No conflicting application is before the Commission.

The Commission orders:

(A) This preliminary permit is hereby issued to City of Petersburg, Alaska (Permittee) for a period of 24 months, effective as of September 1, 1965, for the sole purpose of maintaining priority of application for license for Project No. 2521, to be located on Cascade Creek, in the First Judicial Division, Alaska, and affecting lands of the United States within the Tongass National Forest, subject to the terms and conditions of the Act which is incorporated herein by reference as a part of this permit, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

As tentatively proposed in the application, the project would be constructed in four stages and would consist of: *Stage I*—(1) water flow control structures at the outlets of Swan Lake and Falls Lake; (2) power water conduit from Falls Lake to slope above Thomas Bay; (3) penstock to powerhouse at tidewater on Thomas Bay; (4) powerhouse structure housing two 5,000-kw generating units; (5) transmission line, sized for ultimate project capacity, from the plant to Petersburg; and (6) appurtenant facilities; *Stage II*—(1) a dam on the outlet works of Swan Lake, increasing that reservoir to its ultimate capacity; (2) another penstock from the conduit to the powerhouse on Thomas Bay; (3) an additional powerhouse structure for Stages II and III units; (4) one 10,000-kw unit; and (5) appurtenant facilities; *Stage III*—(1) another penstock from the conduit to the powerhouse; (2) one 10,000-kw unit; and (3) appurtenant facilities; and *Stage IV*—power development of about 380 feet of head between Swan Lake and Falls Lake (justification to be resolved in remote future) by means of: (1) the completion of regulatory facilities at Swan Lake; (2) an intake and power tunnel to a powerhouse on Falls Lake housing an ultimate installation of about 8,000 kw; and (3) appurtenant facilities.

(B) This permit is also subject to the terms and conditions set forth in Form P–1 entitled, "Terms and Conditions of Preliminary Permit" (16 FPC 1303–1305) which terms and conditions (designated as Articles 1 through 8) are attached hereto and made a part thereof; and further subject to the following special conditions set forth herein as additional articles:

Article 9. The Permittee shall submit at the close of each six-month period from the effective date of this permit to the Regional Engineer, Federal Power Commission, San Francisco, California, having supervision over the project, or to such other officer as the Commission may designate, accurate statements of the work accomplished during the period and of the work contemplated under this permit for the ensuing period.

Article 10. The Permittee shall, during the period of project planning, cooperate with the U.S. Fish and Wildlife Service and the Alaska Department of Fish and Game for the purpose of planning and designing adequate conservation measures: (1) to prevent loss of or damage to existing fish and wildlife resources, (2) to mitigate and compensate for the loss of or damage to these resources and (3) to develop and improve these resources where practicable.

Article 11. The Permittee shall during the period of this permit consult with the Department of Anthropology, University of Alaska, College, Alaska, and arrange for a preliminary archeological survey of the project area to determine the cost of archeological salvage operations if any are necessary in the area to be affected by the project. The cost of making such preliminary survey shall be paid by the Permittee in an amount not to exceed $500.00.

Article 12. The Permittee shall, prior to undertaking any investigation work under this preliminary permit on National Forest lands, consult with the Regional Forester, United States Forest Service, Juneau, Alaska, or his representative, as to reasonable requirements relative to operations, field surveys, and explorations, and shall abide by such requirements; and shall cooperate with the United States Forest Service during the period of this permit to develop a plan for alleviation of damage to, and achieving maximum utilization of, National Forest resources insofar as affected by the proposed project.

Article 13. The Permittee shall, during the period of project planning consult with the appropriate State and local agencies to determine any necessary mosquito control measures.

Article 14. The Permittee shall, during the early period of project planning, consult with Federal, State and local agencies having an interest in outdoor recreation on project lands and waters, in the preparation of an "Exhibit R" required for the filing of an application for license pursuant to Section 4.41R of the Commission's Regulations under the Federal Power Act.

Article 15. The Permittee shall, for the purpose of assuring the cooperation required by the terms of the permit, designate a liaison officer to act for the Permittee in keeping the several agencies specified in this permit currently informed, and such liaison officer shall communicate with such agencies within 60 days from the date of issuance of this permit.

(C) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this preliminary permit. In acknowledgment of the acceptance of this preliminary permit, it shall be signed for the Permittee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; Charles R. Ross, David S. Black and Carl E. Bagge.

AREA RATE PROCEEDING, ET AL. (SOUTHERN LOUISIANA AREA), DOCKET NO. AR61-2, ET AL.

ORDER REJECTING APPEAL FROM PRESIDING EXAMINER'S RULINGS DENYING MOTION TO EXCLUDE CERTAIN EVIDENCE

(Issued September 17, 1965)

On August 18, 1965, the Associated Gas Distributors (AGD), interveners in this proceeding, filed an appeal with the Commission from the Presiding Examiner's ruling on July 21, 1965, denying a motion made by AGD on July 12, 1965, to exclude certain portions of the testimony and exhibits sponsored by producers' witnesses, D. W. Auten and W. G. Davis, dealing with the subject matter of time lag between exploration expenditures and receipt of revenues. In the appeal, AGD states that the producers' Auten-Davis time lag presentation is based on certain producer company responses which have been made available only in

coded form and that AGD has been seriously prejudiced by the Presiding Examiner's refusal to grant its requests for subpoenas either of the individual company data or work sheets behind them in uncoded form.

By memorandum dated September 10, 1965, the Presiding Examiner notified the Commission that at the hearing session on September 8, 1965, he made a ruling finally denying the motion to strike the Auten-Davis time lag study but subject to the condition that the sponsoring producer respondents make available to AGD and the staff the uncoded questionnaire responses underlying that study, together with certain other data requested by AGD. The Presiding Examiner also notified us that the parties agreed that in the event the Commission denied the AGD appeal, the requested material would be made available to AGD and staff. Since it is presumed that the requested uncoded material will be made available to AGD and the staff, AGD's appeal to this extent is rendered moot.

The Presiding Examiner in rejecting AGD's request to certify an appeal from his original ruling denying its motion to exclude, found no extraordinary circumstances which would justify the certification to the Commission of his ruling. Questions as to the admissibility or exclusion of evidence must be determined initially by the Presiding Examiner and his rulings are subject to our review at the time of consideration of the Examiner's decision. In accordance with Section 1.28(a) of the Commission's Rules of Practice and Procedure, we shall not examine on appeal interlocutory rulings in the absence of extraordinary circumstances. Accordingly, in view of the final ruling by the Presiding Examiner and the disposition of the matter above referred to, and since AGD has failed to make a persuasive showing of extraordinary circumstances, the appeal should be rejected.

The Commission orders:

That the appeal filed herein by AGD on August 18, 1965, is rejected.

Before Commissioners: Joseph C. Swidler, Chairman; Charles R. Ross, David S. Black and Carl E. Bagge.

EL PASO NATURAL GAS COMPANY, DOCKET NO. CP65-374

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued September 17, 1965)

On May 27, 1965, El Paso Natural Gas Company (Applicant) filed in Docket No. CP65-374 an application, as supplemented on August 2, 1965, and August 27, 1965, pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain facilities and the sale and delivery of natural gas to Cascade Natural Gas Corporation (Cascade) for resale in the community of Quincy, Washington, and environs, as more fully set forth in the application.

Applicant will construct and operate in Chelan County, Washington, a meter station, approximately 2.6 miles of 4½-inch O.D. lateral pipeline and appurtenances extending from a point of connection with Applicant's 8⅝-inch O.D Northwest Division Wenatchee Lateral in a southeasterly direction to a point of connection with facilities proposed to be constructed and operated by Cascade.

Cascade's estimated annual and maximum daily requirements during the third year of the proposed service will be 286,000 Mcf and 2,125 Mcf, respectively.

The total estimated cost of the facilities proposed to be constructed by Applicant is $66,000, which is to be financed by means of the normal financial sources available to it. The project appears to be economically feasible.

Due notice of the filing of the application was published in the Federal Register on June 11, 1965 (30 F.R. 7624). No protest, petition to intervene, or notice of intervention has been filed in this proceeding.

At a hearing held on September 16, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, El Paso Natural Gas Company, a Delaware corporation having its principal place of business in El Paso, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of October 29, 1942, in Docket Nos. G–242 and G–257 (3 FPC 851).

(2) The facilities hereinbefore described and as more fully described in the application in this proceeding are proposed to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of said Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Applicant, El Paso Natural Gas Company, authorizing the construction and operation of facilities and the transportation and sale of natural gas, as hereinbefore described and as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be completed and placed in actual operation and the transportation of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within one year from the date of this order.

Before Commissioners: Joseph C. Swidler, Chairman; Charles R. Ross, David S. Black and Carl E. Bagge.

HUMBLE GAS TRANSMISSION COMPANY, DOCKET NO. CP65-395

ORDER TO SHOW CAUSE

(Issued September 17, 1965)*

On June 9, 1965, Humble Gas Transmission Company (Humble) of New Orleans, Louisiana, filed, pursuant to Section 7 of the Natural Gas Act, an application for a certificate of public convenience and necessity, as amended on July 6, 1965, for authorization to construct a measuring station and one four-inch pipeline approximately 4,100 feet in length, to maintain and operate approximately 2,350 feet thereof, and to transport, sell, and deliver natural gas to Diamond National Corporation (Diamond), as hereinafter described. The proposed lateral line will extend from a point of connection with Humble's existing facilities near Natchez in Adams County, Mississippi, to Diamond's plant.

Humble agreed that upon completion of the construction of such facilities it would assign title to Diamond, free of cost, of that portion of the connecting line extending from the discharge side of its measuring station to the terminal end of the line at the plant. The proposed facilities are estimated to cost $21,000. The line section of approximately 1,750 feet in length that Humble intends to assign to Diamond represents approximately $8,400 of the estimated total cost of the proposed facilities.

Humble seeks authority to construct the aforementioned facilities in order to make a direct sale of natural gas to Diamond. Diamond will use this gas in boilers to produce steam for processing, for direct-fired driers, and miscellaneous plant uses in a facility that it is presently constructing near Natchez, Mississippi. Humble, in its application, requests permission to sell 500,000 Mcf of gas to Diamond on an annual basis and a maximum of 3,000 Mcf on a daily basis.

On July 12, 1965, Mississippi Valley Gas Company (Mississippi) filed a petition to intervene in opposition to the application. Diamond, on August 5, 1965, filed a petition to intervene in the above-styled proceeding. On August 12, 1965, Humble filed an answer in opposition to Mississippi's petition to intervene.

Mississippi alleges in its petition to intervene that it is a local gas distribution company serving over one hundred communities in Mississippi and that the Diamond plant will be located within the geographical confines which are designated as being within its service area by the Mississippi Public Service Commission. Mississippi purchases gas to serve its customers in this area under a service agreement dated September 11, 1963, with Humble. Humble's effective gas tariff on file with the Commission contains a provision that could preclude Mississippi from attaching industrial loads of any significant size in this area.[1]

Mississippi also alleges in its petition to intervene that it worked with the Mississippi Agricultural and Industrial Board in order to induce Diamond to locate a plant in the Natchez, Mississippi area and that it had negotiated with Diamond to supply the natural gas requirements for this plant. Mississippi further claims that Humble has continuously refused to consent to provide it with the additional gas supply necessary for it to serve the requirements of Diamond even

*See order issued October 11, 1965 granting reconsideration, etc., 34 FPC 1127.

[1] Paragraph 10 of the General Terms and Conditions of Humble's FPC Gas Tariff Original Volume No. 1 provides as follows:

Buyer shall not sell gas purchased under Seller's Rate Schedule G-1 to any one industrial consumer in excess of 100,000 cubic feet per month except by written consent of Seller.

though it offered Diamond a contract to supply its gas requirements at a price lower than the price herein proposed by Humble.

Humble in its answer filed in opposition to Mississippi's petition to intervene places strong emphasis on Paragraph 10 of the General Terms and Conditions of its effective FPC gas tariff. Humble contends that under the above-mentioned provisions of this tariff it is only required to meet a customer's request for additional gas to be consumed for industrial purposes when such requirements do not exceed a maximum of 100 Mcf per month.

Mississippi cites *Southern Natural Gas Company*, 25 FPC 925 (1961) and *Northern Natural Gas Company*, Opinion No. 453, 33 FPC 501, issued March 9, 1965 to support its petition to intervene in opposition to Humble's application. The situation that has been directed to the Commission's attention herein by Mississippi is not analogous to our holding in *Southern Natural Gas Company, supra*, wherein we expressed the view that, in general, the wholesale-supplier should not compete directly with its distributor customers. Nor are the reflections in *Northern Natural Gas Company, supra*, helpful in resolving the situation presented herein. In the latter proceeding the Commission indicated that it did not endorse a policy in *Southern* that would limit the making of industrial sales solely to distribution companies, to the exclusion of potential competition by their pipeline suppliers. The ramifications of the tariff provision that we are now considering are of far different consequence than the issues discussed in the proceedings *supra*, because it may serve to restrict local distribution companies from making any direct industrial sales in competition with their pipeline supplier. This provision in Humble's tariff may be unduly restrictive and unjust and unreasonable under the provisions of the Natural Gas Act.

Under the circumstances, the Commission believes that the question of the propriety of this provision in the Humble tariff should be examined. In order to provide an opportunity in a formal hearing, the Commission will direct an order to Humble that it show cause why the above-noted tariff provision should not be held to be unjust and unreasonable. The Commission will invite any of Humble's customers or other persons who are affected by this tariff provision to intervene in this proceeding in order to submit its views on this matter.

The Commission will further consolidate Humble's request for a certificate of public convenience and necessity under Section 7 of the Natural Gas Act in the above-styled proceeding with the issue relating to the necessity and propriety of Paragraph 10 of the General Terms and Conditions of Humble's FPC Tariff Original Volume No. 1.

The Commission will also set a date for a prehearing conference in connection with this matter in order to endeavor to determine whether or not gas service can be afforded to Diamond on an interim basis pending the final determination of this proceeding.

The Commission finds:

Pursuant to the Natural Gas Act, particularly Sections 4, 5 and 7 thereof, it is necessary and appropriate that Humble Gas Transmission Company be directed to show cause in a formal hearing why the Commission should not find and determine that the above-mentioned provision in Humble Gas Transmission Company's filed tariff is unjust and unreasonable.

The Commission orders:

(A) Notice of intervention or petitions to intervene in this proceeding may be filed with the Commission on or before October 4, 1965, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8).

(B) A prehearing conference be convened in the proceeding entitled Humble Gas Transmission Company, Docket No. CP65-395, in a hearing room of the

Federal Power Commission, 441 G Street NW., Washington, D.C., 20426, on October 11, 1965, at 10:00 a.m. (EDST). The Chief Examiner will designate in appropriate officer of the Commission to preside at the prehearing conference and at the formal hearing of these matters, pursuant to the Commission's Rules of Practice and Procedure.

(C) On or before November 19, 1965, Humble Gas Transmission Company shall serve the testimony and exhibits that it intends to present in response to this order upon the various parties to this proceeding.

(D) A formal hearing be commenced in the proceeding entitled Humble Gas Transmission Company, Docket No. CP65-395, in a hearing room of the Federal Power Commission, 441 G Street NW., Washington, D.C., 20426, on December 8, 1965 (EDST).

Before Commissioners: Joseph C. Swidler, Chairman; Charles R. Ross, David S. Black and Carl E. Bagge.

UTAH POWER & LIGHT COMPANY, PROJECT NO. 671

ORDER ACCEPTING SURRENDER OF LICENSE (MAJOR)

(Issued September 17, 1965)

Application was filed on March 8, 1965 under Section 6 of the Federal Power Act by Utah Power & Light Company, licensee for major Project No. 671, for surrender of the license for the project located on Alpine or Dry Creek in the vicinity of Lehi, in Utah County, Utah, and affecting lands of the United States within the Uinta National Forest. The licensee's copy of the license was returned with the application.

According to the application: (1) the 30 inch wood stave pipe line comprising an essential part of the project works is 55 years old and needs to be completely replaced in order to continue operating the plant; (2) the replacement cost is prohibitive due to the present high labor and material costs; and (3) energy can be supplied more economically from other sources in Applicant's interconnected system. Data submitted as part of the application, showing the operating and maintenance costs of the project for 1959 through 1964 supports Applicant's application for surrender.

The Forest Service, which has supervision over the National Forest lands occupied by the project, recommends that surrender of the license be accepted subject to the removal of the project structures and equipment from such lands as proposed in the application, within one year from our acceptance of surrender of the license, and subject to restoration of the lands to a condition satisfactory to the Service.

Public notice of the application has been given. No protests or petitions to intervene have been received.

The Commission finds:

Acceptance of surrender of the license for Project No. 671 is appropriate, as hereinafter provided.

The Commission orders:

Surrender of the license for Project No. 671 is hereby accepted, effective as of August 31, 1966, subject to the restoration within that time of the National Forest lands occupied by the project to a condition satisfactory to the Forest Service and subject to the payment of annual charges under the license through August 31, 1966 within 30 days of rendition of a bill therefor by the Commission.

Before Commissioners: Joseph C. Swidler, Chairman; Charles R. Ross, David S. Black and Carl E. Bagge.

TOWN OF BRIGHTON, IOWA AND NATURAL GAS PIPELINE COMPANY OF AMERICA, DOCKET NO. CP65-312

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued September 20, 1965)

On April 5, 1965, the Town of Brighton, Iowa (Applicant), filed in Docket No. CP65-312 an application pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Natural Gas Pipeline Company of America (Respondent) to establish physical connection of its transportation facilities with the facilities proposed to be constructed by Applicant, and to sell and deliver to Applicant its third year peak day requirements of 439 Mcf of natural gas, all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicant proposes to construct and operate a municipally-owned natural gas distribution system within its borders and a lateral transmission pipeline approximately 13.1 miles in length extending south from a point of interconnection with Natural's main transmission line to Applicant's city gate.

Total volumes of natural gas involved to meet Applicant's anticipated annual and peak day requirements are stated to be:

	First year	Second year	Third year
Annual (Mcf)	27,810	41,700	52,260
Peak day (Mcf)	283	351	439

The total estimated cost of Applicant's proposed construction including the 13.1 miles of lateral, is estimated to be $240,000, which will be financed by Gas Revenue Bonds in the amount of $200,000 and General Obligation Bonds in the amount of $40,000. The data reflected in the application indicates the proposals with reference to Applicant are economically feasible.

On April 22, 1965, Respondent filed an answer to the application in the proceeding, stating it had no unallocated capacity available for the service requested by the Applicant, but would be able and willing to render the request for service should the Commission approve its application in Docket No. CP65-404. Respondent was authorized to construct and operate the said facilities proposed in Docket No. CP65-404 on August 24, 1965, 34 FPC 568.

The Illinois Commerce Commission has approved the proposals of the Applicant made in the instant application.

Due notice of the filing of the subject application and opportunity for hearing thereon have been given by publication in the Federal Register on April 17, 1965 (30 F.R. 5544). No protest, petition to intervene, notice of intervention or request for hearing has been filed in this proceeding.

The Commission finds:

(1) Natural Gas Pipeline Company of America, a Delaware corporation having its principal place of business in Chicago, Illinois, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order issued November 7, 1958, in Docket No. G-9966 (20 FPC 694).

(2) Applicant is legally authorized to engage in the local distribution of natural gas to the public within the meaning of Section 7(a) of the Natural Gas Act.

(3) It is necessary and desirable in the public interest to direct Respondent to establish physical connection of its transmission facilities with the facilities proposed to be constructed and operated by Applicant, and to sell and deliver to Applicant under a service agreement to be executed by Applicant with Respondent in accordance with the Commission's Regulations, up to 439 Mcf per day of natural gas for distribution and resale as hereinbefore described and as more fully described in the application in this proceeding.

(4) Applicant should be prepared to receive natural gas from Respondent for distribution in Brighton, Iowa, and environs, within one year from the date of the issuance of this order.

(5) The requirement that Respondent serve Applicant, as requested, will not place an undue burden upon it nor impair its ability to render adequate service to its existing customers.

The Commission orders:

(A) Natural Gas Pipeline Company of America, Respondent, is directed to establish physical connection of its facilities with the facilities proposed to be constructed and operated by Applicant, as herein described, and to sell and deliver up to 439 Mcf of natural gas daily to Applicant under a service agreement to be executed by Applicant with Respondent in accordance with the Commission's Regulations for distribution and resale as hereinbefore described and as more fully described in the application in the proceeding. Such service shall be rendered pursuant to Respondent's presently filed appropriate rate schedule.

(B) Respondent shall report to the Commission in writing the date of commencement of service to Applicant within 10 days thereof.

(C) Applicant shall be prepared to receive service as directed herein within one year from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; Charles R. Ross, David S. Black and Carl E. Bagge.

EL PASO NATURAL GAS COMPANY, DOCKET NO. CP65-400

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued September 20, 1965)

On June 16, 1965, El Paso Natural Gas Company (Applicant) filed in Docket No. CP65-400 an application, as supplemented on August 2, 1965, pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of three metering and regulating stations, and appurtenant facilities, and the sale of natural gas to Washington Natural Gas Company (Washington Natural), an existing customer, for transportation to and resale and general distribution in the communities of Toledo, Winlock, Fall City, Snoqualmie and North Bend, Washington, and their respective environs, as more fully set forth in the application.

The measuring and regulating stations will consist of one each for service to Toledo and Winlock and the third for service to Fall City, Snoqualmie and North Bend. Deliveries to Washington Natural will be made at the outlets of the measurnig stations, and Washington Natural will transport the gas to points of

resale and distribution in the communities. Washington Natural will be served under Applicant's Rate Schedules DL–1, DS–1, and I–1.

Washington Natural estimates that the maximum daily and annual gas requirements during the third full year of the proposed service will be 1,310 Mcf and 171,435 Mcf, respectively.

The total cost of the facilities to be constructed by Applicant is estimated to be $21,400, which will be financed from currently available working funds. The proposed construction and service appears to be economically feasible.

Due notice of the filing of the application was published in the Federal Register on June 26, 1965 (30 F.R. 8243). No protest, petition to intervene, or notice of intervention has been filed in this proceeding.

At a hearing held on September 16, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, El Paso Natural Gas Company, a Delaware corporation with its principal place of business in El Paso, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of October 29, 1942, in Docket Nos. G–242 and G–257 (3 FPC 851).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are to be used in the transportation and delivery of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the proposed transportation and delivery of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the proposed transportation and delivery of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is issued authorizing Applicant, El Paso Natural Gas Company, to construct and operate the proposed facilities and to transport and sell natural gas as hereinbefore described, as more fully described in the application, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities shall be constructed and placed in actual operation and the transportation and delivery of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within one year from the date of this order.

Before Commissioners: Joseph C. Swidler, Chairman; Charles R. Ross, David S. Black and Carl E. Bagge.

EL PASO NATURAL GAS COMPANY, DOCKET NO. CP65-412

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued September 20, 1965)

On June 22, 1965, El Paso Natural Gas Company (Applicant) filed in Docket No. CP65-412 an application, as supplemented on August 2, 1965, pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities and the sale and delivery of natural gas to Black Mountain Gas Company (Black Mountain) for transportation to and resale and general distribution in the unincorporated communities of Carefree and Cave Creek, Arizona, and their respective environs and rural areas of Maricopa County, Arizona, as more fully set forth in the application.

Applicant will construct and operate a measuring and regulating station adjacent to its 20-inch O.D. San Juan-Maricopa pipeline in Maricopa County, Arizona, and will make deliveries of natural gas to Black Mountain at the outlet of the station. The total estimated cost of Applicant's proposed station is $6,050, which is to be financed from current working funds.

Black Mountain proposes to construct and operate approximately 18.2 miles of transmission pipeline and facilities necessary to provide natural gas service in the two communities and surrounding rural areas. The total estimated cost of Black Mountain's proposed project is $288,425, which it plans to finance through bank loans and the sale of common stock.

Black Mountain estimates that during the five-year prospective period its annual and maximum daily requirements for natural gas will aggregate 67,329 Mcf and 616 Mcf, respectively. Service will be rendered under Applicant's firm service Rate Schedule A-1 and B-1. The proposal appears to be economically feasible.

Due notice of the filing of the application was published in the Federal Register on July 7, 1965 (30 F.R. 8597). No protest, petition to intervene, or notice of intervention has been filed in this proceeding.

At a hearing held on September 16, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, El Paso Natural Gas Company, a Delaware corporation with its principal place of business in El Paso, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of October 29, 1942, in Docket Nos. G-242 and G-257 (3 FPC 851).

(2) The facilities hereinbefore described and as more fully described in the application in this proceeding are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of said Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Applicant, El Paso Natural Gas Company, authorizing the construction and operation of facilities and the sale of natural gas as hereinbefore described and as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be completed and placed in actual operation and the transportation of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within one year from the date of this order.

Before Commissioners: Joseph C. Swidler, Chairman; Charles R. Ross, David S. Black and Carl E. Bagge.

EL PASO NATURAL GAS COMPANY, DOCKET NO. CP66-36

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued September 20, 1965)

On July 30, 1965, El Paso Natural Gas Company (Applicant) filed in Docket No. CP66-36 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities, all as more fully set forth in the application.

Applicant's facilities in the Monument area of Lea County, New Mexico, consist, in part, of a purification and dehydration plant (Monument Plant) and two 16-inch O.D. discharge pipelines extending from the plant. One line extends 6.7 miles to the Eunice Plant. The other line extends 5.2 miles to Applicant's Plains-Eunice pipeline.

Applicant proposes to increase the daily design capacity of the Monument Plant from 110,000 Mcf to 180,000 Mcf per day and to install 5.2 miles of 20-inch O.D. pipeline, looping the 16-inch line which connects the Monument Plant with the Plains-Eunice pipeline. Applicant will also remove the 16-inch Monument-Eunice line from high pressure service, but it will remain in place and will be utilized for low pressure gathering service.

The reason for the proposed construction is that residue gas available to the Monument Plant has been increasing due to increased oil production and increas-

ing gas-oil ratios in some areas. For this reason, the Monument Plant is at times seriously overloaded and some flaring of gas has been necessary. The 16-inch Monument-Eunice line is old and now in too hazardous condition to be continued in high pressure service. Applicant therefore proposes to utilize this line only for low pressure gathering purposes.

The estimated cost of the transmission line and the proposed purification and dehydration plant expansion is $604,000, which will be financed from currently available working funds. The proposal appears to be economically feasible.

Due notice of the filing of the application was published in the Federal Register on August 18, 1965 (30 F.R. 10257). No protest, petition to intervene, or notice of intervention has been filed in this proceeding.

At a hearing held on September 16, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, El Paso Natural Gas Company, a Delaware corporation with its principal place of business in El Paso, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of October 29, 1942, in Docket Nos. G–242 and G–257 (3 FPC 851).

(2) The facilities hereinbefore described and as more fully described in the application in this proceeding are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c) (3), (c) (4) and (e) of Section 157.20 of said Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Applicant, El Paso Natural Gas Company, authorizing the construction and operation of facilities as hereinbefore described and as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c) (3), (c) (4) and (e) of Section 157.20 of such Regulations.

(C) The facilities authorized by this order shall be completed and placed in actual operation and the transportation of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within one year from the date of this order.

312–270—69——59

Before Commissioners: Joseph C. Swidler, Chairman; Charles R. Ross, David S. Black and Carl E. Bagge.

MICHIGAN GAS STORAGE COMPANY, DOCKET NO. CP65-383

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued September 20, 1965)

On June 1, 1965, Michigan Gas Storage Company (Applicant) filed in Docket No. CP65-383 an application, as supplemented August 9, 1965, pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the establishment and operation of a new interchange and delivery point with Consumers Power Company (Consumers) and the transportation of natural gas for and in behalf of Consumers, all as more fully set forth in the application.

The proposed interchange, to be known as Rochester Junction, is to be located in Oakland Township, Oakland County, Michigan. Consumers is to construct approximately 21 miles of 26-inch pipeline extending from its St. Clair Compressor Station now under construction in Macomb County, Michigan to the proposed interconnection with Applicant's existing 20-inch pipeline in Oakland County, Michigan. This pipeline and interchange will permit the utilization by Consumers in its service area of a greater volume of its natural gas production in St. Clair and Macomb Counties, Michigan. The proposed interchange will also be used for the delivery of gas by Applicant to Consumers for storage in Consumer's facilities in St. Clair County, Michigan.

No facilities are to be constructed by Applicant, and Consumers will construct and pay for all facilities required to establish and operate the proposed interchange.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on September 16, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits thereto, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Michigan Gas Storage Company, a Michigan corporation having its principal place of business in Jackson, Michigan, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission.

(2) The establishment of the proposed interchange and its operation by Applicant for the transportation and delivery of natural gas for and to Consumers Power Company are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The proposed establishment and operation of said interchange are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Applicant, Michigan Gas Storage Company, authorizing the establishment of the proposed

interchange with Consumers Power Company and authorizing the operation of such interchange by Applicant for the transportation and delivery of natural gas for and to Consumers, all as hereinbefore described and as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c) (3) and (e) of Section 157.20 of such Regulations.

(C) The interchange authorized above shall be placed in actual operation, as provided by paragraph (b) of Section 157.20 of the aforesaid Regulations, within one year from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; Charles R. Ross, David S. Black and Carl E. Bagge.

NORTHERN STATES POWER COMPANY (MINNESOTA), DOCKET NO. E-7140

ORDER ACCEPTING RATE SCHEDULE FILINGS EFFECTING RATE REDUCTIONS AND TERMINATING PROCEEDING

(Issued September 20, 1965)

Northern States Power Company (Minnesota) [Company] at various times between June 11 and August 16, 1965, submitted proposed rate schedules for filing pursuant to Section 205 of the Federal Power Act whereby Company would reduce its rates and charges to 41 municipal investor-owned and cooperatively-owned customers by $254,468 based upon Company's 1963 operations. This amount would be increased $281,596 based upon 1964 operations of Company.

The subject rate reductions are occasioned by, and proffered in settlement of, the formal rate investigation directed by order of the Commission issued December 6, 1963, 30 FPC 1430, in the above-docketed matter.

Pursuant to the proposed filings, Company would reduce its rates and charges for firm power service to 15 municipal and one investor-owned wholesale customer served from Company's Minnesota-South Dakota system by 6.5 per cent per annum, $153,074 (1963) and $159,811 (1964).[1] Company's rates and charges for wheeling services to 11 municipal and 16 cooperatively-owned wholesale customers would be reduced by 8 per cent per annum, $101,394 (1963) and $121,785 (1964).[2] All of the proposed rate reductions would be effective for billing pur-

[1] Company serves the following all requirements firm power customers in Minnesota, Cities of: Anoka, Arlington, Bayport, Brownton, Buffalo, Chaska, Granite Falls, Kasota, Kasson, Lake City, North St. Paul, St. Peter, Shakopee, Waseca, Winthrop, and Home Light and Power Company.

[2] Company furnishes wheeling service to the following ten municipalities in Minnesota and to the University of North Dakota: Olivia, St. James, Sauk Centre, Ada, East Grand Forks, Marshall, Melrose, Redwood Falls, Fairfax, and Sleepy Eye.

In addition, Company furnishes wheeling service to the following four cooperatives: Lyon-Lincoln and Traverse Electric Cooperative, Renville Sibley Cooperative, Nobles Cooperative Electric Association, and Minnesota Valley Cooperative Light and Power Assn. Company also furnishes wheeling service to Cooperative Power Association for the account of the following 12 cooperatives: Dakota County Electric Cooperative, Goodhue County Electric Association, McLeod Cooperative Power Association, Meeker Cooperative Light & Power Association, Blue Earth-Nicollet Cooperative, Minnesota Valley Electric Cooperative, Steel-Waseca Electric Cooperative, Brown County Rural Electric Association, South Central Electric Association, Stearns Cooperative Electric, Redwood Electric Cooperative, and Runestone Electric Association.

poses as of the first metering dates from and after June 1, 1965. Attached Appendix A sets forth rate schedule designations covering the proffered filings and detailed dollar reductions applicable to individual customers. Attached Appendix B summarizes principal differences in present and proposed rate forms through which the rate reductions would be accomplished.

During the pendancy of the subject proceeding, Company reduced its rates and charges for transformation service supplied to five municipal customers [3] and the University of North Dakota. That reduction amounts to 30 per cent per annum, $22,820 based upon Company's 1963 operations. Additionally, under the proposed rate schedules the Company's corporate affiliate Northern States Power Company (Wisconsin) will receive, effective July 1, 1965, a nominal rate reduction ($4,300 based on 1963–64 operations) through the Company's revision of its standard fuel adjustment clause.

The Commission's order of December 6, 1963, instituting this proceeding directed a general investigation of Company's rates and charges for various classes of service to municipal, investor and cooperatively-owned electric systems including certain services rendered to Company's affiliate, Northern States Power Company (Wisconsin), Eau Claire, Wisconsin. Company operates an interconnected electric system in the States of Minnesota and South Dakota. An isolated electric system of Company serves the Fargo-Grand Forks, North Dakota, area.[4] The Company's corporate affiliate, Northern States Power Company (Wisconsin), operates in the western and northern portions of the State of Wisconsin.

On July 20, 1964, Company submitted a cost of service study showing annual revenue deficiencies for service to the above-mentioned wholesale customers. Thereafter, the Commission staff completed a cost of service study which indicates excess revenues over costs for Company's firm power service to municipals and one non-affiliated investor-owned electric system purchasing from Company's interconnected Minnesota-South Dakota system. Staff's study also indicates excess revenues over costs for Company's wheeling services to municipal and cooperatively-owned electric systems. Staff's study indicates no excess revenues over costs for firm power service rendered from the Fargo-Grand Forks System or for various services rendered to the Company's corporate affiliate, Northern States Power Company (Wisconsin). Based upon Company's prior reduction of $22,820 in charges for transformation service, staff's study shows no excess revenues over costs for that service.

The cost of service study as prepared by the staff, reflects the Commission's cost of service ratemaking principles. Ultimate unresolved dollar differences between the respective cost of service studies of Company and staff reflect differences in cost assignment and allocation procedures. For settlement purposes, Company is willing to concede the major portion of those differences without prejudice to its contentions if this matter were disposed of on a litigated basis. Staff's overall cost of service totals $3,486,342 based upon a 1963 test year. Company's cost of service totals $4,653,770.

We believe this proceeding should be disposed of through acceptance of the proffered rate schedule filings. These schedules will eliminate charges by Company of $254,468 in the test year (1963) or $281,596 when applied to the 1964 usage by the customers affected. The settlement proposal presents an acceptable compromise of contested issues involving numerous judgment factors.

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[3] Those five Minnesota municipal customers are: Olivia, Sauk Centre, St. James, East Grand Forks and Ada.

[4] Company's Minot division which operates in North Dakota has no wholesale customers. That division's rates were not investigated in this proceeding.

In presenting this matter for Commission consideration, the staff study reflects an allowance for return at the rate of 6 percent per annum. We, of course, by accepting Company's schedules do not determine what would be the fair rate of return for Company and neither do we herein determine the basis for disposition of other disputed items in the respective cost of service studies by Company and staff as would be done were this proceeding terminated following a complete trial of all issues. Our rate making authority is a continuing process and disposition of this proceeding on the indicated basis in no way limits our ability to re-examine Company's wholesale rates and charges at any time hereafter.

No party of interest in this proceeding has requested the Commission to refuse to allow the proffered rate settlement to become effective. Intervenor Wisconsin Public Service Commission does not object. Minnesota Valley Co-operative Light and Power Association was granted intervention by order of the Commission issued March 9, 1964, in this proceeding. By filing a "Notice of Withdrawal of Intervention" on May 28, 1965, that Association indicated its intent to withdraw from further participation herein.[5]

Pursuant to individual arrangements Company obtains certain standby electric services from five municipal customers with installed generating capacity. Under the proposed rate schedules, Company will credit three of the cities, Fairfax, Redwood Falls and Sleepy Eye, Minnesota, for their installed generating capacity on a basis equivalent to .65 mills/kwh wheeled by Company to the cities as preference customers of the Bureau, as more fully explained in attached Appendix B. Marshall and Melrose, Minnesota, electing to continue service under Company's presently effective rate schedules will receive a .75 mill/kwh credit as provided in the Company's existing contracts and will continue to pay a 2.5 mill/kwh total wheeling charge. Presently, the customers receiving wheeling service in addition to payment of 1 mill/kwh to the Bureau, pay Company 1.5 mills/kwh wheeled. The proposed wheeling rate is 2.3 mills/kwh, 1 mill being paid to the Bureau and 1.3 mills to Company.

In disposing of this case upon the basis of the proffered rate schedules and resulting revenues, we take note of the immediate rate relief which will be afforded thereby. Also, we note that the effective date of the proposed rate schedule supplements will be on the date service is provided subsequent to the first regular meter reading on or after June 1, 1965. (July 1, 1965 in the case of Northern States Power Company (Wisconsin)).

The Commission finds:

(1) Good cause has been shown that the 30-day notice period provided in Section 205(d) of the Federal Power Act be waived with respect to Company's rate schedule filings as referred to and designated in Appendix A, and that such rate schedules be allowed to take effect on the effective dates shown in Appendix A.

(2) It is necessary and appropriate for the purposes of the Federal Power Act to terminate the above-entitled proceeding in the manner hereinafter ordered.

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[5] Representatives of the City of Hillsboro, North Dakota, a customer of Company's Fargo-Grand Forks System and the City of St. James, Minnesota, a customer of Company's interconnected system, conferred at various times with staff and Company representatives. Neither City formally sought intervention in this proceeding or requested that the Commission reject the proposed settlement. Moreover, the City of St. James has executed a new contract for service by Company at the proposed reduced rates.

The Commission orders:

(A) The 30-day notice period provided in Section 205(d) of the Federal Power Act is hereby waived with respect to the proposed rate schedules as referred to and designated in Appendix A and they are hereby allowed to take effect on the effective dates as indicated in Appendix A.

(B) The issuance of this order shall constitute full notice of the filing and publication of the rate schedules in question insofar as their effective dates are concerned.

(C) Acceptance of Company's rate schedules as herein provided is without prejudice to any findings or order which have been or may hereafter be made by this Commission in any proceeding by or against Northern States Power Company (Minnesota). Moreover, nothing in this order shall be construed as waiver in any other respect of the requirements of Section 205(d) of the Federal Power Act or Section 35.11 of the Commission's Regulations under the Federal Power Act; nor shall this order be construed as constituting approval by this Commission of any service, rate, charge, classification, or any rule, regulation, contract, or practice affecting such service or rate provided for in the rate schedules referred to and designated in Appendix A; nor shall this order be deemed as recognizing any claimed contractual right or obligation affecting or relating to such service or rates.

(D) The above-entitled proceeding, Docket No. E-7140, is hereby terminated.

APPENDIX A

NORTHERN STATES POWER CO. (MINNESOTA)

RATE SCHEDULE DESIGNATIONS, DESCRIPTIONS; REVENUES REDUCTIONS IN TEST YEAR (1963)

Rate schedule FPC-No.	Other party	Date of agreement	Effective date	Description	Present rates	Proposed rates	Reduction
Filed: June 25, 1965							
Supplement No. 1 to FPC No. 172	City of Anoka, Minn	June 4, 1965	June 30, 1965	Rate schedule supplement	$516,207	$483,001	$33,206
Supplement No. 1 to FPC No. 173	City of Arlington, Minn	do	June 15, 1965[1]	do	73,180	68,439	4,741
Supplement No. 1 to FPC No. 174	Village of Bayport, Minn	do	June 17, 1965[1]	do	68,946	64,503	4,443
Supplement No. 1 to FPC No. 175	Village of Brownton, Minn	do	June 25, 1965[1]	do	32,128	30,086	2,042
Supplement No. 1 to FPC No. 176	Village of Buffalo, Minn	do	June 14, 1965[1]	do	134,836	126,165	8,671
Supplement No. 1 to FPC No. 177	City of Chaska, Minn	do	June 28, 1965[1]	do	95,850	89,652	6,198
Supplement No. 1 to FPC No. 178	City of Granite Falls, Minn	do	do	do	106,261	99,704	6,557
Supplement No. 1 to FPC No. 179	Village of Kassota, Minn	do	June 24, 1965[1]	do	17,751	16,492	1,259
Supplement No. 1 to FPC No. 180	Village of Kasson, Minn	do	June 25, 1965[1]	do	53,031	49,551	3,480
Supplement No. 1 to FPC No. 145	City of Lake City, Minn	do	June 21, 1965[1]	do	202,966	189,706	13,260
Supplement No. 1 to FPC No. 181	City of North St. Paul, Minn	do	do	do	215,989	202,106	13,883
Supplement No. 1 to FPC No. 182	City of St. Peter, Minn	do	June 24, 1965[1]	do	230,631	215,585	15,046
Supplement No. 1 to FPC No. 183	City of Shakopee, Minn	do	June 28, 1965[1]	do	162,871	152,395	10,476
Supplement No. 1 to FPC No. 299	City of Waseca, Minn	do	June 25, 1965[1]	do	332,270	310,702	21,568
Supplement No. 1 to FPC No. 185	City of Winthrop, Minn	do	June 18, 1965[1]	do	85,112	79,619	5,493
Supplement No. 1 to FPC No. 89	Home Light & Power Co	June 18, 1965	June 21, 1965	Supplement No. 3 to transformation service contract.	42,676	39,925	2,751
Supplement No. 6 to FPC No. 94	Cooperative Power Association	do	do	Supplement No. 6 to electric service agreement.	435,845	400,977	34,868
Supplement No. 6 to FPC No. 291	do	do	do	do	400,001	369,069	30,932
Filed: June 11, 1965					(Change in fuel clause only)		
Supplement No. 5 to FPC No. 138	Northern States Power Co. (Wisconsin).	June 9, 1965	July 1, 1965	Supplement No. 5 to interchange agreement.			

See footnotes at end of table.

APPENDIX A—Continued

NORTHERN STATES POWER CO. (WISCONSIN)

RATE SCHEDULE DESIGNATION AND DESCRIPTION

Rate schedule FPC-No.	Other party	Date of agreement	Effective date	Description	Present rates	Proposed rates	Reduction
Filed: June 11, 1965							
Supplement No. 5 to FPC No. 18 (concurs in supp. 5 to Northern States-Minn. FPC No. 138).	Northern States Power Co. (Minnesota).	Undated	....do....	Certificate of concurrence...	(Change in fuel clause only)		

NORTHERN STATES POWER CO. (MINNESOTA)

RATE SCHEDULE DESIGNATIONS AND DESCRIPTIONS; REVENUES REDUCTIONS IN TEST YEAR (1963)

Supplement No. 2 to FPC No. 307	University of North Dakota	June 16, 1965	June 20, 1965	Letter Agreement	$22,073	$19,850	$2,223
Supplement No. 2 to FPC No. 269	Nobles Cooperative Electric	June 30, 1965	June 21, 1965	Supplement 1 to attachment.	58,781	54,079	4,702
		Aug. 27, 1965	....do....	Exhibit No. 1 to supplement 1.			
Supplement No. 2 to FPC No. 290	Lyon-Lincoln & Traverse Elec. Cooperative.	June 22, 1965	....do....	Supplement 1 to agreement.	22,136	20,365	1,771
		Aug. 27, 1965	....do....	Exhibit No. 1 to supplement 1.			
Filed: July 19, 1965							
Supplement No. 2 to FPC No. 186	Village of Olivia, Minn	July 6, 1965	....do....	Supplement 1 to agreement.	22,510	20,709	1,801
		Aug. 27, 1965	....do....	Exhibit No. 1 to supplement 1.			
Supplement No. 2 to FPC No. 304	City of Ada, Minn	July 14, 1965	....do....	Supplement 1 to agreement.	15,860	14,591	1,269
		Aug. 27, 1965	....do....	Exhibit No. 1 to supplement 1.			
Supplement No. 2 to FPC No. 305	City of Sauk Centre, Minn	July 12, 1965	....do....	Supplement 1 to agreement.	27,484	25,285	2,199
		Aug. 27, 1965	....do....	Exhibit No. 1 to supplement 1.			
Supplement No. 3 to FPC No. 306	City of East Grand Forks, Minn	July 7, 1965	....do....	Supplement 1 to agreement.	38,615	34,320	4,295
		Aug. 27, 1965	....do....	Exhibit No. 1 to supplement 1.			
FPC No. 312 (supersedes FPC No. 188 and supplements thereto).	City of St. James, Minn	July 7, 1965	....do....	Resale service agreement	42,277	38,895	3,382
		July 8, 1965	....do....	Letter Agreement			
		Aug. 27, 1965	....do....	Exhibit No. 1 to Service agreement.			

Filed: Aug. 9, 1965							
Supplement No. 4 to FPC No. 301	Minnesota Valley Cooperative Light & Power Association.	July 28, 1965	....do....	Supplement 3 to agreement.	79,765	73,384	6,381
Supplement No. 2 to FPC No. 268	Renville-Sibley Cooperative Power Association.	July 15, 1965	....do....	Supplement 1 to agreement.	49,144	45,213	3,931
		Aug. 27, 1965	....do....	Exhibit No. 1 to supplement 1.			
Supplement No. 3 to FPC No. 283	City of Redwood Falls, Minn	Undated	....do....	Supplement 2 to agreement.	34,830	32,044	2,786
		Aug. 27, 1965	....do....	Exhibit No. 1 to supplement 2.			
Supplement No. 3 to FPC No. 308	City of Sleepy Eye,[2] Minn	Undated	....do....	Supplement 2 to agreement.			
		Aug. 27, 1965	....do....	Exhibit No. 1 to supplement 2.			
Filed: Aug. 16, 1965							
Supplemen tNo. 2 to FPC No. 300	Village of Fairfax, Minn	Undated	....do....	Supplement 2 to agreement.	10,677	9,823	854
		Aug. 27, 1965	....do....	Exhibit No. 1 to supplement 2.			
					3,630,703	3,376,235	254,468

[1] The first regular meter reading date on or after June 1, 1965.
[2] New customer in 1965.

APPENDIX B

NORTHERN STATES POWER COMPANY (MINNESOTA), DOCKET NO. E-7140

	Rates for all requirements firm power customers	
	Present rate	Proposed rate
Demand charge:		
	per Kw	*per Kw*
First 25 Kw or less	$75.00	$75.00
Next 125 Kw	3.00	3.00
Next 150 Kw	2.00	2.00
All over 300 Kw	1.50	1.50
Energy charges:		
	per Kwh	*per Kwh*
First 10,000 Kwh	.01882	.0141
Next 90,000 Kwh	.00882	.0081
All over 100,000 Kwh	.00782	.0071

The present energy rate includes an adjustment of 0.132¢ per Kwh to reflect the fuel clause which is based on a heat rate of 22,000 Btu per Kwh and a cost of fuel of 20¢ per million Btu. The proposed fuel clause reflects a present zero adjustment based on a heat rate of 12,000 Btu per Kwh and a cost of fuel of 25¢ per million Btu.

Rates for Wheeling Services

Presently, wheeling customers pay total charges equivalent to 2.5 mills per Kwh. Under the proposed rates such customers would pay total charges equivalent to 2.3 mills per Kwh. Five municipalities,[1] the University of North Dakota, and four cooperatives[2] receive their power from the Bureau of Reclamation over Company's lines. Presently, Company bills the Bureau 1 mill per Kwh (the 1.0 mill is included in the customers cost of power from the Bureau) and bills the individual customers 1.5 mills per Kwh for wheeling Bureau power. The proposed rates provide for a total wheeling charge of 2.3 mills per Kwh with a 1 mill credit to the individual customers for the payment received by Company from the Bureau or a net charge by Company to the customer of 1.3 mills.

Company's present rates to municipalities which have generating facilities provide for a wheeling charge of 1.5 mills per Kwh with a credit of 0.75 mills per Kwh for making their generating facilities available to Company as standby. The proposed rate provides for a total charge of 2.3 mills per Kwh with a credit to the customer for the payment received by Company from the Bureau (1.0 mill per Kwh) and separately provides that Company will purchase the municipalities' existing generating capacity for use by Northern States as standby capacity for 0.65 mills per Kwh.

Company's present agreement with Cooperative Power Association provides that Company will wheel power to CPA member cooperatives from the Bureau at a rate of 2.5 mills per Kwh and from the Upper Mississippi Valley Power Pool at a rate of $10.50 per kw per year which in 1963 was the equivalent of 2.5 mills per Kwh. Under the proposed rate all wheeling service for CPA members will be at the same rate of 2.3 mills per Kwh.

[1] The five are all in Minnesota: Oliva, St. James, Sauk Centre, Ada, and East Grand Forks.

[2] The four are: Lyon-Lincoln and Traverse Electric Cooperative, Renville Sibley Cooperative, Nobles Electric Association and Minnesota Valley Cooperative Light and Power Association.

Before Commissioners: Joseph C. Swidler, Chairman; Charles R. Ross, David S. Black and Carl E. Bagge.

TRUNKLINE GAS COMPANY, DOCKET NO. CP65-117

ORDER AMENDING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued September 20, 1965)

On August 9, 1965, Trunkline Gas Company (Petitioner) filed in Docket No. CP65-117 a petition to amend the order issued in said docket on March 15, 1965, 33 FPC 567, to provide authorization for increased contract quantities of natural gas to two of its existing resale customers, as more fully set forth in the petition to amend.

On March 15, 1965, the Commission issued a certificate of public convenience and necessity authorizing additional horsepower at various existing compressor stations, the construction of a new compressor station at Ambia, Indiana, and the installation of an additional river crossing at the Red River to provide increased contract quantities of natural gas to Consumers Power Company.

Subsequent to the issuance of the certificate on March 15, 1965, Illinois Power Company (Illinois Power) and the City of Rensselaer, Indiana (Rensselaer) requested increased contract demand quantities to meet their requirements for the 1965-1966 heating season.

Illinois Power seeks to increase its contract demand from 350 Mcf per day to 700 Mcf per day, and Rensselaer seeks to increase its contract demand from 2,300 Mcf per day to 2,700 Mcf per day, resulting in a net increase in the contract demand for the two customers of 750 Mcf per day. These increases are required to meet normal market growth.

The proposed increased sales are to be made under Petitioner's Rate Schedule SG-2 at a rate of 42.6 cents per Mcf.

Petitioner states that upon completion of the facilities authorized by the certificate issued on March 15, 1965, it will have adequate capacity to provide these increased contract quantities. No new facilities are proposed in the petition to amend

Due notice of the filing of the petition to amend was published in the Federal Register on August 24, 1965 (30 F.R. 10958). No protest, petition to intervene, or notice of intervention has been filed in this proceeding.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the certificate of public convenience and necessity issued in Docket No. CP65-117 on March 15, 1965, be amended as hereinafter ordered.

The Commission orders:

(A) The certificate of public convenience and necessity issued to Trunkline Gas Company in Docket No. CP65-117 on March 15, 1965, is hereby amended by authorizing the sale of up to 700 Mcf per day of natural gas to Illinois Power Company and the sale of up to 2,700 Mcf per day of natural gas to the City of Rensselaer, Indiana.

(B) In all other respects said order shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; Charles R. Ross, David S. Black and Carl E. Bagge.

UNITED GAS PIPE LINE COMPANY, DOCKET NO. CP60-14

ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued September 20, 1965)

On August 11, 1960, United Gas Pipe Line Company (Petitioner) was issued a certificate of public convenience and necessity in Docket No. CP60-14, 24 FPC 216, authorizing the construction and operation of facilities and delivery of natural gas to industrial customers. Deliveries of gas to Chemstrand Company (Chemstrand) for use in its synthetic fiber plant located in Escambia County, Florida were limited by said order to 56,000 Mcf per day.

On August 9, 1965, Petitioner filed herein a petition to amend the above order by requesting authorization to increase deliveries of gas to the Chemstrand plant to 75,000 Mcf per day. Petitioner also seeks authorization to install additional valves and replace regulators in the meter station serving the Chemstrand plant in order to increase its capacity, since the existing station has a capacity of only 66,000 Mcf per day. Estimated cost of these facilities is $9,448.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the order of the Commission issued August 11, 1960, in Docket No. CP60-14 be amended as hereinafter ordered.

The Commission orders:

(A) The order of the Commission issued August 11, 1960, in Docket No. CP60-14, is amended by authorizing Petitioner to deliver to Chemstrand Company up to 75,000 Mcf of natural gas per day, and by authorizing construction and operation of facilities necessary for such delivery of gas, all as more fully set forth in the petition to amend.

(B) This amendment shall not entitle Chemstrand Company to any priorities to additional gas for meeting any future increases in its requirements at the expense of firm resale customers desiring to acquire additional gas to meet any future increases in their requirements.

(C) In all other respects the order issued in this docket on August 11, 1960 shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; Charles R. Ross, David S. Black and Carl E. Bagge.

UNITED GAS PIPE LINE COMPANY, DOCKET NO. CP66-3

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued September 20, 1965)

On July 2, 1965, as supplemented on August 2, 1965, United Gas Pipe Line Company (Applicant), filed in Docket No. CP66-3 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and

necessity authorizing the construction and operation of certain natural gas facilities, all as more fully set forth in the application.

Applicant proposes to construct and operate the following items of facilities:

Item 1. Install 9.90 miles of 30-inch pipe line loop, beginning at a point near Milepost 311.4 on Applicant's existing Refugio to Sterlington 30-inch pipe line in the John B. Gaines Survey, Abstract 110, Sabine County, Texas, and extending in a northeasterly direction parallel to the existing line to a point near Milepost 321.3 on the existing line in Section 6, Township 6 North, Range 12 west, Sabine Parish, Louisiana;

Item 2. Anchor 30-inch pipe line beginning at a point in the A. L. Frazier Survey, Abstract 102, Sabine County, Texas, and ending at a point in the Ira McDaniel Survey, Abstract 163, Sabine County, Texas, and anchor 30-inch pipe line at a point in the James S. Ogden Survey, A–172, Sabine County, Texas;

Item 3. Replace all 20-inch and 30-inch pipe and other facilities with a single 30-inch concrete coated pipe, beginning near Milepost 312.95 on Applicant's existing Refugio to Sterlington 30-inch pipe line in the James Gaines Survey, Abstract 16, Sabine County, Texas, and ending near Milepost 313.22 in Section 31, Township 6 North, Range 13 West, Sabine Parish, Louisiana;

Item 4. Replace 0.3 mile of 6-inch field line in Joaquin Field beginning in Section 33, Township 12 North, Range 16 West, DeSoto Parish, Louisiana, and ending in the James Blankenship Survey, Abstract 74, Shelby County, Texas;

Item 5. Replace 2.8 miles of 16-inch Latex-Beaumont line beginning in the Elizabeth Daniels Survey, Abstract 889, and ending in the Lucy Maragle Survey, Abstract 438, all in Panola County, Texas;

The Refugio-Sterlington line (West 30-inch) will be anchored for approximately one mile at a tributary of the reservoir.[1] The present Sabine River crossing consisting of 20-inch and 30-inch pipe will be replaced by 0.3 miles of concrete-coated 30-inch pipe. This section of the line including the river crossing, as flooded, will be looped with the 9.9 miles of 30-inch pipe (Item 1). The main line and loop line will be weighted with concrete for a distance of seven miles.

The facilities are being constructed as a safety measure due to the proposed construction by the Sabine River Authorities of Texas and Louisiana of the Toledo Bend Dam Project. Applicant further states that once the reservoir has been completed, it will become very difficult, time consuming, and expensive to repair the present facilities should any failure occur and such facilities proposed in the application will help to assure the continued and uninterrupted flow of natural gas to Applicant's customers.

The estimated cost of the facilities is $2,820,341. Applicant has entered into a reimbursement agreement with the Sabine River Authorities of Texas and Louisiana for $2,285,600 of this amount.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on September 16, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application as supplemented, and exhibits submitted in support of the authorizations sought, and upon consideration of the record,

The Commission finds:

(1) Applicant, United Gas Pipe Line Company, a Delaware corporation having its principal place of business in Shreveport, Louisiana, is a "natural-gas com-

[1] Toledo Bend Reservoir.

pany" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of November 10, 1942, in Docket No. G-232 (3 FPC 863).

(2) The proposed construction and operation of facilities by Applicant as hereinbefore described, and as more fully described in the application and exhibits in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid construction and operation of facilities are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to the Applicant in this proceeding authorizing the construction and operation of facilities as more fully described in the application as supplemented, and exhibits in this proceeding, subject to the jurisdiction of the Commission, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities authorized shall be completed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the aforesaid Regulations within 12 months of the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

W. H. BLACK, DOCKET NO. RI63-52

ORDER ACCEPTING OFFER OF SETTLEMENT, REQUIRING REFUNDS, SEVERING AND TERMINATING PROCEEDING

(Issued September 21, 1965)

On August 10, 1965, W. H. Black (Black) submitted an offer of settlement, pursuant to Section 1.18(e) of the Commission's Rules of Practice and Procedure, involving a sale of natural gas in the Kansas-Hugoton Field, Kearny County, Kansas to Colorado Interstate Gas Company (CIG) under Black's FPC Gas Rate Schedule No. 6. Under the terms of the offer, Black proposes to eliminate the indefinite pricing provisions from said Rate Schedule and substitute a schedule of periodic price increases in conformity with the Seventh Amendment to the Statement of General Policy No. 61-1, 30 FPC 1370 (18 CFR 2.56). Additionally,

Black proposes to reduce the present rate of 12¢, which is being collected subject to refund, to 11.6¢ per Mcf and to make refunds. With its proposal Black filed an executed contract amendment effectuating the terms of the proposal.[1]

Under the proposed settlement, Black's annual revenues would be decreased approximately $200, and refunds would approximate $435, exclusive of interest.

The proposed settlement is consistent with the provisions of the Seventh and Ninth Amendments to the Commission's Statement of General Policy No. 61–1, issued December 20, 1960, 24 FPC 1107, as amended, and its acceptance would serve the public interest.

However, we desire to make it clear that acceptance of Black's offer of settlement shall not be construed as approval of any future increased rate filed in accordance with its reservation of the right to file increases under the subject rate schedule, and is without prejudice to any findings or order of the Commission in any future proceedings including area rate or other similar proceedings, involving Black's rates and rate schedules.

The Commission finds:

The proposed settlement of the above-designated proceeding on the basis described herein, as more fully set forth in the offer of settlement filed with the Commission by Black on August 10, 1965, is in the public interest and appropriate to carry out the provisions of the Natural Gas Act and should be approved and made effective as hereinafter ordered.

The Commission orders:

(A) The offer of settlement filed with the Commission by Black on August 10, 1965, is hereby approved in accordance with the provisions of this order.

(B) Supplement No. 3 to Rate Schedule No. 6, filed by Black with the offer of settlement herein on July 19, 1965, is accepted for filing, and the settlement rate and charge of 11.6¢ per Mcf at 14.65 psia, shall be effective as of the date of issuance of this order, and within 30 days from the issuance of this order Black shall file a notice of change to reflect such settlement rate.

(C) Black shall compute the difference between the rate collected subject to refund and the settlement rate of 11.6¢ per Mcf at 14.65 psia, with applicable interest, to the date of this order, and shall within 30 days from the date of this order submit a report to the Commission, and serve a copy on CIG setting out the amount of refund related to the subject rate schedule (showing separately the principal and applicable interest). Within 10 days thereafter, Black shall file CIG's written concurrence in the refund amounts computed in compliance with the above, and shall within 10 days of such filing make refund to CIG of such amounts of monies.

(D) Upon compliance by Black with the provisions of this order, the proceeding in Docket No. RI63–52 shall be deemed severed from the Hugoton-Anadarko Area Proceeding, Docket No. AR64–1, and terminated without further order of the Commission.

(E) The acceptance by the Commission of Black's offer of settlement and the termination of Docket No. RI63–52 are without prejudice to any findings or determinations that may be made in any proceeding now pending, or hereafter instituted by or against Black, including area rate or other similar proceedings.

[1] The amendatory agreement is designated herein as Supplement No. 3 to Black's FPC Gas Rate Schedule No. 6.

Before Commissioners: Joseph C. Swidler, Chairman; Charles R. Ross, David S. Black and Carl E. Bagge.

MICHIGAN WISCONSIN PIPE LINE COMPANY, DOCKET NO. CP65-396

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued September 21, 1965)

On June 11, 1965, Michigan Wisconsin Pipe Line Company (Applicant) filed in Docket No. CP65-396 an application, as supplemented August 13, 1965, pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities, all as more fully set forth in the application.

Applicant proposes to construct and operate 12.2 miles of 12-inch loop and 26 miles of 16-inch loop on its lateral extending to Madison, Wisconsin. The proposed facilities will complete the looping of Applicant's Madison lateral, and are required to correct low pressure conditions experienced during the 1964-65 heating season and to assure continuity of firm service to communities served from this line. No new service is proposed as a result of construction of the above facilities.

The annual cost of service attributable to the proposed project is estimated to be $287,755, which is 0.693 percent of Applicant's total operating expense exclusive of purchased gas for the year ending March 31, 1965. This cost will have no significant effect on Applicant's presently effective rates.

Total estimated cost of Applicant's proposed construction is $1,925,000, and will be financed with treasury funds and bank loans.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on September 16, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits thereto, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Michigan Wisconsin Pipe Line Company, a Delaware corporation having its principal place of business in Detroit, Michigan, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission.

(2) The proposed construction and operation of facilities by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed construction and operation of facilities are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Applicant, Michigan Wisconsin Pipe Line Company, authorizing construction and operation of the facilities hereinbefore described, as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The authorized facilities shall be constructed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the aforesaid Regulations, within one year from the date on which this order issues.

OPINION NO. 475

H. L. HAWKINS & H. L. HAWKINS, JR., OPERATOR, ET AL., DOCKET NO. G–18077; W. S. KILROY (OPERATOR), ET AL., G–18175; JOHN A. NEWMAN (OPERATOR), ET AL., G–18481; SHELL OIL COMPANY, G–18805; CALLERY PROPERTIES, INC., G–18857; GREGORY J. GALLAGHER, G–19308, G–20385; THE SPARTA OIL COMPANY, G–19964; SKELLY OIL COMPANY, G–20155, CI63–672; THE SUPERIOR OIL COMPANY, G–20359, CI63–584; PAN AMERICAN PETROLEUM CORPORATION, CI63–1445; ROBERT MOSBACHER, OPERATOR, ET AL., CI60–343; NORTH CENTRAL OIL CORPORATION, OPERATOR, CI60–434; WOODS EXPLORATION AND PRODUCING CO., ET AL., CI60–495; W. C. COFFEY AND NORTH CENTRAL OIL CORPORATION, CI60–496; BEN H. SCHNAPP (OPERATOR), ET AL., CI60–642; HUMBLE OIL & REFINING COMPANY, CI63–1057, CI64–677; TIDEWATER OIL COMPANY, CI63–1134; MARATHON OIL COMPANY, CI60–497; KIRBY PETROLEUM CO., OPERATOR, CI60–610; OIL RESERVES CORPORATION, OPERATOR, CI61–468; GEORGE R. BROWN, CI61–1688; A. F. CHILDERS, JR. (OPERATOR), ET AL., CI62–1152; SUN OIL COMPANY, CI60–348; KILROY PROPERTIES, INCORPORATED, ET AL., CI60–478; H. L. HUNT, OPERATOR, ET AL., CI61–1221; H. L. HUNT, CI61–1282; HASSIE HUNT TRUST, OPERATOR, ET AL., CI61–1283; CAROLINE HUNT SANDS, CI61–1343; CAROLINE HUNT TRUST ESTATE, DOCKET NO. CI61–1344; LAMAR HUNT TRUST ESTATE, CI61–1345; NELSON BUNKER HUNT, CI61–1346; PLACID OIL COMPANY, OPERATOR, ET AL., CI61–1682

OPINION AND ORDER ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY, DETERMINING IN-LINE PRICE, AND PROVIDING FOR REFUNDS

(Issued September 22, 1965) *

Syllabus

1. The issue of public need for gas should be confined to pipeline certificate proceedings, not producer applications. P. 900.
2. Sales to gatherer should be eliminated in determination of in-line price; these sales are not comparable since gatherer purchases at a lower price in order to resell at price acceptable to pipeline. PP. 900, 901.
3. In past Commission has emphasized contract prices, but now that some of these sales have been certificated with reduced prices, original prices are no longer outstanding and should not be given primary consideration—how-

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*Initial decision appears on page 914. See order issued November 17, 1965 denying rehearing and granting stay and order issued December 15, 1965 on motion for clarification, etc., 34 FPC 1330, 1472. See Opinion No. 498 on refunds issued July 22, 1966, 36 FPC 149. Set aside and remanded, *Public Service Commission of New York, et al.* v. *F.P.C.*, 373 F. 2d 816 (CADC–1967); Affirmed, 391 U.S. 9 (1968).

ever contract prices whether reduced by conditions or not, do show economic trends in area and are entitled to some weight. PP. 901, 902.

4. In prior proceedings Commission has given some consideration to prices under temporary certificates, while finding them less persuasive than permanently certificated prices—were determination based wholly on permanent certificates, result would be a freeze of price line and proceeding would accomplish nothing. P. 902.
5. 16 cents per Mcf at 14.65 psia is appropriate in-line price for instant sales in Texas Railroad District No. 3 in pre-Policy Statement period and 17.0 cents for period following September 28, 1960. PP. 902, 903.
6. Estimated first-month billings, rather than actual 1962 volumes sold, approved as appropriate method for determining relative importance of gas sold in each category. P. 903.
7. Suspect price doctrine under Commission and Court decisions has been used to prevent price line being raised on basis of prices still subject to litigation—to strike three 16-cent prices representing the line and several steps below the highest would represent a misuse of suspect price doctrine. P. 903.
8. Absent evidence of intrastate or other non-jurisdictional sales comparable to that relating to interstate sales, Commission is not able to weigh its determination with intrastate prices here. P. 904.
9. Exclusion of cost or economic evidence in Section 7 certificate proceeding was correct. P. 904.
10. Following past practice, Commission *prescribes* moratorium on rate increase filings in excess of 19 cents per Mcf for specified period. P. 904.
11. Where certificates had refund conditions and prices above in-line price determined here, Commission provides for refunds but requires producers to hold amounts pending determination of entitlement thereto. P. 905.
12. In a proceeding under Section 7 of the Natural Gas Act, Commission *issues* certificates of public convenience and necessity; *determines* in-line price and *provides* for refunds.

Commissioner Bagge *concurring.*

Commissioners Black and Ross *dissenting.*

William J. LeBuhn for Trunkline Gas Company.

Stuart J. Scott, Bernard A. Foster, Jr. and *Sherman S. Poland* for The Atlantic Refining Company.

David K. Kadane, Edward M. Barrett and *Bertram D. Moll* for Long Island Lighting Company.

J. P. Hammond and *Clifford O. Stone, Jr.* for Pan American Petroleum Corporation.

Oliver L. Stone and *Thomas G. Johnson* for Shell Oil Company.

Albert C. McClain, Jesse Foster, Jr. and *Sherman S. Poland* for Humble Oil & Refining Company.

J. Evans Attwell for W. S. Kilroy (Operator), *et al.* and Robert Mosbacher, Operator, *et al.*

Morton L. Simons and *Kent H. Brown* for Public Service Commission of the State of New York.

William T. Kilbourne II, and *H. W. Varner* for Superior Oil Company.

John A. Ward III, Phillip D. Endom, Robert E. May and *Francis H. Caskin* for Sun Oil Company.

Sherman S. Poland and *Richard Dent* for Skelly Oil Company.

R. Joseph Opperman, Morton Taylor and *Harold L. Kennedy* for Marathon Oil Company.

Thomas G. Crouch and *Robert W. Henderson* for H. L. Hunt, Hassie Hunt Trust, Caroline Hunt Sands, Caroline Hunt Trust Estate, Lamar Hunt Trust Estate and N. B. Hunt.

Paul W. Hicks for Placid Oil Company.

Richard F. Generelly and *Ollie D. Brown, Jr.* for H. L. Hawkins & H. L. Hawkins, Jr.

Richard F. Generelly for Callery Properties, Inc.

Richard F. Generelly, P. H. Swearingen, Jr., and *W. V. Ballen, Jr.* for Oil Reserves Corporation.

Carroll L. Gilliam for Pan American Petroleum Corporation.

Tom P. Hamill, R. D. Haworth and *D. L. Smith* for Socony Mobil Oil Company, Inc.

Clyde E. Willbern for Tidewater Oil Company.

J. Harry Mulhern, Edward S. Kirby and *James R. Lacey* for Public Service Electric and Gas Company.

Jacques Adove for A. F. Childers, Jr. (Operator), *et al.*

David S. Lichtenstein for the Staff of the Federal Power Commission.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

O'Connor, *Commissioner:*

This is a proceeding involving 36 applications for certificates of public convenience and necessity under Section 7 of the Natural Gas Act for sales of gas by producers in Texas Railroad District No. 3. The buyers are Florida Gas Transmission Company, Tennessee Gas Transmission Company, Trunkline Gas Company, and Natural Gas Pipeline Company of America. The sales are proposed to be made at prices ranging from 16.17 cents to 20.0 cents per Mcf (at 14.65 psia) under contracts executed between September 16, 1958, and October 1, 1963. Those pre-dating the Policy Statement[1] are listed in Appendix A; those post-dating the Policy Statement are listed in Appendix B. The gas is now being delivered under temporary certificates.

There are consolidated here by order of March 30, 1964, 31 FPC 725, applications severed from *Florida Gas Transmission Company, et al.*, Docket No. G–18338, *et al.*, and from *Hassie Hunt Trust*, Docket No. G–19115, and other applications.

Hawkins & Hawkins, Docket No. G–18077, produced gas under their temporary certificate but have sold the properties to Johnson and McCurdy, who are now producing no gas and have applied for abandonment, but such abandonment has not yet been granted. Hawkins & Hawkins are thus not applicants for a certificate, but may be required to make a refund. We shall therefore dismiss their application for a permanent certificate. Stewart & Cougar Drilling Company, *et al.*, Docket No. CI60–541, have delivered no gas under their temporary certificate, and by letter of the Secretary of July 6, 1964, have been permitted to withdraw their application and the temporary certificate has been vacated. Therefore this party is no longer part of the proceeding. Kilroy Properties, Incorporated, *et al.*, Docket No. CI60–478, have been permitted to abandon their sale by order of December 22, 1964 in *Neuner, et al.*, Docket No. G–3833, *et al.*, but still may be subjected to refund, and their application will also be dismissed. Skelly Oil Company in Docket No. G–20155 has sold the properties involved to The Superior Oil Company, whose temporary certificate in Docket No. G–20359, consolidated herewith, has been amended to include these properties. The

[1] Statement of General Policy No. 61–1, issued September 28, 1960, 24 FPC 818.

application of Skelly in Docket No. G–20155 should thus likewise be dismissed subject to possible refund requirements; and the certificate issued to Superior herein will, of course, include the sale of gas from these properties. In addition Ben H. Schnapp (Operator), *et al.*, Docket No. CI60–642, were permitted to abandon their sale in *James D. Heldt (Operator), et al.*, Docket No. G–3277, *et al.*, order issued July 14, 1965, subject to any necessary refund, so that this application will be dismissed.

The applications of The Atlantic Refining Company, Docket No. CI60–459, H. B. Lively, Docket No. CI62–1220, and Socony Mobil Oil Company, Inc., Docket No. G–18384, formerly consolidated, have now been severed, and certificates have been granted, so that these dockets are no longer part of this proceeding.

The principal issue here is the initial price at which the producers shall be permitted to sell their gas, although a question has been raised by the Public Service Commission of the State of New York that there is an absence of public need for the gas. The proceeding is before the Commission on the decision by Presiding Examiner Harry C. Shriver dated December 2, 1964, who found that the in-line price for the periods both before and after the Policy Statement is 16 cents per Mcf at 14.65 psia. Exceptions have been filed by the New York Commission, the Staff and a number of producers, and answers have been filed by some producers to the exceptions of the New York Commission.

New York contends that public need is an essential element of public convenience and necessity and that the producers have not shown any such demand. In addition, New York argues that three purchasers of the gas, Tennessee Gas, Florida Gas, and Trunkline, are beset by take-or-pay problems under their contracts with producers. We note that New York has presented no evidence to support these allegations. We agree with the examiner that, because of the nature of the gas business and the obligation of pipeline companies to the consuming public, it is to be expected that such companies will occasionally have long-term contractors for supplies which will give them gas for the future, even though the supplies may be slightly in excess of their present-day needs. The issue of public need should be confined to pipeline certificate proceedings, not producer applications.

As in other proceedings of this nature the price at which the producers should be permitted to sell their gas must be "in-line" with other prices in the area. *Atlantic Refining Co.* v. *P.S.C. of New York* (CATCO), 360 U.S. 378 (1959). For this purpose evidence was presented by the producers and our Staff setting forth price arrays for sales in District No. 3. A summary tabulation of the Staff array, which shows the initial prices permitted under permanent certificates, was included by the examiner in his decision and used by him in reaching his result. (In some cases the Staff array uses the original contract price; in other cases it shows the prices as conditioned to a lower level by the temporary certificate). The array covers the period January 1, 1958 through December 31, 1963, and divides the prices arising under contracts dated before September 28, 1960, the date of the Policy Statement, from those arising under contracts dated later. In the Policy Statement we determined guideline ceiling prices for District No. 3, as well as other areas.

As contended by the producers the Staff price arrays should be modified in certain particulars. Thus the Staff in its pre-Policy Statement tabulation includes 3 sales to Valley Gas Transmission Company among 6 sales at 14 cents per Mcf, and in the post-Policy Statement period includes 10 sales to Valley among 12 sales at 14 cents. We think the Valley sales should be eliminated, because, as we said in the *Amerada* case,[3] these sales are not comparable since

[3] *Amerada Petroleum Corporation*, 31 FPC 623, 635 note 33 (1964).

Valley purchases at less than the price line in order to resell at a price acceptable to major interstate pipelines. Certain producers also point out that the 15-cent sale by Gene Smitherman to Tennessee Gas Transmission Company under contract of June 12, 1961, in Docket No. CI61–1751 has been cancelled and no deliveries made under it. As explained below, we do not accept other modifications of the Staff array suggested by the producers, but with these changes and the elimination of the 20 cent price for the reasons discussed below the Staff prices are tabulated as follows:

DISTRIBUTION OF PRICES PERMANENTLY CERTIFICATED
(Dated Jan. 1, 1958 through Sept. 27, 1960)

Total initial price (¢)	Number of sales	Estimated first month volumes (Mcf)	Total volume (percent)
Less than:			
10.0	3	120,000	4.50
13.5	8	116,100	4.35
14.0	3	60,750	2.28
14.2	1	45,000	1.69
14.4	1	90,000	3.38
14.5	4	132,000	4.95
14.6	2	96,000	3.60
15.0	8	295,075	11.07
15.1	1	60,000	2.25
15.2	3	166,170	6.23
16.0	4	968,000	36.81
16.2	4	514,000	19.28
17.5	1	2,190	0.08
18.0	1	731	0.03
Total	44	2,666,016	100.00

DISTRIBUTION OF PRICES PERMANENTLY CERTIFICATED
(Dated Sept. 28, 1960 through Dec. 31, 1963)

Total initial price (¢)	Number of sales	Estimated first month volumes (Mcf)	Total volume (percent)
12.0	2	24,000	2.13
13.0	2	75,000	6.64
13.5	2	33,615	2.98
14.0	2	42,000	3.72
14.5	3	75,000	6.64
15.0	9	213,100	18.88
16.2	3	155,000	13.73
16.5	1	30,000	2.66
18.0	3	481,040	42.62
Total	27	1,128,755	100.00

The quality specifications of the contracts tabulated above, with some minor variations, are approximately the same as those involved in this proceeding, and thus form an appropriate basis for comparison. The average price, weighted by volume, for the pre-Policy period, is 15.16 cents per Mcf, and is lower than the average price for the post-Policy period, 16.17 cents per Mcf.

The principal witness for the producers, Mrs. Celia Star Gody, based her array on the contract prices rather than permanently certificated prices, and the producers argue that the examiner should have considered the contract prices. In past cases we have emphasized contract prices, but now that some of these sales have been certificated with reduced prices, the original prices are no longer outstanding in the area and should not be given primary consideration.

However, the contract prices, whether reduced by conditions or not, do show economic trends in the area and are entitled to some weight.

The producers also argue that the examiner should have given consideration to the inital prices under temporary certificates because they reflect current conditions. In some prior proceedings we have given some consideration to prices under temporary certificates, but have found that they are not as persuasive as the prices under permanent certificates. *Skelly Oil Co., supra*, 28 FPC 401 at p. 409. Here the record shows only three sales under temporary certificates, at 16.0, 15.0 and 16.17 cents, which are not at issue in these proceedings. In recent in-line proceedings all or a greater part of the sales under temporary certificates in the area have been included, and sales at issue would go unrepresented in determining the line if they were given no consideration. Furthermore, if we based our determination wholly on permanent certificates, the result would be a freeze of the price line, and the proceeding would accomplish nothing. The producers' witness, Mrs. Gody, using the initial contract prices and including sales under temporary certificate found a weighted average price of 18.05 cents per Mcf for the 1958–1963 period.

For the pre-Policy Statement period we agree with the examiner that 16 cents per Mcf at 14.65 psia is the appropriate in-line price. The Commission has already determined a 16-cent ceiling in District No. 3 in *Texaco Seaboard, Inc.*, 29 FPC 593, Opinion No. 383 (1963), and *Hassie Hunt*, 30 FPC 1438, Opinion No. 412 (1963), and there is no reason based on the present record to disturb that determination. As can be seen from the table above, there are comparatively large volumes of gas sold at the 16.0 and 16.2-cent levels and small volumes at 17.5 and 18.0. Thirty-eight sales (72 percent) are at 16 cents or below, while a little more than half the volume is sold at 16 cents or below. The pattern is roughly the same as in *Texaco Seaboard*. Arithmetically the large volumes at 20 cents would have a strong effect on the weighted average of 15.16 cents per Mcf, but these should be discounted as was done in *Texaco Seaboard*, for six of the nine sales were involved in *Trunkline Gas Co., et al.*, 21 FPC 704 (1949), with respect to which New York's petition for review was dismissed because not timely. *P.S.C. of New York* v. *F.P.C.*, 284 F. 2d 200 (CADC-1960).[3] Concerning these sales and those in other categories above 16 cents, the Commission said in *Texaco Seaboard:*

> It is thus apparent that prices at the 17.5-cent level and above must all be discounted since they either have subsequently been set aside (and are presently before us for new decision) or would have been set aside, for failure to permit a proper party to intervene, save for the procedural defect in the PSC review action in the *Trunkline* case. (29 FPC at p. 597)

The producers, on the other hand, argue that the 20-cent sales, if not given full weight, should be given some weight. The Commission adopted this consideration in *Sun Oil Co.*, 32 FPC 1183, Opinion No. 445, Docket No. G–8592, *et al.*, October 24, 1964. A ceiling at 16 cents for the pre-Policy Statement period, in effect, gives some weight to the prices above 16 cents as well as the contract prices and the prices under temporary certificate, for if we gave no consideration to the prices above 16 cents, the ceiling would be set at a lower level, since ordinarily we do not set the ceiling price at the highest level.

As for the post-Policy Statement period, it may be observed that there are nine sales and moderate volumes at 15 cents, three sales and moderate volumes at 16.2 cents, one sale and a small volume at 16.5 cents, and three large sales at

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[3] Two of the sales, Docket Nos. G–16975 and G–17263, were consolidated with *Austral Oil Co., Inc.*, Docket No. G–15819. On review, the PSC's petition was likewise dismissed. *P.S.C.* v. *F.P.C.* (CADC No. 15601, July 1960).

18.0 cents. As the producers argue, the fact that the 18-cent prices were established in abridged hearings should not detract from their weight in setting the line. *Amerada Petroleum Corp., et al.*, 31 FPC 623, 631, Opinion No. 422 (1964).

We are of the opinion that 17.0 cents per Mcf at 14.65 psia is the in-line price for the period following September 28, 1960. It is our judgment that this conclusion gives appropriate weight to the comparatively large volumes sold under permanent certificates at 18.0 cents per Mcf while reflecting the weighted average price of 16.17 cents per Mcf. In addition, a 17.0 cent price clearly gives some weight to the unconditioned contract prices and to the prices under temporary certificates. Finally, some 43 percent of the gas has been permanently certificated at a price higher than 17.0 cents. One proposed sale, Humble to Natural Gas Pipeline in Docket No. CI64–677 is at 17.0 cents, under a contract dated October 1, 1963. Giving due consideration to all sales in the area during the period in question, an in-line price of 17.0 cents is fully justified.

The producers object to the examiner using estimated first-month billings rather than actual 1962 volumes sold. While certain of the producer witnesses make use of such 1962 volumes in connection with their price arrays, the annual volumes were not available for use in connection with sales under contracts executed in 1962 and 1963, and the Staff employed only estimated first-month billings. The use of actual volumes for the pre-Policy Statement contracts tends to increase the percentage of the 20-cent gas (to which in any case we give little weight), but for the post-Policy Statement period the highest priced gas, at 18 cents, is actually decreased relatively by the use of the annual figures. In any case we are of the opinion that the monthly estimates are an appropriate method by which to determine the relative importance of the gas sold in each price category.

Some of the producers argue that it would be discriminatory to limit their prices to a level below the 18-cent level permitted in earlier certificates, in some cases relating to the same field. The earlier certificates were issued when the guideline was 18 cents under the Policy Statement. Because the Commission applied a different standard in earlier non-contested proceedings is no reason that the same standard must now be applied on the basis of a full record.

For the pre-Policy Statement period several producers argue that the examiner improperly listed three sales at 16 cents, *Hassie Hunt*, Docket No. G–19115; *H. L. Hunt, Operator*, Docket No. G–19116; and *Placid Oil Company*, Docket No. G–19125, because these were involved in Opinion No. 412, December 9, 1963, 30 FPC 1438, now subject to litigation in *Margaret Hunt Hill Trustee* v. *F.P.C.*, CA5 No. 21575, and therefore should be disregarded under the suspect price doctrine. See *United Gas Improvement Co.* v. *F.P.C.*, 283 F. 2d 817 (CA9–1960), certiorari denied 365 U.S. 881. The suspect price doctrine under our decisions and those of the Courts [4] has been used to prevent the price being raised on the basis of prices still subject to litigation. To strike out three 16-cent prices, which in our opinion represent the line and which are several steps below the highest, would represent a misuse of the suspect price doctrine. Those prices were determined by the Commission after notice and hearing, and they represented reductions in many contract prices. Having exercised our discretion we cannot presume our action was improper. In any event the remaining prices would define the line at approximately 16 cents for the pre-Policy Statement period.

The producers also contend the examiner mistakenly refused to take into account intrastate sales, which the record shows to be of increasing importance;

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[4] See also *United Gas Improvement Co.* v. *F.P.C.*, 290 F. 2d 133 (CA5), certiorari denied 368 U.S. 823.

however, the record does not contain evidence of the intrastate or other nonjurisdictional sales comparable to that relating to the interstate sales. Only a limited amount of such information is available to the public. In 1958 Florida Power and Light Co. contracted for gas with Sun Oil Co. for 19.5 cents per Mcf and in 1959 Texas Electric Service Corporation wrote contracts at a price of approximately 21.5 cents. Pan American Petroleum Corporation showed that since January 1, 1959, it had entered into contracts for ten intrastate sales involving quantities in excess of 1,000 Mcf per day in District No. 3. Its witness stated that the weighted average price for the ten certificates, apparently for gas sold during 1963, was 19,329 cents per Mcf. However, these prices do not cover the entire area nor is there anything to show that they are representative so as to make them comparable to the interstate arrays.

Because of this record we are not able to weight our determination with the intrastate prices in this proceeding. Furthermore, there is no evidence that the pipeline customers in District No. 3 are unable to obtain contracts for the purchase of gas. Of course, where there is a substantially complete record on the intrastate prices and they are shown to have impact on the interstate market, it may be that we would take them into account in determining the price line. Such a case is not presently before us.

Some of the producers objected to the examiner's refusal to receive cost or economic evidence. In review of the position taken by the Commission in *Skelly*, 28 FPC 401 (1962), and *Texaco Seaboard, Inc.*, 29 FPC 593 (1963); its reiteration in *Union Texas Petroleum*, 32 FPC 254 (1964) and its affirmance by the courts in *P.S.C. of N.Y.* v. *F.P.C.*, 329 F. 2d 242 (CADC-1964), certiorari denied 377 U.S. 963 (1964), *California Oil Co.* v. *F.P.C.*, 315 F. 2d 652, 660 (CA10), and *The Atlantic Refining Co.* v. *F.P.C.*, 316 F. 2d 677, 680 (CADC), we think the examiner was correct in excluding this kind of evidence in a Section 7 certificate proceeding. We are, of course, aware of the opposite result reached in *Callery Properties, Inc.* v. *F.P.C.*, 335 F. 2d 1004 (CA5-1964). The mandate of the Court of Appeals has been stayed in that proceeding, and certiorari has been granted by the Supreme Court of the United States. In these circumstances pending final judicial action we see no reason to depart from the opinions cited above.

The New York Commission argues that the price line should be 15 cents per Mcf contending that the level of prices in District No. 3 was raised by the 17.5-cent sales made in 1955 and 1956 to Coastal Transmission Corporation.[5] We have, of course, made no use of these Coastal sales in this proceeding, and we see no reason to depart from the result reached in *Texaco Seaboard* and *Hassie Hunt*, *supra*, where we sought to avoid giving effect to the Coastal sales.

As in previous proceedings we shall prescribe a moratorium on rate increase filings above a certain level although we realize that the *Callery* case, *supra*, has held that practice improper. In order to protect the public we think the appropriate level is 19.0 cents per Mcf until January 1, 1968, or until the issuance of a final decision in the Texas Gulf Area Proceeding, Docket No. AR64–2, whichever is earlier. The level at which prices will be triggered or redetermined is apparently at the 19-cent price level, which reflects other prices now in effect in the area (although subject to refund) and represents the highest increased price which we have previously permitted to be filed without ordering an immediate hearing. We note that this triggering level is, consistent with our Order No. 296 issued April 5, 1965, 33 FPC 682, which, of course, related only to applications filed after April 15, 1965. The in-line moratorium level must be based on the triggering level; therefore, if any of the producers involved here

[5] *Houston Texas Gas and Oil Corp.*, 16 FPC 118, 141–142, 17 FPC 303, 310.

have a factual basis for taking a contrary view of the establishment of a moratorium at this level, they have opportunity so to state in applications for rehearing.

Ordinarily, where there are appropriate provisions in the temporary certificates we provide for refunds of the difference between the amounts collected by the producers and what should have been collected under the in-line prices determined. However, where there are no refund provisions in the temporary certificates in other proceedings, we have deferred action until the equities involved could be determined in accordance with *P.S.C. of New York* v. *F.P.C.*, 329 F. 2d 242 (CADC-1964).

In the present proceeding there are only two applications involving certificates with refund conditions and prices above the in-line price here determined. These are the applications of *The Superior Oil Company* in Docket No. CI63–584 and *Pan American Petroleum Corporation* in Docket No. CI63–1445, both relating to sales at 17.5 cents per Mcf under contracts dated in the post-Policy Statement period. In the case of these two applications we shall provide for refunds but require that the producers hold the amounts involved until it is determined who is entitled to them as we have done in other proceedings. In the case of all other applications where the price charged under the temporary certificates is greater than the in-line prices here prescribed we shall defer determination of whether refunds should be ordered.

In accordance with the recommendations of the examiner and our past practice we shall condition the certificates issued in these proceedings to provide that take-or-pay clauses are subject to the Commission's ultimate disposition with respect to such provisions in the rule-making provision in Docket No. R–199, subject to the limitation that producers will not be required to file amended take-or-pay provisions for less than 80 percent of the annual contract quantities. Some of the producers contend there is no evidence in support of this condition and that it is too indefinite. In our opinion no evidence is necessary to show that consumers involved should receive the protection of the final result of the proceedings in R–199, subject to a limitation specifically designed to make the producer certificates sufficiently definite.

The Commission further finds:

(1) Applicants listed in Appendices A and B of this opinion are engaged in the sale of natural gas in interstate commerce for ultimate public consumption and each is, therefore, a "natural-gas company" within the meaning of the Natural Gas Act.

(2) The sales of natural gas hereinbefore described, as more fully described in the applications, are made in interstate commerce, subject to the jurisdiction of the Commission, and such sales, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Subject to the requirements of our order herein and the conditions attached to the certificate herein issued, the applicants listed in Appendices A and B except for those in (6) below are able and willing properly to do the acts and to perform the services proposed, and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The sales of natural gas by the independent producers listed in Appendices A and B, except for those in (6) below together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are and have been required by the public convenience and

necessity, and certificates therefor should be issued as hereinafter ordered and conditioned.

(5) The conditions attached to the certificates herein issued are required by the public convenience and necessity.

(6) The applications of Hawkins & Hawkins in Docket No. G–18077, Kilroy Properties in Docket No. CI60–478, Ben H. Schnapp (Operator), *et al.*, Docket No. CI60–642, and Skelly Oil Company in Docket No. G–20155 should be dismissed.

(7) Except as herein granted, the exceptions to the examiner's decision should be denied.

The Commission orders:

(A) Certificates of public convenience and necessity are issued to the several applicants listed in Appendices A and B (except for Hawkins & Hawkins, Docket No. G–18077, Kilroy Properties, Docket No. CI60–478, Ben H. Schnapp (Operator), *et al.*, Docket No. CI60–642, and Skelly Oil Company, Docket No. G–20155) for the sale of natural gas in interstate commerce for resale as proposed in the several applications, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, upon the terms and conditions set forth below.

(B) Certificates issued to the applicants listed in Appendix A are conditioned to prohibit a total initial price, including all reimbursements and charges, greater than 16.0 cents per Mcf at 14.65 psia, and certificates issued to the applicants listed in Appendix B are conditioned to prohibit a total initial price, including all reimbursements and charges, greater than 17.0 cents per Mcf at 14.65 psia. In each case these prices shall remain in effect until lawfully changed in the manner provided by the Natural Gas Act.

(C) Each certificate issued in paragraph (A), is further conditioned to provide for a moratorium on the filing of all price increases in excess of 19 cents per Mcf at 14.65 psia, inclusive of tax reimbursement until January 1, 1968, or until issuance of a final decision in Docket No. AR64–2, whichever is earlier.

(D) Within 60 days from the date of issuance of this order each of the applicants receiving certificates in paragraph (A) hereof, whose proposed total initial price exceeds the limits set forth in paragraph (B) shall file a supplement to its presently filed rate schedule effective as of the date of this order, related to its respective application, reflecting the conditioned price as the total initial price in lieu of the higher initial price provided in the contract; provided that with respect to the reduction in rates hereby ordered, applicants need not comply with the detailed submittal provisions of Section 154.94(f) of the Regulations under the Natural Gas Act.

(E) The Superior Oil Company in Docket No. CI63–584 and Pan American Petroleum Corp. in Docket No. CI63–1445 shall compute amounts to be refunded to Florida Gas Transmission Co. The refund shall include the difference between the amount charged and collected from Florida Gas and 17 cents per Mcf applied to all volumes paid for by Florida Gas from the date of the first delivery of natural gas under temporary authorization until the date of this order. Interest shall be included at a rate of 7 percent per annum to the date of this order. Within 90 days from the date of this order Superior and Pan American shall submit a report to the Commission, and serve a copy on Florida Gas, setting forth the amount of refund related to each subject rate schedule (showing separately the principal and applicable interest), the basis used for such determination, the period covered, and a letter from Florida Gas agreeing to the corrections of the amounts.

(F) Superior and Pan American shall retain the amounts shown in the report required under paragraph (E) above, subject to further order of the Commission directing the disposition of those amounts.

(G) If Superior and Pan American elect to commingle these retained refunds with their general assets and use them for their corporate purposes, they shall pay interest thereon at the rate of 4½ percent per annum on all funds thus available from the date of this order to the date on which they are paid over to the person ultimately determined to be entitled thereto in a final order of the Commission.

(H) If Superior and Pan American elect to deposit the retained refunds in a special escrow account, they shall each tender for filing within 90 days of the issuance of this order an executed Escrow Agreement, conditioned as set out below, accompanied by certificate showing service of a copy thereof upon Florida Gas. Unless notified to the contrary by the Secretary within 30 days from the date of filing thereof, the Escrow Agreement shall be deemed to be satisfactory and to have been accepted for filing. The Escrow Agreement shall be entered into between each producer and any bank or trust company used as a depositor for funds of the United States Government and the agreement shall be conditioned as follows:

(i) The producer, the bank or trust company, and the successors and assigns of each, shall be held and formally bound unto the Federal Power Commission for the use and benefit of those entitled thereto, with respect to all amounts and the interest thereon deposited in a special escrow account, subject to such agreement, and such bank or trust company shall be bound to pay over to such person or persons as may be identified and designated by final order of the Commission and in such manner as may be therein specified, all or any portion of such deposits and the interest thereon.

(ii) The bank or trust company may invest and reinvest such deposits in any short-term indebtedness of the United States or any agency thereof or in any form of obligation guaranteed by the United States which is, respectively, payable within 120 days as the said bank or trust company in the exercise of its sound discretion may select.

(iii) Such bank or trust company shall be liable only for such interest as the invested funds described in paragraph (2) above will earn and no other interest may be collected from it.

(iv) Such bank or trust company shall be entitled to such compensation as is fair, reasonable and customary for its services as such, which compensation shall be paid out of the escrow account to such bank or trust company. Said bank or trust company shall likewise be entitled to reimbursement for its reasonable expenses necessarily incurred in the administration of this escrow account, which reimbursement shall be made out of the escrow account.

(v) Such bank or trust company shall report to the Secretary quarterly, certifying the amount deposited in the bank or trust company for the quarterly period.

(I) With respect to the applications of all producers listed in Appendices A and B except The Superior Oil Co., Docket No. CI63–584, Humble Oil & Refining Co., Docket Nos. CI63–1057 and CI64–677, Tidewater Oil Company, Docket No. CI63–1134, and Pan American Petroleum Corp., Docket No. CI63–1445, the decision whether refunds should be ordered as a condition to the permanent certificates is deferred for subsequent determination. Within 30 days from the date of issuance of this order the parties to this proceeding, to the extent desired, may file briefs directed to the issue whether refunds should be ordered in any or all of the dockets and the extent of such refunds, if any. Replies may be filed

within 10 days of service of the briefs. Any party who wishes to introduce into the record evidence as to additional facts which might bear upon the ultimate determination of this matter shall file with its brief, within 30 days from the date of issuance of this order, a statement of such additional facts and of the evidence by which it is proposed to establish such facts.

(J) The certificates herein issued, are upon the express condition that the allowance of the take-or-pay provision in the applicant's contracts or amendment is subject to the Commission's ultimate disposition with respect to such provisions in the rule-making proceeding in Docket No. R–199. Upon the establishment, by regulation or policy statement, of a general policy governing such provisions in producer contracts, each applicant shall within 30 days, file its amended rate schedule in conformity therewith, acceptable to the Commission, provided that the applicant shall not be required to file a take-or-pay provision for less than 80 percent of the annual contract quantity and, provided further, that any rate schedule changes or modifications to be made in accordance with this paragraph shall be prospective only.

(K) The certificates issued by paragraph (A) hereof are not transferable and shall be effective only so long as each respective applicant continues the acts and operations hereby authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations and orders of the Commission.

(L) The grant of the certificates and amendments herein shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act, or of Part 154 of the Regulations thereunder except as specifically provided in paragraph (C) hereof. Such grant is without prejudice to any findings or order which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against the applicants or any one of them. Further, the action in this proceeding shall not foreclose nor prejudice any further proceedings or objections by the Commission relating to the operation of any price or related provision in the gas purchase contracts or amendments here involved.

(M) The applications of Hawkins & Hawkins, Docket No. G–18077, Kilroy Properties, Docket No. CI60–478, Ben H. Schnapp (Operator), *et al.*, Docket No. CI60–642, and Skelly Oil Company, Docket No. G–20155, are dismissed, subject however to the proceedings relating to refunds provided for in paragraph (I) above.

(N) The examiner's decision is adopted as the decision of the Commission except where inconsistent herewith as in the determination of the in-line price during the post-Policy Statement period.

(O) Exceptions not granted are hereby denied.

Commissioner Bagge *concurring.*

Commissioner Black *dissenting*, joined by Commissioner Ross.

BAGGE, *Commissioner, concurring:*

I agree with the result of this proceeding. I am compelled to add a word, however, because I believe that something else needs to be said about in-line determinations generally.

In considering the proper in-line price here, I started as we all must with the basic proposition that our essential task is to hold the line as it in fact existed as of the period of the contracts in issue rather than as it existed at some other period of time. The critical point here, as the Commission decision points out, is that the weighted average of nonsuspect prices of permanent

certificates during the post-policy statement period was approximately one cent (16.17¢ per Mcf) more than the price for the weighted average for such sales in the pre-policy period (15.23¢ per Mcf). The fact that we here find the in-line price for the later period to be one cent higher than the earlier one is, therefore, hardly surprising. The weighted average prices, of course, do not in themselves determine the proper in-line price here any more than the *Texaco Seaboard* case. Moreover, I agree with my colleagues in the majority that unless we give some consideration to the sales temporarily certificated in the post-policy period, we would necessarily be ignoring a substantial portion of the relevant evidence.

The question is, of course, how much weight should be given to such evidence. The answer to this question is not subject to any precise mathematical formula. It necessarily involves a matter of informed judgment upon which, in the final analysis, our in-line determination ultimately rests.

The specific price determination resulting from these exercises of judgment have been expressed in the past in terms peculiar to these proceedings. I do not find them helpful. I assume that they exist only because there may be no alternative for the contesting parties to express or for the Commission to adjudicate divergent economic interests pending a just and reasonable determination under Section 5 other than through these pious incantations. I am, as yet, however, not committed to the dogma of in-line price determination apologetics. I would prefer to realistically recognize the fact that the final figure to be determined necessarily is essentially a judgment factor. In my case this judgment also recognizes the existence of and takes into account the existing guideline price.

Even if the guideline price in Texas District No. 3 were not 17¢, however, I am convinced that an in-line price determination approximating this figure would be a proper one on the present record. That the two prices coincide is to me, however, a matter of satisfaction rather than dismay. The Commission makes clear that the guidelines cannot determine the in-line price. Here, in fact, the guidelines in existence during most of the period was a higher 18¢ price. There is certainly no merit, however, in this already complex methodology of fixing initial prices during the period immediately prior to the establishment of area rates in artificially separating guideline and in-line prices. On the contrary to the extent to which, within the dialectics of in-line price determination, they can be made to coincide, the public and the industry will substantially benefit from the certainty derived therefrom.

BLACK, *Commissioner, dissenting:*

In my opinion there is no valid support for an in-line price in Texas Railroad District 3 in excess of 16¢ per Mcf. The majority errs in relying on temporaries to support its findings, in affording weight to the sales certificated under Commission policies which since have been repudiated by the Courts and the Commission, and in affording weight to our guideline policy statement.

The majority relies on the Amerada proceeding[1] as precedent for its use of temporary certificates in establishing an in-line price. Although I participated with the majority in that proceeding, were that case before us now I would express different views. I do not believe that it is consonant with our responsibilities under the Natural Gas Act as interpreted by the courts for us to rely

[1] *Amerada Petroleum Co., et al.*, Docket No. CI62–1544, *et al.*, Opinion No. 422, 31 FPC 623 (1964).

on temporary prices in cases at issue before us in determining an in-line price. As the Court in *U.G.I. Co.* v. *F.P.C.*, 283 F. 2d 817 at 824 noted:

> When an order certificating an initial rate is under Court or *Commission* review, it is possible that the certificate may be eventually denied or price conditions may be attached. In our opinion an existing rate subject to such a hazard does not provide a reasonably reliable basis upon which to predicate a price line. [Emphasis added]

The majority here does violence even to the justification for its use of the temporaries in *Amerada*. It there argued that the examiner's basic error in refusing to give weight to the temporary certificates was that in doing so he ignored the bulk of the evidence; that substantial volumes of gas were not moving under permanent certificates; and, that this distinguished it from Skelly [2] where substantial volumes of gas moving under permanent certificates were available for study. In the present proceeding there are but 441,317 Mcf (estimated first month volumes) under temporary certificates in the post-policy statement period as contrasted to more than 1,630,000 Mcf under permanent certificates in the same period. Thus, even assuming the propriety of the majority's reliance on temporary certificates under the limited exception to the general rule recognized in *Amerada*, there is no justification for the use of such evidence in this proceeding.

In the *Union Texas* case,[3] we held that an in-line price, once established is presumed to continue in the absence of evidence to the contrary. The Commission on essentially the same evidence as here at issue but without reliance on the temporary certificates or affording weight to the suspect certificates at 20¢ per Mcf found the appropriate in-line price for this area to be 16¢ per Mcf. There has been presented here no evidence of new facts of significance to justify a change in that finding. I, therefore, concur in the majority's conclusion that the appropriate in-line price for the area continues to be 16¢ per Mcf at 14.65 psia.

Turning to the period following the issuance of our General Policy Statement on September 28, 1960, several facts emerge. First, as Respondent's evidence clearly shows, there is no significant difference in contract pricing levels in the area between the pre and post policy statement eras. Secondly, as Staff evidence clearly shows, the average certificate pricing levels are inflated by the influence of certificates issued under Commission policies which have since been reversed. Thus, where the majority table outlines but a few sales certificated at prices above 16.2¢ (11 out of 53 in the pre-policy period), it has properly noted that these are suspect by virtue of Court reversal of the principles applied by the Commission in their issuance. However, what the majority fails to recognize is that the *post-policy* statement 18¢ permanent certificates are subject to essentially the same defect. For, in issuing Texaco Seaboard, Inc.,[4] we corrected an error in the level at which the guideline price was established for Texas Railroad District 3, adjusting that price from 18¢ to 17¢ per Mcf. Surely where, as here, the principle permitting the issuance of certificates at 18¢ has been proven erroneous, those certificates like their 20¢ counterparts in the pre-policy period should be discounted.

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[2] *Skelly Oil Company, et al.*, Docket No. G–18638, *et al.*, Opinion No. 362, 28 FPC 401 (1962).

[3] *Union Texas Petroleum, et al.*, Docket No. G–13221, *et al.*, Opinion No. 486, 32 FPC 254, 260 (1964).

[4] *Texaco Seaboard, Inc., et al.*, Docket No. CI61–118, *et al.*, Opinion No. 383, 29 FPC 593, 599 (1963).

It is of interest to note that the 17¢ price found for the post-policy period is higher than the price at which other gas is sold under permanent certificates except for the comparatively large volumes at 18¢ per Mcf, and is higher than 24 sales out of 27 (89%) representing 47% of estimated first month volumes. It is also higher than the weighted average price under permanent certificates of 16.17¢ per Mcf. In these circumstances the legally relevant evidence for this period dictates a price not in excess of 16¢.

The majority, however, elects a quite contrary course. Since it cannot support its predetermined 17¢ level by reliance on permanent certificates, it seeks to support its conclusions by alluding to the support to be had in the prices at which temporary certificates were issued during this period, and to the fact that this price coincided with the guideline prices. Even assuming the validity of relying on the temporary certificates here at issue, those issued during this post-policy period under policies which have since been recognized as erroneous and discontinued should be afforded little, if any, weight. Those temporaries issued at prices above the pricing levels now recognized as constituting the appropriate guideline should be at least discounted in weight, if not, as I believe, disregarded in their entirety.

I am perplexed by the majority's insistence that stability of gas prices can be achieved only by giving the Commission's guideline prices consideration in arriving at the in-line determination. Stability is precisely the objective I would hope to achieve. I have made no suggestion that we should "roll back" the price of gas in Texas District 3. I would maintain the in-line price level and the guideline price level most recently determined. This, in my view, achieves stability. The majority, though, by its action today has *raised* the price of gas. This concept of "stability" is a strange one.

The Commission majority misunderstands the nature and purpose of our guideline prices. They are determined by the Commisison *in camera* without the benefit of any hearing or record to assist us and with no rationale to inform the industry or the consumer how they were arrived at. They are, in fact, *only* guidelines.

A review of the Commission opinions[5] wherein corrections have been made to the original guideline pricing levels shows that the Commission has sought to maintain its guideline prices at approximately 1¢ above the in-line price. This has merit. The guideline price is essentially a statement of settlement policy authorizing issuance of permanent certificates without litigation provided no parties intervene. In issuing our original policy statement, we expressly provided "their use will not deprive any party of substantive rights."[6]

Our policy statement has provided a valuable administrative tool which has greatly simplified the administration of the Act and has expedited our certificate work. The producers have largely accepted our guideline prices because they are generous and because the parties have been spared lengthy and costly litigation. They have, therefore, served a useful purpose. But when the issue of initial price is forced to hearing and is brought before us on a formal record for in-line determination, it is not logical that such determination should be influenced in any substantial way by our seat of the pants guideline prices. The certificates we issue now at prices influenced by the higher guideline prices in turn become the evidentiary subject matter for future cases, and if past Commission practice is followed, we can expect the guideline price to be increased to 18¢.

Commissioner Ross joins me in this dissenting statement.

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[5] *Skelly, supra. Texaco Seaboard, supra.*

[6] 24 FPC 818, 819 (1960).

APPENDIX A

Certificate docket No.	Seller	Buyer	Date of contract	Location		Initial price including tax and other reimbursements (at 14.65 psia)	Estimated first month's production
				County	Field		
						Cents	*Mcf*
G-18481	John A. Newman	Florida Gas Transmission Co.	Dec. 10, 1958	Brazoria	Lockridge	17.5	10,000
C160-478	Kilroy Properties, Inc.	Trunkline Gas Co.	Sept. 16, 1958	Galveston	Arcadia	20.0	15,000
G-18175	W. S. Kilroy	Florida Gas Transmission Co.	Jan. 22, 1959	Matagorda	Palacios	17.5	1,500
G-18857	Callery Properties, Inc.	do	Jan. 14, 1959	do	do	17.5	1,500
G-19308	Gregory J. Gallagher	do	Feb. 2, 1959	do	do	17.5	3,000
G-18077	H. L. Hawkins & H. L. Hawkins Jr.	do	Jan. 30, 1959	Brazoria	Lockridge	17.5	3,750
G-20155	Skelly Oil Co.	do	Aug. 1, 1959	Matagorda	Pheasant	17.5	3,906
G-20359	The Superior Oil Co.	do	do	do	do	17.5	3,750
G-20385	Gregory J. Gallagher	do	Sept. 15, 1959	do	do	17.5	4,000
G-18805	Shell Oil Co.	do	Apr. 15, 1959	Galveston	East Bay	18.0	15,500
G-19964	The Sparta Oil Co.	do	Sept. 10, 1959	do	League City West	18.0	67,500
C160-497	Marathon Oil Co.	do	Feb. 18, 1959	Matagorda	Palacios	[1] 18.0	7,120
C160-343	Robert Mosbacher	Tennessee Gas Transmission Co.	Jan. 30, 1960	Colorado	Englehart	[2] 16.16947	3,000
C160-434	North Central Oil Corp.	do	Mar. 15, 1960	Matagorda	North Blessing	[2] 16.16947	60,000
C160-496	C. W. Coffey	do	Mar. 28, 1960	do	Blessing	[2] 16.16947	30,000
C160-495	Woods Exploration & Producing	do	Apr. 18, 1960	Wharton	E. Bernard	[3] 16.16947	135,000
C160-642	Ben H. Schnapp	do	Apr. 6, 1960	Chambers	Petkas	[3] 16.16947	60,000
C161-468	Oil Reserves Corp.	Trunkline Gas Co.	June 21, 1960	Newton	Quicksand Creek	[4] 17.0	450,000
C160-610	Kirby Petroleum Co.	Florida Gas Transmission Co.	Mar. 22, 1960	Matagorda	S. Hamman	[5] 17.5	22,500
C160-497	Marathon Oil Co.	do	Jan. 25, 1960	do	Palacios	[1] 18.0	77,580
C160-348	Sun Oil Co.	Trunkline Gas Co.	Mar. 3, 1960	Galveston	Sarah White	20.0	30,000

[1] Contract was amended to reflect 18 cents per Mcf base rate instead of the original 18.5 cents per Mcf base rate.
[2] Includes 0.21931 cents per Mcf dehydration reimbursement.
[3] Subject to 0.21931 cents per Mcf dehydration charge, which will be deducted by buyer.
[4] Includes 0.25 cents per Mcf dehydration reimbursement.
[5] Buyer exercised option to purchase gathering system whereupon rate was reduced by 2 cents per Mcf. Seller has to refund amounts over 15.5 cents per Mcf subsequently to Oct. 10, 1961.

312-270—69——61

APPENDIX B

Certificate docket No.	Seller	Buyer	Date of contract	Location		Initial price including tax and other reimbursements (at 14.65 psia)	Estimated first month's production
				County	Field		
						Cents	*Mcf*
CI61-1682	Placid Oil Co	Natural Gas Pipeline Co. of America.	Dec. 15, 1960	Galveston	Alta Loma	[1] 18.0	11,000
CI61-1221	H. L. Hunt	do	do	Brazoria	City of Alvin	[2] 18.0	([3])
CI61-1282	do	do	do	Galveston	Alta Loma	[2] 18.0	13,950
CI61-1283	Hassie Hunt Trust	do	do	do	do	[2] 18.0	4,030
CI61-1688	George R. Brown	Florida Gas Transmission Co	Jan. 12, 1961	Matagorda	Pheasant	17.5	24,273
CI61-1346	N. B. Hunt	Natural Gas Pipeline Co. of America.	Feb. 15, 1961	Brazoria	Chenango	[1] 18.0	7,750
CI61-1345	Lamar Hunt Trust Estate	do	do	do	do	[1] 18.0	31,000
CI61-1344	Caroline Hunt Trust Estate	do	do	do	do	[1] 18.0	7,750
CI61-1343	Caroline Hunt Sands	do	do	do	do	[1] 18.0	31,000
CI62-1152	A. F. Childers, Jr	Florida Gas Transmission Co	Jan. 17, 1962	Wharton	James Creek	17.5	15,500
CI63-584	The Superior Oil Co	do	Sept. 20, 1962	Brazoria	Oliver	17.5	15,500
CI63-672	Skelly Oil Co	Natural Gas Pipeline Co. of America.	Oct. 16, 1962	Matagorda	East Bay City	18.0	169,200
CI63-1057	Humble Oil & Refining Co	Trunkline Gas Co	Jan. 21, 1963	Newton	Quicksand Creek	[4] 17.0	18,000
CI64-677	do	Natural Gas Pipeline Co. of America.	Oct. 1, 1963	Brazoria	Pledger Miocene	17.0	60,000
CI63-1134	Tidewater Oil Co	Trunkline Gas Co	Jan. 30, 1963	Newton	Quicksand Creek	[4] 17.0	15,500
CI63-1445	Pan American Petroleum Corp	Florida Gas Transmission Co	Feb. 12, 1963	Matagorda	Palacios	17.5	15,500

[1] Temporary certificate conditions initial 20 cents per Mcf rate down to 18 cents per Mcf. Rate escalates to 23 cents per Mcf. after 10 years.
[2] Temporary certificate conditions initial 20 cents per Mcf rate down to 18 cents per Mcf. Rate escalates to 22 cents per Mcf after first 4 years.
[3] Billing statement not filed.
[4] Includes 0.25 cent per Mcf dehydration reimbursement.

INITIAL DECISION

OF THE PRESIDING EXAMINER RESPECTING PRODUCER PRICES UPON APPLICATIONS FOR PUBLIC CONVENIENCE AND NECESSITY FILED PURSUANT TO SECTION 7 OF THE NATURAL GAS ACT

(Issued December 2, 1964)

SHRIVER, *Presiding Examiner:* This is a consolidated proceeding upon forty applications for certificates of public convenience and necessity filed pursuant to Sections 7(c) and (e) of the Natural Gas Act, 52 Stat. 821, 825, 56 Stat. 84; 15 U.S.C. 717f(c), 717f(e). The Commission consolidated the applications and fixed a prehearing conference on them by order issued March 30, 1964, 31 FPC 725. The applicants are independent producers from an area in Texas known as the Texas Railroad District No. 3. They seek authorization to sell natural gas to four pipelines[1] for resale in interstate commerce. Each of the applicants have executed initial contracts for the sale of gas at prices ranging between 16.17 cents to 20.0 cents per Mcf (at 14.65 psia) and have filed their contracts with the Commission. The sales were executed between September 16, 1958 and October 1, 1963.[2] Temporary certificates have heretofore been issued to the applicants by the Commission and delivery of gas is being made pursuant to these certificates. The producers now seek permanent certificates. The primary issue in the proceeding is the price at which the producers shall be permitted to sell their gas.

A prehearing conference was held in this case on April 23, 1964, and hearings were held on July 8, 9, 10, 13, 14, 15, 16 and 17, 1964. At the prehearing conference the parties stipulated, except as hereafter noted, among other things, that the sales contracts were entered into after arm's-length negotiations, that each applicant is ready, willing and able to perform under their respective contracts and to comply with the Natural Gas Act and all valid Commission rules and regulations promulgated thereunder. The New York Public Service Commission, however, refused to stipulate that Callery Properties, Inc., and Kilroy Properties, Inc., were ready, willing, and able to perform under their respective contracts.

It should be observed that Kilroy Properties (CI60–478) is now seeking to abandon its sale, and that Hawkins & Hawkins (G–18077) and the Stewart and Gouger Drilling Company, *et al.* (CI60–541) are no longer applicants for certificates and did not agree to the stipulation. It is also to be observed that pursuant to the Commission's order of October 8, 1964, 32 FPC 933, in Atlantic Refining Company, Docket Nos. G–9283 and G–9284, *et al.*, Atlantic's Docket No. CI60–459 was severed from the instant proceeding and a settlement was reached therein at 16.00 cents per Mcf at 14.65 psia.

In its order of March 30, 1964, 31 FPC 725, the Commission consolidated into this proceeding eleven applications severed from Florida Gas Transmission Company, *et al.*, Docket No. G–18338, *et al.*, as well as seven applications previously severed from Hassie Hunt Trust, Operator, *et al.*, Docket No. G–19115, (Opinion No. 412, December 9, 1963), 30 FPC 1438, and twenty-two other applications not previously consolidated. As to the eleven applications, permanent certificates were issued on them by an order of August 9, 1961, which provided

[1] The pipeline companies are Florida Gas Transmission Company; Tennessee Gas Transmission Company; Trunkline Gas Company; and the Natural Gas Pipeline Company of America.

[2] One of the contracts, however, was executed on January 31, 1951 and ratified April 10, 1962. See Appendix to Commission's order of March 30, 1964, reproduced as Appendix A hereto.

that they were subject to the condition that the applicant refund to the pipeline with interest at 7 percent per annum any amounts collected "in excess of the ultimate rates determined to be required by the public convenience and necessity." 26 FPC 318, 331, 334. Thereafter, on November 2, 1961, after a rehearing the Commission set aside the certificates previously issued and issued temporary certificates. 26 FPC 677, 683, 686.

In respect to the seven applications, these involve sales by the Hunt interests. These applications were the subject of a 1962 hearing together with nine other applications in *Hassie Hunt Trust, Operator, et al.* (Opinion No. 412, December 9, 1963, *supra*, and Opinion No. 412–A, January 24, 1964), 31 FPC 181, but by order of the Commission of December 9, 1963, the seven applications were severed and later consolidated into the instant proceeding.

The proposed initial price under which Callery Properties, Inc. began to sell and deliver gas to Coastal in 1959 was 17.5 cents per Mcf. On December 1, 1962, pursuant to action taken in Docket No. RI62–463, Callery began collecting a new rate of 18.5 cents per Mcf under a Trust Agreement to assure refunds pending a determination of the justness and reasonableness of the new rate.

At the hearing, Callery offered no evidence in support of its initial contract price of 17.5 cents per Mcf but attacked the Staff's use of estimated first month billing statement volumes rather than actual delivery volumes in arriving at a recommended "in line" price. It is self-evident that actual volumes are more accurate than estimated volumes but this alone does not disprove the validity of the use of first month billing statement volumes, particularly when actual volumes are unavailable. It is of interest, for example, that the total billing statement volumes contained in Exhibit 10 sponsored by the Hunt Oil Company on some 130 contracts dated between April 1, 1956 and July 28, 1961 exceeded the actual volumes in 1962 by less than 4 percent. The billing statement volumes have previously been utilized by the Commission and they provide an effective and appropriate measure in determining comparability. The use of estimated volumes has the advantage of using the volume yardstick which the parties had in mind when the contract was executed.

If a weighted average price is a criterion in the determination of a market at which proposed prices will be certificated then some volume measure must be utilized in arriving at a weighted average price, but it is misleading to arbitrarily select particular sales or a year, or years, for this purpose in which there are large volumes of actual delivery at a high price. This is shown by the illustrations below.[3]

[3] It will be seen that the large volumes at high prices in Illustration 1 as contrasted with high volumes at low prices in Illustration 2, produce a weighted average of 16.8 cents as compared to 13.2 cents.

ILLUSTRATION 1

[Weighted average price—16.8 cents]

Year	Price per Mcf	Volume	
1959	12	100,000	$12,000
1960	14	150,000	21,000
1961	16	1,000,000	160,000
1962	18	1,500,000	270,000
		2,750,000	$463,000

Footnote continued at bottom of following page.

At the hearing, Mr. Robert L. Norris appeared as a witness on behalf of the Hunt Oil Company. Although he testified in support of the "in-line" issue, he made no firm recommendations. In exhibit No. 10, he indicates that on the basis of actual volumes of gas delivered in 1962, the average price for gas sold under permanent uncontested certificates was 17.5081 cents per Mcf.

Although the first sales contract involved in this proceeding is dated September 16, 1958, Mr. Norris begins his tabulations with January 1956. By doing so he was able to utilize some seven sales in that year at a price of 17.50 cents and another at 18 cents per Mcf involving 1962 deliveries of more than 16,000,000 Mcf. This had the effect of unduly raising his weighted average price. By contrast Mrs. Gody who also testified in behalf of the producers selected January 1, 1958 to December 31, 1963 as the critical period in her basic exhibit. But aside from the fact that the contracts utilized were executed in mid-1956, these sales as stated by the Commission in *Texaco Seaboard, Inc.*, 29 FPC 593. 598, March 27, 1963, "were to a new company that had neither been given a certificate nor was yet in operation, and so may have taken place at higher prices than would have occurred under contracts with an established pipeline because of the inclusion in the price of an additional risk factor." Moreover, Mr. Norris made use of large volumes of gas deliveries in 1962 at 20 cent prices which represented pre-CATCO sales (*Trunkline Gas Company*, 21 FPC 704) characterized by the courts as suspect. Although Mr. Norris was conversant with gas industry matters his conclusions as to what is an appropriate "in-line" price in this case based on the weighted average sales prices which he considered are not well founded.

Mr. H. L. McDonald testified on behalf of the Pan American Petroleum Corporation in support of its contract executed February 12, 1963 and temporarily certificated by the Commission at 17.5 cents per Mcf. Pan American's application was filed on May 23, 1963, temporarily certificated October 7, 1963, and deliveries of gas were commenced on December 31, 1963. Mr. McDonald testified as to the intrastate market compared with the interstate market of gas from Texas District No. 3, stating that the intrastate market was large and had grown in recent years. He expressed the view that the intrastate market was more favorable than the interstate market and that this supported a higher conract rate for gas sold interstate and that this justified the permanent certification at 17.5 cents per Mcf. On cross-examination, however, he admitted that his company had no bona fide intrastate offers for the gas covered by the subject sale. As to the intrastate market it would appear that this can be put on one side and that that market is irrelevant in determining an "in line" price in the instant pro-

ILLUSTRATION 2

[Weighted average price—13.2 cents]

Year	Price per Mcf	Volume	
1959	12	1,500,000	$180,000
1960	14	1,000,000	140,000
1961	16	150,000	24,000
1962	18	100,000	18,000
		2,750,000	$362,000

If it were necessary to certificate a few sales made almost at the same time, it is reasonable in doing so, that consideraton be given to comparable sales made at or about the same time which have been permanently certificated. If several sales scattered over a period of years are to be certificated it follows that consideration must be given to comparable sales covering approximately the same period which well might include a reasonable time before and after. But to include sales two or three years before the sales in issue without extenuating circumstances, would be misleading, and to determine a weighted average based on such sales would be equally fallacious.

ceeding. Moreover, Mr. McDonald's testimony when considered with other evidence herein does not support a rate of 17.5 cents per Mcf.

Mr. L. L. Byars, who testified for the Skelly Oil Company (Docket Nos. G–20155 and CI63–672), stated that the contract in the first docket was executed on August 1, 1959, and the other on October 16, 1962, and that the contracts were temporarily executed at 17.5 cents and 18 cents per Mcf, respectively. Deliveries on the first contract were commenced on November 22, 1961, and on the second December 18, 1962. Mr. Byars testified that the Pan American Petroleum Corporation and Tidewater Oil Company executed contracts on October 16, 1962 (Docket Nos. CI63–656 and CI63–650) to sell gas to the same purchaser as Skelly, *i.e.*, Natural Gas Pipeline Company of America, and were given permanent certificates for such sales at a price of 18 cents per Mcf, and that the gas sold came from the same location as that under Skelly's contract of October 16, 1962. He stated that Skelly had only an unconditional temporary certificate at 18 cents per Mcf. Mr. Byars pointed out that the gas was sold from the same unit at different prices. He stated that this would create serious problems, but he was rather vague as to what they were and why. We must disagree with this conclusion. In *Ohio Oil Company, Operator, et al.*, 27 FPC 551, 566, Examiner Kelly was confronted with the same contention and he stated:

> Each brief filed by the Applicants stresses the fact that a permanent certificate was issued to Gulf by the Commission on July 8, 1959, authorizing the sale of gas to United at 18.5 cents per Mcf. It is argued by them that the Gulf sale is of gas produced from the Ada field of Bienville Parish, just as are 8 of the 14 sales here involved, and that their contractual initial price being the same, should be permanently certificated by the Commission, as was Gulf's rate * * *"

Examiner Kelly was upheld by the Commission in its order of March 21, 1962, 27 FPC 551.

The principal witness for the producers was Mrs. Celia Star Gody. Mrs. Gody is an economic statistician. She testified that she had been asked "to present testimony on prices for sales of natural gas in Texas Railroad Commission District No. 3 and to compare the proposed price for the subject sales with prices for other sales of natural gas in the same part of the market." Mrs. Gody expressed the opinion that the price negotiated by the parties reflects the underlying economic forces which determine the value of gas as a commodity, and that the first line of inquiry in determining whether certifications of the docketed sales is in the public convenience and necessity is to determine whether the proposed sales are within the *dominant range of market prices* for comparable supplies. She testified that the prices negotiated by buyers and sellers are affected by the fact of regulation by the Commission but that the initial contract prices are the best indication of the value of gas. Mrs. Gody preferred, however, to testify to the high contract prices for gas and the high volumes sold at a high price, rather than to the prevailing certificated prices in a particular year or over a period of years. Her testimony reveals that she concerned herself chiefly with initial contracts rather than certificated contracts. She asserted that relatively few contracts were executed in any single year and that price behavior must be appraised by reference to the experience over a period of years rather than by reference to short term changes.

A careful examination of Mrs. Gody's testimony reveals, however, that her ultimate conclusions are subject to question on several counts. Mrs. Gody did not follow the usual practice of an expert witness in stating her opinion and then supporting it by explanatory testimony and documentary evidence. She

chose rather to state her own premises and assumptions, to provide what she characterized as "information on market prices" or a "dominant range of market prices," and then conclude that such data established a basic price for certificating the subject contracts. She did not define what she meant by "dominant range of market prices," nor did she attempt to determine a price level objectively which would be applicable to the contracts involved in this proceeding.

Since she dealt essentially with initial contracts rather than certificated contracts her conclusions are largely hypothetical in respect to a certificate proceeding. Moreover, to assume as she did, that the prices negotiated by the parties determine the value of gas when producer prices of gas sold in interstate commerce are subject to regulation is misleading and provides no sound basis for determining whether the subject sales can be certified as in the public convenience and necessity. Although Mrs. Gody utilized contracts covering the period January 1, 1958 to December 31, 1963, a period covered by the subject sales, she ignored or gave but little consideration to the low priced sales. Indeed on cross-examination when speaking of intrastate sales she stated, "The lowest price of such sales would be of no particular interest to me." Her search was directed in large measure to large volume deliveries at high prices. This necessarily resulted in weighted averages which suited her purposes.

The tables and charts prepared by Mrs. Gody are meaningful statistically but their relevance is limited in determining an appropriate price at which the subject sales should be certificated. For example, the chart captioned, *Annual Delivery Volumes Committed Under Long Term Contracts, Texas Railroad Commission District No. 3, by Year of Contract 1952–1963* (Exhibit 5, p. 2) shows, among other things, a commitment of new contract volumes of more than 80 million cubic feet of gas for the year 1952, some 33 million for 1958, and declining volumes in succeeding years to 2.7 million in the year 1963, but the witness did not contend that the number of sales or the volumes committed between 1959 and 1963 were insufficient to indicate a market during these years. In her direct testimony, Mrs. Gody stated in respect to another chart that it shows prices in a range of 13 to 20 cents per Mcf in the period 1958–1963 but in the chart following containing the same sales, she lumped volumes by price and concluded that the weighted average of initial contract prices was 18.05 cents per Mcf, and that half the total volumes under the new contracts was at the 20-cent price. The latter chart (Exhibit 5, p. 7) includes the subject sales in the array with which the subject sales are compared in arriving at an appropriate price for certifying the subject contracts. This is a strange procedure and in the instant proceeding certainly cannot be justified either in law or logic.

Mrs. Gody's conclusions in respect to the sales consolidated in this proceeding are, that "if the subject contracts were evaluated by reference to prices under comparable contracts written at about the same time, the proposed prices could be found to be within the range of current market prices, and at or below the 20-cent price at which the largest proportion of the new-contract volume was committed," and further "assuming that from a legal standpoint, the certificated sales at a price of 20 cents were not to be relied upon" then "the 18-cent price is the appropriate upper price limit for the subject sales." In her direct testimony, Mrs. Gody stated that the conspicuous feature of the price distribution is the concentration of delivery volumes at the 20-cent price, and that a substantial proportion of the volume under the certificated sales dated 1958–1963 is at the 20-cent price. Further inquiry will now be made to determine whether these assumptions and conclusions are valid.

In Exhibit 5 Mrs. Gody indicates that there were 18 contracts executed at an initial base price of 20 cents involving annual delivery volumes of 44,042 MMcf at 14.65 psia. Five of these dockets, however, are consolidated herein (CI61–1221, CI61–1282, CI61–1283, CI61–1682, and CI60–348). Since these dockets are in issue they provide no true basis of comparison. Two dockets, G–19115 and G–19116, were conditioned at 16 cents in, *Hassie Hunt Trust, Operator, et al.*, Opinion No. 412, issued January 24, 1964, *supra*. Two additional dockets, namely, G–19559 and G–20383, involved sales by the Cities Service Oil Company and the Gulf Oil Corporation to the Trunkline Gas Company and were certificated on the basis of settlement proposals at 18 cents and at 16 cents, respectively. (Orders October 31, 1963 and August 8, 1963.) The contract in Docket No. CI61–157 was conditioned at 16 cents in *Texaco Seaboard, Inc.*, 29 FPC 593, dated March 27, 1963. The eight remaining dockets (G–16975, G–17044, G–16551, G–15471, G–15472, G–16147, G–16267 and G–17263) were permanently certificated at 20 cents in *Trunkline Gas Company*, 21 FPC 704, on May 22, 1959. This opinion, however, was issued prior to the decision in the *CATCO* case, *Atlantic Refining Company* v. *Federal Power Commission*, 360 U.S. 378, wherein the Supreme Court admonished the Commission to hold the line against further increases in the price of gas.

It will thus be perceived that in this group of 18 sales there is none higher than 16 cents which can rightfully be employed for comparison in establishing an "in line" price. The one sale at 18 cents represented a compromise settlement and for obvious reasons must be put on one side. The eight 20-cent sales having been certificated prior to *CATCO* are commonly regarded as suspect. In *Hunt Oil Company* v. *Federal Power Commission* (CA5) No. 19218, May 28, 1964, the Court indicated that "several Courts of Appeals, including this Court and the District of Columbia Circuit, held that the Commission had erred in using the improperly certificated *CATCO* prices in determining the public interest price level for initial sales, and the Supreme Court consistently denied certiorari." Citing:[4]

The sale listed at 18.05 cents in Exhibit 5, p. 7 (CI61–553) was withdrawn by the applicant. In respect to six sales at 18 cents, three are consolidated in this proceeding and are in issue, while three others were certificated under abridged hearings in March 1963. As to the 17.5–cent sales, 15 of the 19 listed are again consolidated herein; two others (Docket Nos. G–18376 and CI60–412) were permanently certificated at 16 cents; one (Docket No. CI61–334) is of limited import here under *Texaco Seaboard, Inc.*, 29 FPC 593, 598, March 27, 1963, since the contract was executed on February 22, 1960, (pre-CATCO); and as to the last sale (G–19971) the witness admitted that it was withdrawn. Thus, only

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[4] *United Gas Improvement Co.* v. *Federal Power Com'n*, 10 Cir., 287 F. 2d 159 (1961); *United Gas Improvement Co.* v. *Federal Power Com'n*, 9 Cir., 283 F. 2d 817 (1960), cert. denied, *sub nom. California Company* v. *United Gas Improvement Co.*, 365 U.S. 881 (1961); *Public Serv. Com'n of New York* v. *Federal Power Com'n*, 109 U.S. App. D. C. 292, 287 F. 2d 146 (1960), cert. denied, *sub nom. Hope Natural Gas Co.* v. *Public Service Commission of New York*, 365 U.S. 880 (1961), and *Shell Oil Co.* v. *Public Service Commission of New York*, 365 U.S. 882 (1961); *United Gas Improvement Co.* v. *Federal Power Com'n*, 5 Cir., 290 F. 2d 133, cert. denied, *sub nom. Sun Oil Co.* v. *United Gas Improvement Co.*, 368 U.S. 823 (1961); *United Gas Improvement Co.* v. *Federal Power Com'n*, 5 Cir., 290 F. 2d 147, cert. denied, *sub nom. Superior Oil Co.* v. *United Gas Improvement Co.*, 366 U.S. 965 (1961). Only the third Circuit sustained such an order by the Commission, but that decision was summarily reversed by the Supreme Court. *Transcontinental Gas Pipe Line Corp.*, 20 FPC 264, rehearing denied, 20 FPC 571 (1958), affirmed, *sub nom. United Gas Improvement Co.* v. *Federal Power Com'n*, 3 Cir., 269 F. 2d 865, reversed, *sub nom. Pub. Serv. Comm'n of N.Y.* v. *F.P.C.*, 361 U.S. 195 (1959) (*per curiam*).

one of the 19 sales listed was in fact permanently certificated at 17.5 cents. The contracts listed at 16.75 cents (Docket No. CI61–468) and at 17 cents (CI64–677) are consolidated herein. Of the contracts listed at 16.17 cents, seven are consolidated herein (Docket Nos. CI60–495, CI60–459, CI60–496, CI60–343, CI60–434, CI60–642, and CI62–1220). Six others (Docket Nos. G–19099, G–20323, CI61–810, CI60–635, CP60–94, and CI61–1183) were permanently certificated.

When the sales contracts at the initial prices between 16.17 cents and 20 cents referred to above are eliminated from consideration, or they are fairly evaluated along with other contracts executed at lower prices during the period 1958-1963, it is clearly evident that there is no rational support either for a 20-cent or an 18-cent price.

Mrs. Gody's tabulation of initial prices, as well as her tabulation of permanently certificated sales, range in price for the period 1958–1963 between 9.26 cents and 20 cents. Nearly half of the sales in the first tabulation fall between 9.26 and 16 cents and approximately half in the second tabulation between 9.26 and 15 cents. Although there were substantial delivery volumes at these prices, it is a curious fact that Mrs. Gody contends that the range of current market prices—the price at which she says the subject sales should be certificated—is at the highest price, namely, at or below 20 cents.

Although the producers' principal witness testified that it would be inappropriate to place exclusive reliance upon permanently certificated prices, she nevertheless found that "a substantial proportion of the volume" under such sales for the period in question were at the 20-cent price. By using permanently certificated sales—oddly enough the witness allegedly obtains almost the same result as when using initial prices. The witness arrived at this result by including or excluding particular sales in the preparation of her charts.

In the testimony on which reliance is placed upon permanently certificated sales Mrs. Gody again utilizes eight of the 20-cent prices which are pre-CATCO prices, and three sales at 18 cents which were certificated under abridged hearings. The only sale at 17.5 cents is subject to the Commission's suspect price doctrine and the annual deliveries at this price are very small.

The contracts of Hassie Hunt, Docket No. G–19115 and H. L. Hunt, Operator, Docket No. G–19116 as well as Placid Oil Company, Docket No. G–19125 were included by Mrs. Gody in her chart and tabulation of initial prices at 20 cents. The same contracts, however, were excluded by the witness in her chart and tabulation of permanently certificated sales. The Commission conditioned these contracts at 16 cents in *Hassie Hunt Trust, Operator, et al.*, Opinion No. 412 on December 9, 1963, *supra*. The explanation for omission given was that the Commission stayed its order contained in Opinion No. 412 pending judicial review by its order in Opinion No. 412–A, January 24, 1964, *supra*. A more plausible explanation for omitting these contracts in the array of certificated sales it that since they involve large volumes of gas they would have lowered the weighted average price had they been included, and thus would not have suited her purpose.

A more serious omission, however, relates to the sales by producers to the Valley Gas Transmission Company amounting to approximately nine and one half billion cubic feet of gas per annum. The witness' reason for excluding these sales is that they are not comparable to normal producer-pipeline sales, citing as authority, *Amerada Petroleum Corporation, et al.*, (Opinion No. 422, footnote 33, 31 FPC 635), wherein it is stated, "In Skelly we specifically referred to the activities of Valley, indicating that its sales are not comparable to the normal producer-pipeline sales." The Staff argues, however, that a sale *by*

Valley is not comparable to sales by producers since it is a gathering company, but that sales by producers *to* Valley are jurisdictional and are comparable-producer sales. *Skelly Oil Company*, 28 FPC 401, 408, August 30, 1962; *Superior Oil Company* (Opinion 437, July 23, 1964, 32 FPC 243–244). We conclude that it was erroneous to disregard the sales to the Valley Gas Transmission Company.

In her direct testimony, Mrs. Gody states, "Assuming that, from a legal standpoint, the certificated sales at a price of 20 cents *were not to be relied upon* * * * I would conclude * * * the 18 cent price is the appropriate upper price limit." (Emphasis supplied). On cross-examination she revealed that if the 20 cent price were to be accorded no weight then the 18 cent price should control (Tr. 1035–36). Mrs. Gody's conclusions in effect are "take one or the other—if not 20 cents then 18 cents." Although she strenuously emphasizes the significance of annual delivery volumes, when she falls back to 18 cent sales (permanently certificated sales), her price is supported by only three sales and 5,572 MMcf annually as an indicia of the market for 1958–1963 at which the subject sales should be certificated.

In view of the foregoing the conclusion is inescapable that the witness' findings are based almost solely on mathematical calculations and allocations rather than an objective appraisal of all the sales which were made during the 1958–1963 period. Her contentions that the subject sales should be certificated at 20 cents or at 18 cents based on previous sales are without foundation and accordingly are rejected.

The Staff's witness, Mr. Russell T. Jones, testified in respect to the contracts for the sale of gas in interstate commerce from the Texas Railroad Commission District No. 3, and to an "in line" price. His testimony as to an "in line" price falls into two parts; namely, that covering the subject contracts negotiated prior to September 28, 1960, the date on which the Commission issued its Statement of General Policy No. 61–1, and that following September 28, 1960. For the pre-Policy Statement period, Mr. Jones considered that the "in line" price of 16 cents per Mcf at 14.65 psia for Texas District No. 3 found by the Commission in *Texaco Seaboard, Inc., et al.*, 29 FPC 593, March 27, 1963, and reaffirmed in *Hassie Hunt Trust, Operator, et al.*, Opinion No. 412, December 9, 1963, referred to above, was controlling, *i.e.*, for the contracts entered into up to September 28, 1960. As to the post-Policy Statement period, Mr. Jones was of the opinion that the "in line" price applicable to such contracts based on his analysis should not exceed 16.2 cents per Mcf at 14.65 psia. In arriving at this determination, the witness said he took into account the permanently certificated sales entered into prior to September 28, 1960, but relied primarily upon the sales executed after that date. The witness did not include rates resulting from any settlements unless the settlement was at the total initial rate, that is, the contract rate. In other words, only permanently certificated initial rates rather than compromise settlement rates were included. Mr. Jones testified that in determining the "in line" price in the Texaco Seaboard case the Commission utilized a Staff exhibit which presented in tabular form substantially the same information as contained in Exhibit I of this proceeding. The sales which were excluded since they represented compromise settlement rates consisted of the following: Tidewater Oil Company, Docket Nos. G–17578 and G–18376; Shell Oil Company, Docket No. G–19571; Gulf Oil Corporation, Docket Nos. G–20383 and CI60–412 and Cities Service Oil Company, Docket No. G–19559.

The following charts, reproduced from the Staff's exhibit (Exhibit No. 2), show the distribution of permanently certificated sales before and after the Commis-

sion's Statement of General Policy No. 61-1 and during the period January 1, 1958 through December 31, 1963:

CHART 1

DISTRIBUTION OF PRICES

PERMANENTLY CERTIFICATED SALES

(Contracts dated January 1, 1958 through December 31, 1963)

Total initial price	Number of sales	Estimated first month volumes (Mcf)	Percent of total volume
Less than 10.0	3	120,000	1.96
12.0	2	24,000	.39
13.0	2	75,000	1.23
13.5	10	149,715	2.45
14.0	18	884,270	14.48
14.2	1	45,000	.74
14.4	1	90,000	1.47
14.5	7	207,000	3.39
14.6	2	96,000	1.57
15.0	18	523,675	8.57
15.1	1	60,000	.98
15.2	3	166,170	2.72
16.0	4	968,000	15.85
16.2	7	669,000	10.96
16.5	1	30,000	.49
17.5	1	2,190	.04
18.0	4	481,771	7.89
20.0	9	1,515,650	24.82
Total	94	6,107,441	100.00

CHART 2

DISTRIBUTION OF PRICES

PERMANENTLY CERTIFICATED SALES

(Contracts dated January 1, 1958 through September 27, 1960)

Total initial price	Number of sales	Estimated first month volumes (Mcf)	Percent of total volume
Less Than 10.0	3	120,000	2.68
13.5	8	116,100	2.59
14.0	6	353,250	7.90
14.2	1	45,000	1.01
14.4	1	90,000	2.01
14.5	4	132,000	2.95
14.6	2	96,000	2.15
15.0	8	295,075	6.59
15.1	1	60,000	1.34
15.2	3	166,170	3.71
16.0	4	968,000	21.64
16.2	4	514,000	11.49
17.5	1	2,190	.05
18.0	1	731	.02
20.0	9	1,515,650	33.87
Total	56	4,474,166	100.00

CHART 3

DISTRIBUTION OF PRICES

PERMANENTLY CERTIFICATED SALES

(Contracts dated September 28, 1960 through December 31, 1963)

Total initial price	Number of sales	Estimated first month volumes (Mcf)	Percent of total volume
12.0	2	24,000	1.47
13.0	2	75,000	4.59
13.5	2	33,615	2.06
14.0	12	531,020	32.51
14.5	3	75,000	4.59
15.0	10	228,600	14.00
16.2	3	155,000	9.49
16.5	1	30,000	1.84
18.0	3	481,040	29.45
Total	38	1,633,275	100.00

For the period after September 28, 1960, Mr. Jones found that 38 sales were permanently certificated, 22 of which were entered into at prices of 14 cents and 15 cents per Mcf; and that although 481,040 Mcf of gas were estimated as the first month's volumes for three sales at 18 cents, a greater volume was estimated to be sold under 12 contracts at 14 cents with a substantial volume to be sold at 15 cents per Mcf. Mr. Jones indicated that the pattern of sales for the period January 1, 1958 through September 27, 1960 was essentially no different than for the period following September 28, 1960. For the earlier period, he said there were 41 sales at prices of 16 cents or less with 15 sales ranging from prices of 16.2 (4 sales) to 20 cents (9 sales). The witness disclosed that when the sales for the two periods are grouped together it was apparent that there were six concentrations of sales involving substantial volumes of gas, namely, at 14, 15, 16, 16.2, 18 and 20 cents per Mcf. He noted that prices at 17.5 cents and above including the 20-cent sales should be discounted quoting the *Texaco Seaboard* case "since they either have subsequently been set side (and are presently before us for new decision) or would have been set aside, for failure to permit a proper party to intervene, save for the procedural defect in the PSC review action in the *Trunkline* case." 29 FPC 593, 597. He also noted in respect to the four sales at 18 cents that three were entered into subsequent to September 28, 1960 and were certificated by the Commission pursuant to abridged procedure in March 1963. He said he gave these sales some weight but not controlling weight.

It will be observed from the foregoing distribution of prices for the period September 28, 1960 through December 31, 1963, that the largest concentration of sales occurred at 14 cents and 15 cents per Mcf-57.9 percent, and that the largest volumes of gas were sold at or below 15 cents per Mcf. The average numerically weighted sales price for the period was approximately 14.67 cents and the average sales price by volume was approximately 15.51 cents per Mcf. In respect to the period January 1, 1958 through September 27, 1960 more than 73 percent of the sales occurred at 16 cents or below and these sales account for more than half the volume. The average numerically weighted sales price for this period is 15.41 cents per Mcf and the average sale price by volume is approximately 16.76 cents per Mcf. When the two periods are combined (January 1, 1958 through December 31, 1963) it is apparent that there are two major concentrations of sales namely at 14 cents and 15 cents and minor concentrations at 13.5, 14.5, 16.2 and 20 cents. The average numerically weighted price of the 94 sales is 15.11 cents per Mcf and the average by volume is 16.43 cents per Mcf.

In view of the foregoing and the evidence adduced there is ample support for finding that 16 cents per Mcf at 14.65 psia is an appropriate "in line" price applicable to producer contracts in this proceeding for the period prior to September 28, 1960. The Staff witness found, however, that 16.2 cents was the appropriate "in line" price applicable to the period following September 28, 1960 and in doing so stressed the significance of the sales which were made at 16.2 cents per Mcf. (Four sales before September 28, 1960 and three afterwards.) We do not think that this is decisive. Indeed there is evidence which tends to show that a higher price may be justified for the pre-Policy Statement period than for the post-Policy Statement period.

It is manifest that the "in line" price is neither the highest price nor the lowest price at which gas is sold from a particular area in interstate commerce. It is also clear that it is not the general average of prices at which gas is sold in a particular period or indeed the mathematical weighted average. Consideration necessarily must be given, however, to the number of sales as well as to the volume—large volumes frequently selling at higher prices than low volumes. Consideration should be given to numerous factors depending upon individual circumstances from one case to another. Consideration must also be given to

the Commission's Statement of General Policy No. 61–1, and to policy of the Natural Gas Act as heretofore construed by the Commission and by the courts particularly by the United States Supreme Court in the CATCO case. *Atlantic Refining Co.* v. *P.S.C. of New York*, 360 U.S. 378. In view of these factors and all the facts of record we conclude that the subject sales in this proceeding from the Texas Railroad District No. 3 made under contracts executed both before and after the Policy Statement dated September 28, 1960, should be conditioned at a price no greater than 16 cents per Mcf at 14.65 psia.

The quality specifications of the contracts involved in this proceeding are generally the same as those contained in other contracts executed during the years 1958 to 1963 and utilized as to comparability of price. The gas delivered under the contracts is of pipe line quality as that term is used and generally understood in District No. 3.

At the hearing the applicants adduced evidence to support their contention that refunds should not be ordered in the event that the "in line" price should be determined to be below the proposed initial price. Evidence was also presented of "equitable considerations" as a bar to the making of refunds. On October 5, 1964, 32 FPC 914, however, in respect to the Sinclair Oil & Gas Company, *et al.*, Docket No. G–16760, *et al.*, and Turnbull & Zoch Drilling Co. (Operator), *et al.*, Docket No. G–17960, *et al.*, the Commission ordered that where the temporary certificate does not contain an express refund condition then consideration of refunds should be deferred until further order by the Commission. In an order issued on October 13, 1964, 32 FPC 991, this ruling was also made applicable to the instant case. Since the initial price in Docket Nos. CI63–1445, CI63–584, CI63–1057, and CI63–1134 are subject to the condition that the seller refund any amounts collected plus interest at 7 percent per annum in excess of 16 cents per Mcf at 14.65 psia an order will be issued herein ordering refunds in these dockets.

The Public Service Commission of New York contends that the pipeline purchasers are in a take-or-pay situation and have no need for the gas of the Applicants, particularly the Tennessee Gas Transmission Company, Florida Gas Transmission Company, and the Trunkline Gas Company. Some of the applicants argue that need is not an issue in the proceeding, others that PSC has no direct interest, and others that PSC's action amounts to a collateral attack upon an order of the Commission in issuing certificates to the pipelines. The chief argument of the applicants, however, is that the contracts and temporary certificates are matters of record. They contend that deliveries are being made under the contracts and in some instances have been made for several years. There was no evidence to refute this. It is unnecessary to pass on all of these contentions. The Florida Gas Transmission Company, an intervenor, says that the gas delivered by its producer-applicants is being transported and resold to its customers in Florida. It denies that it is in a "severe take-or-pay situation," and contends that it has now substantially recouped its gas paid in advance. By reason of the nature of the gas business and the obligation of the pipeline companies to the consuming public, it is to be expected that such companies frequently will be in over supply rather than under supply. But however this may be, in view of the contracts and deliveries and the paucity of evidence as to lack of need it must be concluded on a balancing of interests that the statutory requirements in the granting of certificates in the instant case in regard to need are clearly met.

It will be observed from Appendix A, page 928, that the Applicant, H. B. Lively (Operator), *et al.*, CI62–1220 sells gas to the Tennessee Gas Transmission Company under Rate Schedule No. 3 at the proposed initial price of 15.95016

cents at 14.65 psia. It is also noted Lively's price is subject to the condition that it refund any amount (plus interest) in excess of the amount computed at the rate determined to be required by the public convenience and necessity in Docket No. CI62–1220. Lively has not been specifically represented in the proceeding and filed no brief. After the close of the hearing, however, on November 9, 1964, Lively filed a Motion for Severance, with a settlement agreement, and a request for the issuance of a permanent certificate pursuant to abridged procedure. Under the circumstances, no order will be issued herein in respect to H. B. Lively's Docket No. CI62–1220.

FINDINGS AND CONCLUSIONS

Upon consideration of the record, the briefs, and arguments of counsel, it is found and concluded, in addition to the findings and conclusions heretofore stated that:

(1) The following applicants:

	Docket No.
W. S. Kilroy (Operator), *et al*	G–18175
John A. Newman (Operator), *et al*	G–18481
Shell Oil Company	G–18805
Callery Properties, Inc	G–18857
Gregory J. Gallagher	G–19308
The Sparta Oil Company	G–19964
Skelly Oil Company	G–20155
The Superior Oil Company	G–20359
Gregory J. Gallagher	G–20385
Socony Mobil Oil Company, Inc	G–18384
Pan American Petroleum Corporation	CI63–1445
Robert Mosbacher, Operator, *et al*	CI60–343
North Central Oil Corporation, Operator	CI60–434
Woods Exploration and Producing Co., *et al*	CI60–495
W. C. Coffey and North Central Oil Corporation	CI60–496
Ben H. Schnapp (Operator), *et al*	CI60–642
The Superior Oil Company	CI63–584
Humble Oil & Refining Company	CI63–1057
Humble Oil & Refining Company	CI64–677
Tidewater Oil Company	CI63–1134
Marathon Oil Company	CI60–497
Kirby Petroleum Co., Operator	CI60–610
Oil Reserves Corporation, Operator	CI61–468
George R. Brown	CI61–1688
A. F. Childers, Jr. (Operator), *et al*	CI62–1152
Skelly Oil Company	CI63–672
Sun Oil Company	CI60–348
Kilroy Properties, Incorporated, *et al*	CI60–478
H. L. Hunt, Operator, *et al*	CI61–1221
H. L. Hunt	CI61–1282
Hassie Hunt Trust, Operator, *et al*	CI61–1283
Caroline Hunt Sands	CI61–1343
Caroline Hunt Trust Estate	CI61–1344
Lamar Hunt Trust Estate	CI61–1345
Nelson Bunker Hunt	CI61–1346
Placid Oil Company, Operator, *et al*	CI61–1682

are "natural-gas companies" within the meaning of the Natural Gas Act as independent producers of natural gas, as that term is defined in Section 154.91(a) of the Commission's Regulations, engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption, and such sales, and the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas act.

(2) The Applicants named in (1) above are able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(3) The sale of natural gas as proposed by each of the Applicants, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor are required by the public convenience and necessity and a certificate authorizing the same should issue to each of them upon the terms and conditions of the order herein, which terms and conditions are required by the public convenience and necessity.

(4) The public convenience and necessity requires that the initial prices charged by the Applicants named in (1) for the sales proposed in this proceeding be not greater than 16 cents per Mcf at 14.65 psia.

ORDER

WHEREFORE, *It is ordered*, subject to review by the Commission on appeal, or review on its own motion, as provided in its Rules of Practice and Procedure that:

(A) A certificate of public convenience and necessity is hereby issued to each of the Applicants referred to in Finding (1) for the sale of natural gas in interstate commerce for resale as proposed in their applications, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor upon the terms and conditions of this order.

(B) The certificates issued to the Applicants in Finding (1) are hereby conditioned to prohibit any total initial price, including all reimbursements and charges, greater than 16 cents per Mcf at 14.65 psia from the date of the issuance of this order until such prices may be lawfully changed in the manner provided by the Natural Gas Act.

(C) The certificates to the producer Applicants referred to above are conditioned so that the take-or-pay requirements of each contract is subject to the provisions of the Commission's final order in Docket No. R-199 as of the effective date of that order, provided, however, that the producers shall not be required to file take-or-pay provisions for less than 80 percent of the annual contract quantities.

(D) The certificates issued herein are not transferrable and shall be effective only so long as each of said Applicants continues the acts and operations hereby authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations and order of the Commission.

(E) The certificates issued herein are conditioned upon their acceptance in writing by the respective producer Applicants within 30 days of the issuance of this order.

(F) The grant of the certificates herein shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act or of Part 154 of the Commission's Regulations under said Act. Such grant is without prejudice to any findings or order which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against the

Applicants. Further, the action in this proceeding shall not foreclose or prejudice any further proceedings or objection relating to the operation of any price or related provisions in gas purchase contracts here involved.

(G) In accordance with the conditions imposed in the temporary authorizations granted to the Applicants in Docket Nos. CI63–584, CI63–1445, CI63–1057 and CI63–1134 such Applicants shall within 60 days from the date of the issuance of this order refund to the pipeline purchasers, with interest at 7 percent per annum to continue until full refund is made, a sum equal to the difference between the price charged to and collected from such purchaser and the price set forth in Paragraph (B) above, applied to all volumes paid for by such purchaser from the date of deliveries under the temporary authorizations until the date on which this order shall issue.

HARRY C. SHRIVER,
Presiding Examiner.

APPENDIX A*

Docket No.	Applicant	Field and location	Purchaser	Proposed initial price (cents per Mcf 14.65 psia)	Rate schedule	Contract date	Comments
G-18077	H. L. Hawkins and H. L. Hawkins, Jr. (Operator), *et al.*	Lockridge Field, Brazoria County.	Florida Gas Transmission Co.	17.5	9	Jan. 30, 1959	(2).
G-18175	W. S. Kilroy (Operator), *et al.*	Palacios Field, Matagorda County.	do	17.5	1	Jan. 22, 1959	(2).
G-18481	John A. Newman (Operator), *et al.*	Lockridge Field, Brazoria County.	do	17.5	1	Dec. 10, 1958	(2).
G-18805	Shell Oil Co	East Bay Field, Galveston County.	do	18.0	209	Apr. 15, 1959	(2).
G-18857	Callery Properties, Inc	Palacios Field, Matagorda County.	do	17.5	1	Jan. 14, 1959	(2).
G-19308	Gregory J. Gallagher	do	do	17.5	1	Feb. 2, 1959	(2).
G-19964	The Sparta Oil Co	League City West Field, Galveston County.	do	18.0	3	Sept. 10, 1959	(2).
G-20155	Skelly Oil Co	Pheasant Field, Matagorda County.	do	17.5	158	Aug. 1, 1959	(2).
G-20359	The Superior Oil Co	do	do	17.5	99	Aug. 1, 1959	(2).
G-20385	Gregory J. Gallagher	Palacios Field, Matagorda County.	do	17.5	2	Sept. 15, 1959	(2).
G-18384	Socony Mobil Oil Co., Inc	do	do	17.5	263	Feb. 18, 1959	(2).
CI63-1445	Pan American Petroleum Corp	do	do	17.5	358	Feb. 12, 1963	(1).
CI62-1220	H. B. Lively	Columbus Field, Colorado County.	Tennessee Gas Transmission Co.	15.95016	3	Jan. 31, 1951	Ratification Apr. 10, 1962.[3]
CI60-459	The Atlantic Refining Co	Englehart Field, Colorado County.	do	16.16947	215	Mar. 16, 1960	(2).
CI60-343	Robert Mosbacher	do	do	16.16947	17	Jan. 30, 1960	(2).
CI60-434	North Central Oil Corp	North Blessing Area, Matagorda County.	do	16.16947	3	Mar. 15, 1960	(2).
CI60-495	Woods Exploration and Producing Co.	East Bernard Field, Wharton County.	do	16.16947	2	Apr. 18, 1960	(2).
CI60-496	C. W. Coffey and North Central Oil Corp.	Blessing Area, Matagorda County.	do	16.16947	4	Mar. 28, 1960	(2).
CI60-642	Ben H. Schnapp	Petkas Field, Chambers County.	do	16.16947	1	Apr. 6, 1960	(2).
CI63-584	The Superior Oil Co	Oliver Field, Brazoria County	Florida Gas Transmission Co.	17.5	109	Sept. 20, 1962	(1).
CI63-1057	Humble Oil & Refining Co	Quicksand Creek Field, Newton County.	Trunkline Gas Co	17.0	325	June 21, 1960	Ratification Jan. 21, 1963.[1]

CI63-1134	Tidewater Oil Co	do	do	17.0	125	June 21, 1960	Ratification Jan. 30, 1963.[1]
CI60-497	Marathon Oil Co	Palacious Field, Matagorda	Florida Gas Transmission Co	18.0	80	Jan. 25, 1960	(2).
CI60-497	do	do	do	18.0	81	Feb. 18, 1959	(2).
CI60-541	Stewart & Gougher Drilling Co	Northern Ranch Field, Matagorda County.	do	17.5	3	Jan. 13, 1960	(2).
CI60-610	Kirby Petroleum Co	South Hamman Field, Matagorda County.	do	17.5	12	Mar. 22, 1960	(2).
CI61-468	Oil Reserves Corp	Quicksand Creek Field, Newton County.	Trunkline Gas Co	17.0	2	June 21, 1960	(2).
CI61-1688	George R. Brown	Pheasant Field, Matagorda County.	Florida Gas Transmission Co	17.5	10	Jan. 12, 1961	(2).
CI62-1152	A. F. Childers, Jr	Jones Creek Field, Wharton County.	do	17.5	1	Jan. 17, 1962	(2).
CI63-672	Skelly Oil Co	East Bay City Field, Matagorda County.	Natural Gas Pipeline Co. of America.	18.0	181	Oct. 16, 1962	(2).
CI60-348	Sun Oil Co	Sarah White Field, Galveston County.	Trunkline Gas Co	20.0	120	Mar. 3, 1960	(2).
CI60-478	Kilroy Properties, Inc	Arcadia Field, Galveston County.	do	20.0	4	Sept. 16, 1958	Ratification Mar. 15, 1960.
CI61-1682	Placid Oil Co. (Operator), *et al*	Alta Loma Area, Galveston County.	Natural Gas Pipeline Co. of America.	20.0	33	Dec. 15, 1960	(2).
CI64-677	Humble Oil & Refining Co	Pledger Miocene, Brazoria County.	do	17.0	342	Oct. 1, 1963	(2).
CI61-1221	H. L. Hunt (Operator), *et al*	Alvin City, Brazoria County	do	20.0	34	Dec. 15, 1960	(4).
CI61-1282	H. L. Hunt	Alta Loma, Galveston County	do	20.0	35	Dec. 15, 1960	(4).
CI61-1283	Hassie Hunt Trust (Operator), *et al.*	do	do	20.0	28	Dec. 15, 1960	(4).
CI61-1343	Caroline Hunt Sands	Chenango, Brazoria County	do	20.0	9	May 15, 1959	Ratification Feb. 15, 1961.[5]
CI61-1344	Caroline Hunt Trust Estate	do	do	20.0	4	May 15, 1959	Do.
CI61-1345	Lamar Hunt Trust Estate	do	do	20.0	11	May 15, 1959	Do.
CI61-1346	N. B. Hunt	do	do	20.0	12	May 15, 1959	Do.

*Reproduced from Appendix to the Commission's order issued Mar. 30, 1964 in H. L. Hawkins & H. L. Hawkins, Jr., (Operator), *et al.*, in Docket No. G-18077, *et al.*, 31 FPC 728.

[1] Initial price is subject to the condition that the seller will refund any amounts collected in excess of 16 cents per Mcf (plus interest), which may be determined to be in excess of the price required by the public convenience and necessity.

[2] Temporary certificate issued without condition.

[3] The price is subject to the condition that H. B. Lively will refund any amounts (plus interest) in excess of the amount computed at the rate determined to be required by the public convenience and necessity in Docket No. CI62-1220.

[4] The price is subject to the condition that the total initial price shall not exceed 18 cents per Mcf at 14.65 psia with such rate to be effective for the duration of the temporary authorization and until a different prospective rate is established.

[5] The price is subject to the condition that the total initial price shall not exceed 18 cents per Mcf at 14.65 psia.

312-270-69——62

OPINION NO. 476

SINCLAIR OIL & GAS COMPANY, ET AL., DOCKET NO. G-16760; UNION OIL COMPANY OF CALIFORNIA, G-18389; TRICE PRODUCTION COMPANY (OPERATOR), ET AL., G-19340; GEORGE PARKER, G-19718; H. H. HOWELL (OPERATOR), ET AL., G-20595, CI60-402, CI60-640; CARRL OIL, ET AL., CI60-403, CI60-592; EDWIN L. COX (OPERATOR), ET AL., (FORMERLY PAUL R. TURNBULL (OPERATOR), ET AL.), CI60-620; PAUL R. TURNBULL (OPERATOR), ET AL., CI61-1; RICHARD M. FINDER, D/B/A TEXKAN OIL COMPANY (OPERATOR), ET AL., CI61-352; MRS. JAMES R. DOUGHERTY, ET AL., CI61-619; W. A. STOCKARD, ET AL., CI61-751; LONE STAR PRODUCING COMPANY, CI61-918; EDWIN M. JONES OIL COMPANY, CI61-1202; PRODUCING PROPERTIES, INC., CI61-1236; HERITAGE PETROLEUM CORPORATION (FORMERLY LAYTON BROWN DRILLING CO., INC. (OPERATOR), ET AL.), CI61-1567; LAMAR HUNT (OPERATOR), ET AL., CI61-1736; MPS PRODUCTION CO. (OPERATOR), ET AL., CI62-314; SOUTHLAND ROYALTY COMPANY (OPERATOR), ET AL. (FORMERLY KATZ OIL COMPANY), CI62-334; J. N. PRATT, ET AL., CI62-1373; SHELL OIL COMPANY, CI62-653; THE JUPITER CORPORATION (OPERATOR), ET AL., CI62-698; RALPH E. FAIR, INC., CI62-780; MONSANTO COMPANY (OPERATOR), ET AL., CI62-824, CI62-889; CITIES SERVICE COMPANY, CI62-959; CONTINENTAL OIL COMPANY, CI62-961; RODNEY DELANGE (OPERATOR), ET AL., CI62-962; H. B. ZACHRY COMPANY, GASOLINE PRODUCTION DIVISION, CI62-1023; GEORGE R. BROWN (OPERATOR), ET AL., CI63-5; RALPH E. FAIR, CI63-56; MONSANTO COMPANY, CI63-58; MONTEGO OIL COMPANY (OPERATOR), ET AL., CI63-790; PRODUCING PROPERTIES, INC. (OPERATOR), ET AL., CI63-814; H. D. BRUNS (OPERATOR), ET AL., CI63-820; HIGHLAND OIL COMPANY, CI64-346; TIDEWATER OIL COMPANY, CI64-788; TEXAS EASTERN TRANSMISSION CORPORATION, CP63-192, CP63-193

OPINION AND ORDER ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

(Issued September 22, 1965)*

Syllabus

1. Commission fixes 16 cents in-line price for Texas Railroad Commission District No. 2 for period after September 28, 1960. PP. 993; 949.
2. Beginning point in any in-line price decision is *CATCO* which requires Commission to scrutinize level of initial prices for new sales to assure they do not establish higher pricing levels. P. 933.
3. Generally, line to which initial producer prices must be related is level at which substantial volumes of gas, not under judicial review or otherwise suspect, move in interstate commerce during period under consideration. PP. 933-934.
4. Where substantial volumes of gas moving in interstate commerce have been permanently certificated, Commission has relied principally upon initial prices of gas under such certificates in determining in-line price. P. 934.
5. Where volumes of gas moving under permanent certificates were relatively insubstantial or failed to adequately reflect current conditions, Commission

*Initial decision appears on p. 945. Opinion No. 476-A and order issued November 22, 1965 denying application for rehearing, etc., 34 FPC 1357. Set aside and remanded, *Public Service Commission of New York*, et al. v. *F.P.C.*, 373 F. 2d 816 (CADC-1967); Affirmed 391 U.S. 9 (1968).

has given consideration to initial prices of substantial volumes sold under temporary certificates. P. 934.

6. Consistently Commission has excluded financial and cost evidence in certificate cases; otherwise they would be converted into individual company rate cases, found inappropriate in certificate proceedings and impracticable as means for fixing rates. PP. 934; 947.
7. Permanently certificated sales at less than 14 cents per Mcf included here in determination of post-policy in-line price since their exclusion had effect of unduly narrowing statistical price base for District No. 2. P. 936.
8. Prices received by producers selling to gatherer are not comparable to other producer prices and their exclusion is in order. P. 936.
9. Evidentiary weight given here to 33 temporarily certificated sales is fully warranted—to limit consideration to those permanently certificated would permit price freeze and render hearing meaningless. P. 936.
10. Since Lone Star functioned here more as pipeline than gatherer, sales to it should be included in calculation of in-line price. PP. 936–937.
11. Contract prices, whether reduced by conditions or not, do show area trends and are entitled to some weight. P. 937.
12. For period prior to September 28, 1960, 15 cents per Mcf is correct in-line price for District No. 2. PP. 937; 953.
13. Commission has consistently used estimated first month's delivery volumes in its in-line price decisions. PP. 938; 953–954.
14. Commission has not given intrastate sales any weight in previous in-line proceedings and sees no basis here for so doing. P. 938.
15. Exceptions to in-line price require a compelling justification; Sinclair is not entitled to an exception merely because it is not receiving same price as another producer for gas from same well. P. 939.
16. State Commission's evidence as to lack of public need for gas is not persuasive. P. 940.
17. Commission *issues* certificates of public convenience and necessity under Section 7 of the Natural Gas Act.

Commissioner Bagge *concurring.*

Commissioners Black and Ross *dissenting.*

Charles E. McGee, James D. McKinney, Jr., and *Angus A. Davidson* for Sinclair Oil & Gas Company.

Bruce R. Merrill, Joseph C. Johnson, and *Thomas Burton* for Continental Oil Company.

Charles E. McGee, James D. McKinney, Jr., and *Grover B. Cobb* for Houston Natural Gas Production Company.

Robert W. Maris and *William T. Coleman, Jr.*, for Philadelphia Gas Works Division of The United Gas Improvement Company.

Manuel J. Edling, F. Edwin Smith, John W. Scott, and *Louis L. DaPra* for Lone Star Producing Company and Lone Star Gathering Company.

Bernard A. Foster, Jr., Sherman S. Poland, and *Lewis Carroll* for Tex-Star Oil & Gas Corporation, Carrl Oil, W. A. Stockard, Mrs. James R. Dougherty, and Edwin M. Jones Oil Company.

Robert M. Scott for George Parker.

Richard F. Generelly and *B. L Allen* for Monsanto Company.

J. Evans Attwell for MPS Production Company and H. D. Bruns.

Gentry Lee, R. J. Leithead and *Graydon D. Luthey* for Cities Service Company.

Jack D. Head, Joseph F. Weiler, Bolivar C. Andrews, and *Keith M. Pyburn* for Texas Eastern Transmission Corporation.

Thomas G. Crouch and *Robert W. Henderson* for Lamar Hunt (Operator), *et al.*

George P. Morrill for Mrs. James R. Dougherty, *et al.*

Carroll L. Gilliam for Reserve Oil and Gas Company (Successor to Producing Properties, Inc.).

Morton L. Simons for Public Service Commission of the State of New York.

Thomas G. Johnson for Shell Oil Company.

Harwood G. Martin for the Staff of the Federal Power Commission.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

SWIDLER, *Chairman:*

This proceeding involves 41 applications for permanent certificates of public convenience and necessity for sales of gas by producers in Texas Railroad Commission District No. 2. The buyers are Florida Gas Transmission Company, Lone Star Gathering Company (for resale to United Gas Pipe Line Company), Natural Gas Pipeline Co. of America, Tennessee Gas Transmission Co., and United Gas Pipe Line Company. The sales are proposed under contracts executed between May 12, 1958 and January 1, 1964, at prices ranging from 15.192 cents to 20.05 cents per Mcf (at 14.65 psia), with the exception of one contract for the sale of sour gas at 12 cents per Mcf. Gas is now being delivered under temporary certificates by many of the applicants.

The applications were consolidated for hearing by Commission order dated March 25, 1964. On March 3, 1965, the Presiding Examiner, Harry W. Frazee, issued an initial decision which, proposed that certificates be issued to the applicants conditioned to an "in-line" price of 15 cents per Mcf for gas sold under contracts executed on or before September 28, 1960, the date of the Commission's Statement of General Policy No. 61–1 (24 FPC 818), and of 16 cents per Mcf for gas sold under contracts executed after that date. The sale of sour gas under contract dated December 3, 1962, was authorized at the price of 12 cents per Mcf. In the case of Sinclair Oil & Gas Company (Sinclair), Docket No. G–16760, the Examiner authorized the sale of gas to United Gas Pipe Line Company (United) under a contract negotiated on May 12, 1958, at the price of 17.59509 cents per Mcf.

The proceeding is before the Commission on Exceptions to the Examiner's decision, filed by the Public Service Commission of the State of New York (the New York Commission), the Staff, interveners and a number of producers, and answers filed by certain producers. The principal issues presented are whether the Examiner was correct in setting 16 cents per Mcf as the in-line price for gas sold under contracts executed after September 28, 1960, and in recognizing 17.59509 cents per Mcf as the price for Sinclair's sales to United. Other questions raised by the exceptions involve (1) the New York Commission's assertion that the applications should be denied because of the absence of any evidence of a public need for the gas, and because of indications that pipelines in the Gulf Coast area are suffering from take-or-pay problems; (2) the allegations of certain producers that the concept of in-line pricing is incorrect, and that testimony and exhibits relating to the gas industry's costs, economic background, and intrastate sales were improperly excluded; and (3) the assertion of some producers that the Examiner's rulings as to refunds were in error.

The facts have been set forth in the initial decision of the Examiner, and will be referred to here only to the extent necessary to make plain the reasons for our findings and conclusions.

Background

Guideline prices for natural gas sold by independent producers in Texas Railroad Commission District No. 2[1] were established by the Commission in Statement of General Policy No. 61–1, on September 28, 1960, at 18 cents per Mcf (at 14.65 psia) for gas sold under contracts executed after the policy date, and at 14 cents per Mcf for gas sold under contracts executed on or prior to the policy date. On December 9, 1963, we issued Opinion No. 412 in *Hassie Hunt Trust, Operator, et al.*, 30 FPC 1438 (1963), holding the in-line price for producer sales under pre-policy contracts in District No. 2 to be 15 cents per Mcf. On that same date the guideline ceiling for the future was reduced from 18.0 cents per Mcf to 16.0 cents. In Opinion No. 412 we rejected the Examiner's finding that 15 cents was also the in-line price for producer sales under post-policy contracts in the District, stating that the record was insufficient to determine an in-line price for such sales. We thereupon severed for consideration in a separate proceeding the dockets involving post-policy contracts; and the present proceeding represents an outgrowth of that action.

We permitted intervention by the following: Long Island Lighting Company, Lone Star Gathering Company, Natural Gas Pipeline Company of America, Philadelphia Electric Company, and The Philadelphia Gas Works Division of The United Gas Improvement Company.

Hearings were held at Washington, D.C., from September 1 through September 4, 1964, and again on September 24, 1964.

In-Line Price for the Post-Policy Period

The principal question in this proceeding is whether the Examiner was correct in finding that the in-line price in Texas Railroad Commission District No. 2 for gas sold under contracts executed after September 28, 1960, is 16 cents per Mcf. A price of no more than 15 cents per Mcf was recommended by the Staff, the New York Commission, and the following interveners: Long Island Lighting Company, Philadelphia Electric Company, and The Philadelphia Gas Works Division of The United Gas Improvement Company (Long Island and Philadelphia Interveners). On the other hand, the producer applicants asserted that the in-line price should be no lower than 18 cents.

We agree with the Examiner that the in-line price in Texas Railroad Commission District No. 2 for gas sold under contracts executed after September 28, 1960, is 16 cents per Mcf.

The Examiner correctly observed that the beginning point in any in-line price decision is *Atlantic Refining Co.* v. *Public Service Commission of New York*, 360 U.S. 378 (1959) (CATCO), in which the Court stressed the importance of the Commission's responsibilities to scrutinize the level of initial prices for new sales by producers to assure that they do not establish higher pricing levels in the area without explanation. Following that decision, we enunciated definitive standards for exercising our responsibilities in a series of opinions beginning with *Skelly Oil Company*, Opinion No. 362, 28 FPC 401 (1962), and *Texaco Seaboard, Inc.*, Opinion No. 383, 29 FPC 593 (1963), and continuing through *Union Texas Petroleum*, Opinion No. 436, 32 FPC 254 (1964). Generally, we have held that the line to which initial producer prices must be related is the level at which substantial volumes of gas, not under judicial review, or otherwise suspect, move

[1] Texas Railroad Commission District No. 2 is composed of Bee, Jackson, Calhoun, Live Oak, Victoria, De Witt, Goliad, Refugio, Lavaca, and Karnes Counties in the State of Texas. This District is one of the three Texas Gulf Coast gas supply areas, and is located between District No. 3 which lies to its northeast and District No. 4 which lies to its south and west.

in interstate commerce during the time period under consideration. Where the substantial volumes of gas so moving have been under permanent certificates, we have relied principally upon the initial prices of natural gas sold under such permanent certificates in determining the in-line price. *Skelly Oil Company, supra, Texaco Seaboard, Inc., supra.* On the other hand, where the volumes of gas moving under permanent certificates were relatively insubstantial or failed adequately to reflect current conditions in the industry, we have given consideration to the initial prices of substantial volumes of natural gas sold under temporary certificates. *Amerada Petroleum Corporation*, Opinion No. 422, 31 FPC 623 (1964); *Union Texas Petroleum, supra.*

At the opening of the hearings the applicants offered the same array of financial and cost data plus prices paid for interstate sales of natural gas, and prices paid for sales of natural gas in areas outside of District No. 2 as have been offered and rejected in previous cases. The Examiner excluded this evidence, citing *Public Service Commission of New York* v. *F.P.C.*, 329 F. 2d 242 (CADC-1964), cert. denied, 377 U.S. 963.[2] The Commission's consistent policy has been to exclude such evidence in certificate cases for otherwise they would be converted into individual company rate cases, which we have found inappropriate as an adjunct of a certificate proceeding, and impracticable as a means for fixing rates. The Examiner's ruling was clearly correct.

The Examiner determined on the basis of evidence of record that the total estimated first month's delivery of jurisdictional gas moving in interstate commerce from District No. 2 during the post-policy period from September 28, 1960 through March 10, 1964 amounted to 4,390,500 Mcf. This total was made up of an estimated 1,933,986 Mcf moving under permanently certificated sales, and an estimated 2,456,514 Mcf moving under temporary certificated sales.

At the hearings Staff urged that in drawing the price line, sole reliance be placed upon the permanently certificated sales, and recommended an in-line price of 15 cents per Mcf for sales under contracts negotiated after the policy date, asserting that from September 28, 1960 through March 10, 1964, 94 percent of the permanently certificated volumes of gas were contracted at a price of 15 cents per Mcf or less. The applicants, on the other hand, contended that the in-line price should be 19 cents per Mcf on the basis of initial contract prices, or at least 18 cents on the basis of sales previously certified by the Commission. The applicants maintained that little weight was to be accorded the sales at prices of less than 14 cents per Mcf, although these accounted for 25 percent of the total volume, and argued that the number of other permanently certificated sales in the District after the policy date was insufficient to provide a satisfactory base upon which to determine an in-line price. The applicants therefore recommended that the base be enlarged to include sales under temporary certificates.

The Examiner decided that in determining the post-policy in-line price he would exclude from consideration all permanently certificated sales at less than 14 cents per Mcf, stating that the Commission invariably had started with initial contract prices of 14 cents and higher in adopting Staff presentations on in-line prices. He also excluded sales of 330,000 Mcf of gas at 14 cents per Mcf made under permanent certification to Valley Gas Transmission, Inc. (Valley), on the ground that these sales were not representative in that they were made to a gathering company. The elimination of the above sales left a balance of only 14 permanent certificated sales for the post-policy period with

[2] He permitted the applicants to make offer of proof as provided by Section 1.28(b) of the Rules of Practice and Procedure of the Commission.

an estimated first month's volume of 460,575 Mcf. The Examiner concluded that this base was inadequate for the determination of a proper in-line price, and he decided to increase the base by adding 33 temporarily certificated sales, including those involved in this proceeding. The consequences of the Examiner's action are demonstrated in the chart below:

CERTIFICATED SALES IN TEXAS RAILROAD COMMISSION DISTRICT NO. 2 UNDER CONTRACTS DATED AFTER SEPT. 28, 1960 THROUGH MAR. 10, 1964

	Certificated price (cents per Mcf)	Number of contracts	Estimated first month volumes (Mcf)
I.—Permanently certificated sales listed by staff but excluded by Examiner.	Under 10.00	4	51,500
	10.00	11	236,286
	11.00	18	358,796
	12.00	17	391,329
	13.00	2	105,500
	14.00	[1] 11	330,000
Total		63	1,473,411
II.—Permanently certificated sales listed by staff and included by Examiner.	14.00	5	210,000
	14.18	2	45,000
	15.00	3	93,500
	15.20	1	60,000
	15.25	2	42,000
	17.59	1	10,075
Total		14	460,575
III.—Temporarily certificated sales (including those of applicants) included by Examiner.	15.00	3	92,500
	16.00	2	90,500
	17.00	3	151,000
	17.59	1	75,000
	18.00	24	1,837,402
Total		33	2,246,402
Combined totals of II and III		47	2,706,977

[1] Sales to Valley.

The Examiner observed that the initial contract prices in the 47 contracts selected by him ranged from 14 cents to 20.045 cents per Mcf, and that 83.36 percent of the gas moving in interstate commerce under the contracts was priced at 16 cents or more. The Examiner held that he was required to give evidentiary weight to the temporarily certificated prices and volumes in arriving at an in-line price. He calculated that the numerically weighted average price of the 47 contracts was 16.68 cents per Mcf, and the volumetrically weighted average price was 17.18 cents. He then determined that the greatest weight was to be given to the permanently certificated sales, and concluded that the public convenience and necessity required an in-line price of 16 cents per Mcf.

The producers, for whom briefs on exceptions are filed by H. D. Bruns, Continental Oil, MPS Production, Reserve Oil and Gas, Cities Service, Mrs. James R. Dougherty, Edwin M. Jones Oil, W. A. Stockard, Lamar Hunt, George Parker, and Shell Oil, disagree with the Examiner's conclusion that 16 cents is the correct in-line price, and argue for prices ranging from 18 cents to 20 cents per Mcf. The producers contend that the Examiner erred in giving too much weight to the prices of the permanently certificated sales, in considering the temporarily certificated prices as being suspect, in excluding evidence as to prices for intrastate sales in District No. 2, as well as evidence relating to prices for interstate and intrastate sales in Districts No. 3 and No. 4, and in not giving sufficient weight to contract prices.

The Staff's exceptions are directed against the Examiner's action in (1) excluding the permanently certificated sales at less than 14 cents per Mcf, (2)

excluding the sales to Valley at 14 cents, and (3) including the temporarily certificated sales, particularly certain sales at 18 cents per Mcf to Lone Star Gathering Company. Exceptions similar to Staff's were filed by the New York Commission and by the Long Island and Philadelphia Interveners.

We find that there is merit in Staff's exception to the Examiner's exclusion of the permanently certificated sales at less than 14 cents per Mcf. The Examiner's decision to exclude these sales in his determination of the in-line price appears to have been based on his misreading of our language in *Skelly Oil Company*, Opinion No. 362, 28 FPC 401 (1962), and in the other opinions cited by him. In fact, the force of *Skelly* is that we do take notice of sales at less than 14 cents per Mcf. Accordingly, in our consideration of the post-policy in-line price we shall include these sales, particularly so since the Examiner's exclusion has had the effect of unduly narrowing the statistical price base for District No. 2.

The Examiner's exclusion of 11 sales to Valley at 14 cents, with an estimated first month volume of 330,000 Mcf, is based upon his finding that this action is in accordance with our precedent in *Skelly Oil Company*, Opinion No. 362, 28 FPC 401, 408, fn. 14 (1962), and in *Amerada Petroleum Corp.*, Opinion No. 422, 31 FPC 623, 635, fn. 33 (1964). The Examiner's action in this respect is correct. Valley's function as a gatherer is undisputed. Producers who find it necessary to sell to a gatherer are generally compelled to sell at a discount below the pipeline price. The prices received by these producers from Valley thus are not comparable to other producer prices, and their exclusion in this case is in order.

We further find that the Examiner had adequate grounds for giving some evidentiary weight to the 33 temporarily certificated sales with an estimated first month volume of 2,246,402 Mcf, and that his action is in accord with our previous holdings in *Amerada Petroleum Corporation*, Opinion No. 422, 31 FPC 623 (1964), and in *Union Texas Petroleum*, Opinion No. 436, 32 FPC 254 (1964). In our opinion consideration of these temporarily certificated sales is fully warranted.

The permanently certificated prices reflect only a part of the market activity in the post-policy period. Permanent certification is granted only where the proposed price is within the applicable guideline price, and where there is no contest by any interveners. Thus to limit the consideration to permanent certificates would permit a price freeze and would render the hearing in this proceeding meaningless. The pre-policy price would automatically control because almost all contracts above 15.0 cents were contested.

At the time of the hearing the producers and the pipeline purchasers had experienced more than three years of doing business under the provisions of Statement of General Policy No. 61–1, and their transactions under temporarily certificated prices constituted a heavy and significant percentage of all jurisdictional sales in District No. 2. To the extent that "the price line is intended to reflect *current* conditions in the industry," *United Gas Improvement Co.* v. *F.P.C.*, 283 F. 2d 817, 824 (CA9), the determination of an in-line price calls for a scrutiny of all pertinent sales activity, whether under permanent or under temporary certification. See *Hassie Hunt Trust, Operator, et al.*, Opinion No. 412, 30 FPC 1438, 1442–1443 (1963). We therefore approve the Examiner's action in giving consideration to the temporary certificated sales.

Staff has urged that if the sales to Valley at 14 cents per Mcf are to be disregarded because made to a gatherer (and hence at a discount), then the sales to Lone Star Gathering Company (Lone Star), which comprise most of the sales at the 18 cents price, should similarly be disregarded because these were also made to a gatherer Lone Star's reply was that it functioned in these instances

more as a pipeline than as a gatherer. We find that the evidence in the record supports Lone Star's position, and that the sales to Lone Star should be included in our calculation of the in-line price.

The producers contend that the examiner should have taken into consideration the contract prices rather than the conditioned certificate prices. While we have emphasized contract prices in past cases,[3] the original prices that have now been conditioned, are no longer outstanding in the area and should not be given primary consideration. The contract prices, whether reduced by conditions or not, do show economic trends in the area and are entitled to some weight.

A totaling of all permanently and temporarily certificated sales in District No. 2 under contracts dated after September 28, 1960 and through March 10, 1964, exclusive of the sales to Valley at 14 cents, shows a listing of 101 sales involving a combined estimated first month volume of 4,060,388 Mcf.[4] The median price on a volumetric basis is 16.00 cents and the volumetric weighted average price is 15.29 cents. Approximately 53 percent of the estimated first month volume covered by these sales moved in the price range of from 16 cents to 18 cents. On the basis of these calculations, and with recognition of the fact that the temporarily certificated sales represented most of the sales above the 16 cents price level, and should not be accorded undue weight, and giving some weight to the unconditioned contracts we conclude that the price of 16 cents per Mcf represents the correct post-policy in-line price of jurisdictional sales of natural gas in District No. 2. In reaching this result we may observe that if we confined ourselves to permanently certificated sales we would not find a line as high as 16 cents, for the next highest sales are at the 15.25 cents level.

In-Line Price for the Pre-Policy Period

The Examiner concluded that the in-line price for the pre-policy period, covering gas sold under contracts executed on or before September 28, 1960, is 15 cents per Mcf. This conclusion is the same as that reached for District No. 2 in *Hassie Hunt Trust, Operator, et al.*, Opinion No. 412, 30 FPC 1438 (1963). Exceptions to the Examiner's decision have been filed by George Parker, Docket No. G–19718, who alleges error on the Examiner's part in not following the precedent of *Callery Properties, Inc.* v. *F.P.C.*, 335 F. 2d 1004 (CA5-1964), certiorari granted, March 8, 1965, and in not considering evidence of an economic nature or of intrastate sales.

We find that the evidence of record as well as applicable legal precedent amply support the Examiner's conclusion that the correct pre-policy in-line price for District 2 is 15 cents per Mcf. The Examiner stated that he relied upon Staff's submission of permanently certificated sales in District No. 2 under contracts dated from January 1, 1957 through September 28, 1960, as listed in Staff's Exhibit 5, Chart 2, and that he excluded 140 sales with a total estimated first month's volume of 5,007,952 Mcf, representing more than 57 percent of the sales volume listed, because these sales were all made at prices of less than 14 cents per Mcf. For the reasons set forth in connection with the post-policy in-line price, it is our view that the Examiner should have included these sales in his computations. However, even without such sales the Examiner had adequate basis for his finding. He considered a selection of 29 permanently certificated

[3] *Skelly Oil Co.*, 28 FPC 401 (1962), remanded on refund point *P.S.C. of N.Y.* v. *F.P.C.*, 329 F. 2d 242 (CADC-1964), certiorari denied 377 U.S. 963; *Texaco Seaboard, Inc.*, 29 FPC 593 (1963).

[4] This total includes in addition to the sales listed on page 935 *supra* (exclusive of the 14 cents sales to Valley), 2 temporarily certificated sales at 12 cents per Mcf with an estimated first month volume of 210,000 Mcf.

sales of gas from District No. 2 during the period in question, with an estimated first month's delivery volume totaling 3,157,104 Mcf, and found that 22 of these sales, representing 70.2 percent of the total volume, were made at prices ranging from 14 cents to 14.75 cents per Mcf, and that the remaining 7 sales, although made at prices ranging from 15 cents to 17 cents per Mcf, were suspect because of involvement in litigation.

On our part we agree with the argument of the producer, George Parker, that the seven sales should not be considered suspect. The litigation applies only to the sale in Docket No. G–19119 by the Lamar Hunt Trust Estate. In *Hassie Hunt Trust, Operator, et al.*, Opinion No. 412, 30 FPC 1438, we conditioned that sale to 15.0 cents per Mcf, and the whole proceeding is now pending in the Court of Appeals for the Fifth Circuit upon petition of the producers only. (*Margaret Hunt Hill Trustee, et al.*, CA5, No. 21286). However, we do not believe that this change affects the result. The 15 cent price is exceeded only by three sales at 15.2 cents and two sales at the highest level of 17 cents.

Reliance Upon Estimated First Month's Delivery Volumes

The Examiner's in-line price determinations have been attacked by Lamar Hunt, Docket No. CI61–1736, on the ground that the Examiner committed error in "relying upon unreliable, estimated volumes rather than actual reported volumes." We find that there is no merit in this attack.

During the hearings, a witness testifying on behalf of Lamar Hunt attempted to show that Staff's reliance upon estimated first month's delivery volumes was unsound because in certain instances, where he claimed he made a first-hand investigation, the actual sales volumes were much lower than the original estimates. In considering this testimony, the Examiner correctly pointed out that the Commission, beginning with *Skelly Oil Company*, Opinion No. 362, 28 FPC 401 (1962), has consistently used estimated first month's delivery volumes in its in-line price decisions. The Examiner also explained that reliance upon actual delivery volumes based upon the producers' report, FPC Form No. 30–B, and upon the annual report of the purchasing pipeline, FPC Form No. 2, did not necessarily assure full accuracy since these reports were based upon annual sales only, and it frequently was not possible to ascertain from these annual reports the actual first month's delivery volume in any specific case. The Examiner noted that apart from a few isolated instances of actual reports of annual average volumes submitted by the witness for Lamar Hunt, the record did not contain the average volumes of the sales under consideration during the periods involved in this proceeding. In light of this background, we agree with the Examiner that for the purposes of determining an in-line price the use of estimated first month's delivery volumes was warranted since these volumes represented the best judgment figure of the sellers and the buyers at the time of negotiating the initial contracts.

Other Points Raised by the Producers

In addition to the points raised above, the producers object that the evidence on intrastate prices was excluded by the Examiner. This consisted of testimony, a price array and exhibit material showing the increasing importance of intrastate prices. The witness excluded prices of less than 14 cents per Mcf, so that the array is less than complete, and there is nothing to show that the array is otherwise representative of intrastate sales in the area. Furthermore, there is no evidence that the pipeline customers in District 2 are unable to obtain contracts for the purchase of gas. We have not given intrastate sales any weight in previous in-line proceedings and see no basis on this record for doing so here.

Of course, where there is a substantially complete record on the intrastate prices, and they are shown to have impact on the interstate market, it may be we would take them into account in determining the price line.

Some of the producers also object to the Examiner's refusal to receive cost or economic evidence. In view of the position taken by the Commission in *Skelly*, 28 FPC 401 (1962), and *Texaco Seaboard, Inc.*, 29 FPC 593 (1963); its reiteration in *Union Texas Petroleum*, 32 FPC 254 (1964) and its affirmance by the courts in *P.S.C. of N.Y.* v. *F.P.C.*, 329 F. 2d 242 (CADC-1964), certiorari denied, 377 U.S. 963 (1964), *California Oil Co.* v. *F.P.C.*, 315 F. 2d 652, 660 (CA10), and *The Atlantic Refining Co.* v. *F.P.C.*, 316 F. 2d 677, 680 (CADC), we think the Examiner was correct in excluding this kind of evidence in a Section 7 certificate proceeding. We are, of course, aware of the opposite result reached in *Callery Properties, Inc.* v. *F.P.C.*, 335 F. 2d 1004 (CA5–1964). The mandate of the Court of Appeals has been stayed in that proceeding, and certiorari has been granted by the Supreme Court of the United States. In these circumstances pending final judicial action we see no reason to depart from the opinions cited above.

Sinclair's Sale in Docket No. G–16760

The examiner recognized an exception to the pre-policy in-line price of 15 cents in the case of Sinclair Oil & Gas Company (Sinclair), Docket No. G–16760, with respect to the sale of about 32,000 Mcf of gas per month by Sinclair to the United Gas Pipe Line Company from the Normanna Field, Bee County, Texas, under a contract negotiated by Sinclair's predecessor in interest, Western Natural Gas Company, dated May 12, 1958. An unconditioned temporary certificate was issued to Western on June 18, 1959, and this sale is being continued by Sinclair under authority of our letter-order dated November 26, 1963, at the price of 17.0 cents per Mcf plus tax reimbursement of 0.59509 cents per Mcf at 14.65 psia.

Sinclair and Tennessee Oil Company (Tenneco) jointly own interests in the wells from which the above gas is produced. Tenneco is selling its gas under a permanent certificate issued on April 13, 1959, to Tenneco's predecessor in interest, Midstates Oil Corporation, at the contract price of 17.59509 cents per Mcf. Under the doctrine of "the same price for an identical product from a single well", the Examiner found that Sinclair was entitled to receive the same price of 17.59509 cents as Tenneco.

Exceptions to this ruling of the Examiner have been filed by Staff, the New York Commission, and the Long Island and Philadelphia Interveners, who assert that the Examiner has misapplied the force of Justice Jackson's observation in a concurring opinion in *Colorado Interstate Gas Company* v. *F.P.C.*, 324 U.S. 581 (1945), and has ignored the rulings of *City of Detroit* v. *F.P.C.*, 230 F. 2d 810 (CADC-1956), and *Ohio Oil Company, Operator, et al.*, Docket No. G–15385, *et al.*, 27 FPC 551 (1962). It is our opinion that these exceptions are well taken, and that the price to Sinclair should be no higher than the applicable in-line price. Exceptions to the in-line price require a compelling justification. There is little more justification for equalizing all well prices at the highest level applicable to any owner than for a similiar equalization for all producers in the field. Sinclair has demonstrated no justification for an exception in its own right, and is entitled to none.

The Sour Gas Sale in Docket No. CP63–192

The New York Commission has filed exception to the Examiner's authorization of a 12 cents per Mcf price for the sale of sour gas in Docket No. CP63–192 under contract dated December 3, 1962, by Texas Eastern Transmission Corpora-

tion to the Lone Star Gathering Company (Lone Star), alleging that this price should be 11.5 cents per Mcf. The New York Commission contends that the 12 cents price was computed on the assumption and showing that Lone Star's charges for processing would total 3 cents per Mcf, and it asserts that Lone Star intends, however, to charge 3.5 cents per Mcf, as demonstrated by a notice filed in a separate proceeding, *Lone Star Gathering Co.*, Docket No. CP62–179, Notice of Application, March 26, 1964. The New York Commission's assertion is not supported by evidence of record in this proceeding, and its exception accordingly is not well founded.

The Need for Gas

The New York Commission has raised the assertion in its exceptions that the producer applications should be denied because of the absence of any evidence of a public need for the gas, and because of indications that pipelines in the Gulf Coast area are suffering from take-or-pay problems. This issue was not raised at the pre-hearing conference in this proceeding, nor was it brought up at the hearings. The contracts and temporary certificates here involved are matters of record. In many instances deliveries have been made under the contracts for several years. The New York Commission's evidence as to lack of need is not, in our judgment, persuasive. We find the exceptions of the New York Commission not appropriate in the present posture of this proceeding, particularly so, since such exceptions were raised after the certification of the pipeline purchasers had been authorized, and on the basis of a record which discloses no question as to need for the gas supply involved.

Refunds in Docket Nos. G–19718 and G–18389

Exceptions have been filed by George Parker, Docket No. G–19718, and Union Oil Company of California, Docket No. G–18389, to the Examiner's ordering paragraph (F) requiring these two applicants to refund any amounts collected in excess of 15 cents per Mcf. This paragraph appears to be inconsistent with our order of October 5, 1964, 32 FPC 914, and the Examiner's ruling that the question of refund requirements by applicants selling under unconditioned certificates will be deferred until a later stage of the proceedings. We therefore grant these exceptions to the extent that we shall defer action as to refund obligations on the part of these applicants until the issue is raised regarding all unconditioned certificates in these proceedings.

The exceptions not discussed herein are immaterial to the result in this case or are without substantial support of reasonable basis in law and should be denied. The Examiner's decision, to the extent not inconsistent herewith, should be approved and adopted as part of this opinion and order.

The Commission further finds:

(1) The following applicants:

Sinclair Oil & Gas Company, *et al*	G–16760.
Union Oil Company of California	G–18389.
Trice Production Company (Operator), *et al*	G–19340.
George Parker	G–19718.
H. H. Howell (Operator), *et al*	G–20595, CI60–402, and CI60–640.
Carrl Oil, *et al*	CI60–403 and CI60–592.

Edwin L. Cox (Operator), *et al.* (Formerly Paul R. Turnbull (Operator), *et al.*)	CI60-620.
Paul R. Turnbull (Operator), *et al*	CI61-1.
Richard M. Finder, d/b/a Texkan Oil Company (Operator), *et al*	CI61-352.
Mrs. James R. Dougherty, *et al*	CI61-619.
W. A. Stockard, *et al*	CI61-751.
Lone Star Producing Company	CI61-918.
Edwin M. Jones Oil Company	CI61-1202.
Producing Properties, Inc	CI61-1236.
Heritage Petroleum Corporation (Formerly Layton Brown Drilling Co. Inc. (Operator), *et al.*)	CI61-1567.
Lamar Hunt (Operator), *et al*	CI61-1736.
MPS Production Co. (Operator), *et al*	CI62-314.
Southland Royalty Company (Operator), *et al.* (Formerly Katz Oil Company)	CI62-334.
J. N. Pratt, *et al*	CI62-1373.
Shell Oil Company	CI62-653.
The Jupiter Corporation (Operator), *et al*	CI62-698.
Ralph E. Fair, Inc	CI62-780.
Monsanto Company (Operator), *et al*	CI62-824 and CI62-889.
Cities Service Company	CI62-959.
Continental Oil Company	CI62-961.
Rodney DeLange (Operator), *et al*	CI62-962.
H. B. Zachry Company, Gasoline Production Division.	CI62-1023.
George R. Brown (Operator), *et al*	CI63-5.
Ralph E. Fair	CI63-56.
Monsanto Company	CI63-58.
Montego Oil Company (Operator), *et al*	CI63-790.
Producing Properties, Inc. (Operator), *et al*	CI63-814.
H. D. Bruns (Operator), *et al*	CI63-820.
Highland Oil Company	CI64-346.
Tidewater Oil Company	CI64-788.
Texas Eastern Transmission Corporation	CP63-192 and CP63-193.

are each engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption and each is, therefore, a "natural-gas company" as that term is defined in Section 154.91(a) of the Commission's Regulations, and such sales, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(2) Subject to the requirements of the order herein and the conditions attached to the certificates of public convenience and necessity herein issued, the applicants named in paragraph (1) above are each able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(3) The sale of natural gas as proposed by each of the applicants named in paragraph (1) above, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are required by the public convenience and necessity and a certificate authorizing the same

should issue to each of them upon the terms and conditions of the order herein, which terms and conditions are required by the public convenience and necessity.

(4) The public convenience and necessity requires that the initial prices charged by the applicants named in paragraph (1) above for the sales proposed in their certificate applications upon contracts executed on, or before, September 28, 1960, the date on which the Commission issued its Statement of General Policy No. 61–1, 24 FPC 818, as amended, be not greater than 15.0 cents per Mcf at 14.65 psia.

(5) The public convenience and necessity requires that the initial prices charged by the applicants named in paragraph (1) above for the sales proposed in their certificate applications upon contracts executed after September 28, 1960, the date on which the Commission issued its Statement of General Policy No. 61–1, 24 FPC 818, as amended, be not greater than 16.0 cents per Mcf at 14.65 psia except as hereinafter specifically provided in paragraph (6).

(6) The public convenience and necessity requires that the initial price charged by Texas Eastern Transmission Corporation in Docket No. CP63–192 to the Lone Star Gathering Company be not greater than 12.0 cents per Mcf at 14.65 psia.

(7) Except as herein granted, the exceptions to the Examiner's decision should be denied.

The Commission orders:

(A) Certificates of public convenience and necessity are hereby issued to each of the applicants named in paragraph (1) above for the sale of natural gas in interstate commerce for resale as proposed in their respective applications, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefore, upon the terms and conditions hereinafter set out in this order.

(B) A certificate of public convenience and necessity is hereby issued to the Texas Eastern Transmission Corporation authorizing the sale of natural gas from the Kawitt Field, Karnes and De Witt Counties, Texas, to the Lone Star Gathering Company at the initial contract price of 12.0 cents per Mcf at 14.65 psia as set out in Docket No. CP63–192, Texas Eastern Rate Schedule No. F–8.

(C) Except as ordered in paragraph (B) above, a certificate of public convenience and necessity is issued to the other applicants named in paragraph (1) above and not referred to in paragraph (B), conditioned as to those initial contracts executed on or before September 28, 1960, to prohibit any total initial price, including all reimbursements and charges, greater than 15.0 cents per Mcf at 14.65 psia, and conditioned as to those initial contracts executed after September 28, 1960, to prohibit any total initial price, including all reimbursements and charges, greater than 16.0 cents per Mcf at 14.65 psia; all such conditioned prices are effective from the date of the issuance of this order and until such price may be lawfully changed in the manner provided by the Natural Gas Act.

(D) In those cases where the applicants have not already accepted temporary certificates, the certificates issued herein are further conditioned upon their acceptance in writing by the respective applicants within 30 days of the issuance of this order.

(E) In accordance with the several conditions attached to the temporary authorizations in CI62–698, The Jupiter Corporation (Operator), *et al.;* CI62–780, Ralph E. Fair, Inc.; CI62–824 and CI62–889, Monsanto Company (Operator), *et al.;* CI62–959, Cities Service Company; CI62–961, Continental Oil Company, CI62–962, Rodney DeLange (Operator), *et al.;* CI62–1023, H. B. Zachry Company, Gasoline Production Division; CI63–5, George R. Brown (Operator), *et al.;*

CI63–56, Ralph E. Fair; CI63–58, Monsanto Company; CI63–790, Montego Oil Company (Operator), *et al.*; CI63–814, Producing Properties, Inc. (Operator), *et al.*; CI63–820, H. D. Bruns (Operator), *et al.*; CI64–346, Highland Oil Company; CI64–788, Tidewater Oil Company; and CP63–193, Texas Eastern Transmission Corporation, each of such applicants shall compute the amounts to be refunded to their respective purchasers. The refund shall include the difference between the amount charged and collected by each of the above-named applicants from his respective purchaser and 16 cents per Mcf applied to all volumes paid for by such purchaser from the date of the first delivery of natural gas under the applicable temporary authorization until the date of this order. Interest shall be included at the rate provided in the applicable temporary authorization to the date of this order. Within 90 days from the date of this order each of the above-named applicants shall submit a report to the Commission, and serve a copy on his respective purchaser, setting forth the amount of refund related to each subject rate schedule (showing separately the principal and applicable interest), the basis used for such determination, the period covered, and a letter from each respective purchaser agreeing to the correctness of the amounts.

(F) Each of the applicants named in paragraph (E) above shall retain the amounts shown in the report required under such paragraph, subject to further order of the Commission directing the disposition of those amounts.

(G) If any of the applicants named in paragraph (E) elects to commingle the retained refunds with its general assets and use such refunds for business or corporate purposes, such applicant shall pay interest thereon at the rate of 4½ percent per annum on all funds thus available from the date of this order to the date on which the funds are paid over to the person ultimately determined to be entitled thereto in a final order of the Commission.

(H) If any of the applicants named in paragraph (E) elects to deposit the retained refunds in a special escrow account, such applicant shall tender for filing within 90 days of the issuance of this order an executed Escrow Agreement, conditioned as set out below, accompanied by a certificate showing service of a copy thereof upon the applicable purchaser. Unless notified to the contrary by the Secretary within 30 days from the date of filing thereof, the Escrow Agreement shall be deemed to be satisfactory and to have been accepted for filing. The Escrow Agreement shall be entered into between each producer and any bank or trust company used as a depositor for funds of the United States Government and the agreement shall be conditioned as follows:

(i) The producer, the bank or trust company, and the successors and assigns of each, shall be held and formally bound unto the Federal Power Commission for the use and benefit of those entitled thereto, with respect to all amounts and the interest thereon deposited in a special escrow account, subject to such agreement, and such bank or trust company shall be bound to pay over to such person or persons as may be identified and designated by final order of the Commission and in such manner as may be therein specified, all or any portion of such deposits and the interest thereon.

(ii) The bank or trust company may invest and reinvest such deposits in any short-term indebtedness of the United States or any agency thereof or in any form of obligation guaranteed by the United States which is, respectively, payable within 120 days as the said bank or trust company in the exercise of its sound discretion may select.

(iii) Such bank or trust company shall be liable only for such interest as the invested funds described in subparagraph (ii) above will earn and no other interest may be collected from it.

(iv) Such bank or trust company shall be entitled to such compensation as is fair, reasonable and customary for its services as such, which compensation shall be paid out of the escrow account to such bank or trust company. Said bank or trust company shall likewise be entitled to reimbursement for its reasonable expenses necessarily incurred in the administration of this escrow account, which reimbursement shall be made out of the escrow account.

(v) Such bank or trust company shall report to the Secretary quarterly, certifying the amount deposited in the bank or trust company for the quarterly period.

(I) The decision as to whether refunds should be ordered as a condition to the remaining certificates herein issued is, in accordance with the Commission's order issued herein on October 5, 1964, deferred to the further order of the Commission.

(J) Each certificate issued in paragraph (A) above is further conditioned to provide for a moratorium on the filing of all price increases in excess of 18 cents per Mcf at 14.65 psia, inclusive of tax reimbursement, pending the issuance of a final decision in the Texas Gulf Coast Area Rate Proceeding, Docket No. AR64-2, or until January 1, 1968, whichever is earlier.

(K) The certificates issued herein are granted upon the further express condition that the allowance of the take-or-pay for provisions in the applicants' contracts is subject to our ultimate disposition with respect to such provisions in the rule-making proceeding in Docket No. R-199. Upon the establishment, by regulation or policy statement, of a general policy governing such provisions in producer contracts, the applicants shall within 30 days file amended rate schedules in conformity therewith, acceptable to the Commission. The producers shall not be required to file take-or-pay provisions for less than 80 percent of the annual contract quantities. Any changes or modifications to be made in accordance with this paragraph shall be prospective only.

(L) The certificates herein issued are not transferable and shall be effective only so long as each of the applicants continues the acts and operations hereby authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations and orders of the Commission.

(M) The grant of the certificates herein shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act or of Part 154 of the Commission's Regulations under said Act requiring the filing of rate schedules for the service herein authorized and is without prejudice to any findings or orders which may have been or hereafter may be made by the Commission in any proceeding now pending or hereinafter instituted by or against the applicants. Further, the action taken in these proceedings shall not foreclose nor prejudice any further proceedings or objections by the Commission relating to the operation of any price or related provisions in the gas contracts here involved.

(N) Within 30 days from the date of issuance of this order each of the applicants receiving certificates in paragraph (A) above who now have rate schedules on these dockets filed with the Commission shall file supplements to such presently filed rate schedules reflecting the conditioned price as the initial price in lieu of the initial price provided in the contract; provide that the notice provisions of Section 154.94(f) of the Commission's Regulations Under the Natural Gas Act are waived insofar as they apply to the reductions in rates hereby ordered.

(O) Except as herein granted, the exceptions to the Examiner's decision are hereby denied.

(P) The Examiner's decision, to the extent not inconsistent herewith, is hereby adopted as part of this Opinion and Order.

Commissioner Bagge *concurring* for the reasons set forth in his concurring statement accompanying Opinion No. 475 issued September 22, 1965, in Docket No. G–18077, *et al.*, *supra*, p. 908.

Commissioners Black and Ross *dissenting* for the reasons set forth in their dissenting statement accompanying Opinion No. 475 issued September 22, 1965, in Docket No. G–18077, *et al.* H. L. Hawkins & H. L. Hawkins, Jr., Operator, *et al.*, *supra*, p. 909.

INITIAL DECISION

OF THE PRESIDING EXAMINER UPON APPLICATION FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY FOR THE SALE OF NATURAL GAS FROM TEXAS RAILROAD COMMISSION DISTRICT NO. 2

(Issued March 3, 1965)

FRAZEE, *Presiding Examiner:* This consolidated proceeding concerns forty-nine producer applications, (or applications to amend previously issued certificates), for permanent certificates of public convenience and necessity, under Section 7 of the Natural Gas Act, to sell and deliver natural gas produced in Texas Railroad District No. 2[1] to four interstate pipeline companies and to a gathering company for resale to one of the interstate pipelines for transportation, and to further determine whether such sales, as proposed in the applications, are or will be required by the present or future public convenience and necessity.

By an order issued on March 25, 1964, the Commission severed Socony Mobil Oil Company, Incorporated (Operator), *et al.*, Docket No. G–18385,[2] Socony Mobil Oil Company, Incorporated, Docket No. G–18386,[3] Union Oil Company of California, Docket No. G–18389, Trice Production Company (Operator), *et al.*, Docket No. G–19340, and George Parker, Docket No. G–19718, from the Coastal Transmission Corporation, *et al.*,[4] Docket No. G–18338, *et al.*, and consolidated them together with 44 additional dockets with this proceeding for hearing and decision.

On April 30, 1964, Alfred C. Glassell and Gene M. Woodfin, Trustee, for the Jean Curry Glassell Trust, filed notices of withdrawal of their respective certificate applications in Docket Nos. CI63–221 and CI63–229, and on May 7, 1964, The Superior Oil Company filed its notice of withdrawal in Docket No. CI63–51. These sales proposed in these three dockets were to the Lone Star Gathering Company from the Dubose Field, De Witt and Gonzales Counties under temporary authorization granted on September 7, 1962. No deliveries were ever made under these sales agreements, and the contracts, according to the withdrawal notices, have been cancelled. By its order herein on July 22, 1964, the Commission severed these dockets from this hearing and terminated the proceedings therein.

Also, by a notice of withdrawal filed on June 22, 1964, the Tex-Star Oil & Gas Corp. (Operator), *et al.*, in Docket No. CI63–67 stated no deliveries had been made from the acreage dedicated to the contract. By a letter dated July 30, 1964, the Secretary authorized the withdrawal of the Tex-Star application effective July 22, 1964, and closed the record in Docket No. CI63–67 as of that date.

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[1] Texas Railroad District No. 2 is composed of Bee, Jackson, Calhoun, Live Oak, Victoria, De Witt, Goliad, Refugio, Lavaca, and Karnes Counties in the State of Texas.

[2] See FPC order issued herein on March 25, 1964.

[3] See FPC order issued herein on March 25, 1964.

[4] Now designated as the Florida Gas Transmission Company.

By its order issued herein on March 25, 1964, the Commission consolidated four Socony Mobil Oil Company, Inc. dockets as follows, for hearing herein:

G–18385, Socony Mobil Oil Co., Inc. (Operator), *et al.* from Kentucky Mott Field, Victoria County, Texas, to Florida Gas Transmission Co. under a contract dated February 17, 1959, and filed as Rate Schedule No. 264.

G–18386, Socony Mobil Oil Co., Inc. from N. LaWard Field, Jackson County, Texas, to Florida Gas Transmission Co. under a contract dated February 18, 1959, and filed as Rate Schedule No. 206.

CI63–874, Socony Mobil Oil Co., Inc. from Kawitt Field, Karnes and De Witt Counties, Texas, to Lone Star Gathering Company under a contract dated October 12, 1962, and filed at Rate Schedule 327.

CI63–875, Socony Mobil Oil Co., Inc. from Speary, Kawitt and Yorktown Field, Karnes and De Witt Counties, Texas, to the Lone Star Gathering Co., under a contract dated October 12, 1964, and filed as Rate Schedule No. 328.

On October 14, 1964, the Commission in Socony Mobil Oil Company, Inc., Docket No. G–6030, *et al.* issued permanent certificates to Socony, after a statutory hearing, beginning with Docket No. G–18385, p. 5, Item 15; Docket No. G–18386, p. 6, item 1; Docket No. CI63–874, p. 6, item 9, and Docket No. CI63–875, p. 6, item 10. These dockets have therefore not been considered by the Examiner in this proceeding.

Each of the remaining 36 applicants executed initial contracts, which they filed as 41 rate schedules, for the sale of natural gas from Texas District No. 2 at prices ranging between 15.1920 cents [5] per Mcf to 20.045 cents per Mcf at 14.65 psia. Some 13 of these contracts were executed prior to the issuance of the Commission's Statement of General Policy No. 61–1, on September 28, 1960, 24 FPC 818, as amended. These 13 contracts are considered separately under the heading of "In-Line Price For Period Prior to September 28, 1960" in order to reflect any distinction in the in-line price level before and after the issuance of the Commission's Statement of General Policy. *Skelly Oil Co., et al.*, 28 FPC 401, 412, 417–18, 1069, *Hassie Hunt Trust, (Operator), et al.*, 30 FPC 1438, 1442–43.

Petitions to intervene [6] and a Statement of Intention to Participate [7] in the hearing were timely filed and permitted by the Commission's order issued on June 8, 1964.

As directed in the March 25, 1964, order, a prehearing conference was convened on May 11, 1964, at which time it was stipulated and agreed:

(1) The rate schedules and applications involved in the proceeding will be identified as items by reference to the Commission's files and received in evidence.[8]

(2) The contracts involved in this proceeding were entered into after arm's-length negotiations.[9]

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[5] A pipeline field sale of sour gas is being made by Texas Eastern Transmission Corp. from the Kawitt Field in Karnes and De Witt Counties, Texas, to the Lone Star Gathering Company, at 12.0 cents per Mcf at 14.65 psia under Rate Schedule No. F–8, under a contract dated December 3, 1962, Docket No. CP63–192.

[6] Permitted to intervene were: (a) United Gas Improvement Company, Philadelphia Gas Works Division; (b) Long Island Lighting Company; (c) Philadelphia Electric Company; (d) Natural Gas Pipeline Company of America; and (e) Lone Star Gathering Company.

[7] New York State Public Service Commission.

[8] See Tr. p. 13, Lines 9–13, and Tr. p–14, Lines 5–6.

[9] See Tr. p. 15, lines 1–3 and Tr. p. 16, lines 17–18.

(3) Each applicant is ready, willing, and able to perform under his respective contracts and to comply with the terms and provisions of the Natural Gas Act and the Rules and Regulations of the Commission promulgated thereunder.[10]

Also, at the prehearing conference, dates were fixed for the filing of prepared written testimony and supporting exhibits[11] and for the filing of written motions[12] directed to the admissibility of the filed prepared written testimony and supporting exhibits. The hearing was scheduled to convene on September 1, 1964.

On June 30, 1964, the Continental Oil Company, one of the applicants herein, filed a motion requesting a ruling (1) to clarify whether or not refunds were to be an issue herein; (2) if an issue, Continental requested a ruling deferring same until after a final decision herein on the producer prices. The Staff of the Commission filed an answer on July 14, 1964, to the Continental motion for clarification contending the Commission is empowered to order refunds of amounts collected under temporary certificates containing no price condition, therefore the determination of necessary refunds is an essential issue which should be considered and decided at the time of issuance of certificates. The Staff rely upon a decision of the Court of Appeals, District of Columbia Circuit, in *Public Service Commission of the State of New York* v. *F.P.C.*, 329 F. 2d 242, cert. den. 377 U.S. 963. The Examiner ruled that final determination of the price at which the present or future public convenience and necessity will require the natural gas is a prerequisite to the consideration of any refund issue in those cases where a temporary certificate, unconditioned as to price, has been issued to and accepted by the applicant. From this ruling the Examiner certified an appeal by the Staff to the Commission. On October 5, 1964, 32 FPC 914, the Commission in ruling on the Staff appeal directed "that any consideration of refunds in cases where the temporary certificate does not contain an express refund condition be deferred until further order of the Commission."

When the prehearing conference was held on May 11, 1964, the admissibility of evidence of an economic nature (Tr. pp. 11–12) was discussed. The Examiner then ruled such evidence would not be received, but stated the parties would be permitted to make an offer of proof thereon as provided in Section 1.28(b) of the Commission's Rules of Practice and Procedure. Subsequently, but before the convening of the hearing, the Fifth Circuit Court of Appeals filed its decision in *Callery Properties, Inc., et al.* v. *F.P.C.*[13], 335 F. 2d 1004. It found that "the Commission erred in rejecting the proffered evidence on cost and other economic data" bearing on the issue of the price at which the natural gas sales under consideration in a Section 7 hearing is or will be required by the present or future public convenience and necessity.

Relying on the *Callery* decision, *supra*, the producer applicants offered extensive prepared testimony and supporting exhibits of an economic nature which included revenue-cost relationship data, the problems of a very small independent producer in both finding and marketing natural gas, the prices paid for intrastate sales of natural gas and prices paid for natural gas in areas outside Texas Railroad District No. 2. Motions attacking the admissibility of this type of evidence, *Callery* notwithstanding, were filed and fully argued. The Examiner relying upon the District of Columbia Court of Appeals decision in *Public*

[10] See Tr. p. 16, lines 19–23 and Tr. p. 17, lines 15–16.

[11] Applicants to file their prepared written testimony and supporting exhibits on or before July 20, 1964; the Staff and Intervenors to file their prepared written testimony and exhibits on or before August 3, 1964.

[12] Motions to be filed in writing on or before August 17, 1964.

[13] Remanding *Placid Oil Co., et al.*, 30 FPC 283.

Service Commission of New York v. *F.P.C.*, 329 F. 2d 142[14] thereupon excluded the evidence, but permitted the parties to make an offer of proof as provided by Sec. 1.28(b) of the Rules of Practice and Procedure of the Commission.

Hearings were held at which an opportunity was afforded all parties desiring to do so to offer evidence, and a substantial volume was offered and received. Further, those desiring to do so were permitted to file briefs.

In-Line Price for the Period after September 28, 1960

The applicants' direct evidence was presented mainly through one witness who, based upon the initial contract prices, concluded the in-line price for the sales in issue should be 19.0 cents per Mcf; however, if reliance were to be placed on sales previously certified by the Commission, then the in-line price should be 18.0 cents per Mcf. The witness contended the initial contract prices, as negotiated by the parties, properly reflect the underlying economic forces which determine the value of the natural gas as a commodity and that these initial prices should be the starting point in determining any in-line price. This witness also was of the opinion that the Commission's Statement of General Policy No. 61–1 issued on September 28, 1960, had a general depressant effect on contract prices negotiated thereafter and that the Commission should take this into consideration in determining in-line prices for sales after that date.[15]

The direct evidence of the applicants indicated that jurisdictional sales of natural gas have been made from Texas Railroad Commission District No. 2 under long term contracts since 1958 at initial prices of 18.0 cents and 20.0 cents per Mcf. According to Chart 1, Schedule 1, Exhibit 3 of this witness, there were 30 contracts at 18.0 cents per Mcf and above made since September 28, 1960, out of a total of 87 contracts executed during that period. This witness testified that about one-third of the total volume of gas sold from Texas District No. 2 under contracts made between January 1, 1958, and September 28, 1960, was at prices of 18.0 cents or higher and that 47 percent of such total volume was at prices of 17.0 cents or higher. As to contracts executed after September 28, 1960, it was said that 60 percent of the total volume was sold at 18.0 cents or higher and 65 percent at 17.0 cents or higher (Chart 2, Exhibit 3). The testimony of this witness further shows there were large volumes of gas sold under contracts executed between January 1, 1958, and December 31, 1963, at 17.0, 17.5, and 18.0 cents per Mcf. (Chart 4, Exhibit 3.) Chart 4, Exhibit 3, shows there were large volumes sold during this period at less than 14.0 cents (79 contracts showing annual delivery volumes of 22,679.0 MMcf or 17.0 percent of the total) and at a price of 22.0 cents (One contract showing annual delivery volumes of 28,800.0 MMcf or 21.6 percent of the total.) The witness said the prices below 14.0 cents were not given any consideration and the 22.0 cent price was given relatively little weight in determining an in-line price.

The witness for the applicants contended that reliance in determining an in-line price should not be confined solely to permanently certificated prices since such reliance would not reflect relevant current economic considerations and, further, such a confined reliance would not meet the requirement of Section 7(e)

[14] This was a review of Commission Opinion No. 362 in *Skelly Oil Co., et al.*, 28 FPC 401 and *Skelly Oil Co., et al.*, 28 FPC 1065.

[15] The Commission recognized there might be some distinction between prices contained in contracts before the promulgation of the Policy Statement on September 28, 1960, and contracts negotiated after that date and the Commission carefully stated that the record should reflect any such distinction. *Skelly Oil Co., et al.*, 28 FPC 401, 412, 417–18, 1069, *Hassie Hunt Trust, Operator, et al.*, 30 FPC 1438, 1442–43.

of the Natural Gas Act as to whether the sale "is or will be required by the present or future public convenience and necessity." Complete reliance by the Commission on permanently certificated prices would, the witness said, only result in a rollback of prices of new gas for each new certificate proceeding. It was also contended by this witness there were an insufficient number of permanently certificated sales or volumes in Texas District No. 2 to provide a satisfactory base upon which to determine an in-line price, therefore the base should be enlarged to include temporary certificates.

The Staff presented its evidence through a single witness. With some exceptions, which will be discussed later, Exhibit 4 and Exhibit 5 of the Staff follow pattern of the Staff exhibits upon which the Commission has substantially relied in *Skelly Oil Company*, 28 FPC 401; *Placid Oil Company*, 30 FPC 283, remanded on other grounds, *Callery Properties, Inc.*, v. *F.P.C.*, 335 F. 2d 1004; *Texaco Seaboard, Inc.*, 29 FPC 593; *El Paso Natural Gas Co.*, 29 FPC 1175; *Hassie Hunt Trust, (Operator)*, 30 FPC 1438; *Amerada Petroleum Corp.*, Opinion No. 422, 31 FPC 623; *Union Texas Petroleum Co.*, Opinion No. 436, 32 FPC 254; *Superior Oil Co.*, Opinion No. 437, 32 FPC 241; and *Sun Oil Co.*, Opinion No. 445, 32 FPC 1183. These decisions were subsequent to the Supreme Court's decision in *Atlantic Refining Co., et al.* v. *P.S.C. of N.Y., et al.*, 360 U.S. 378 (the *Catco* case) and establish the standards under which in-line prices are to be determined.

In its Exhibits Nos. 4 and 5, the Staff included sales below 14.0 cents per Mcf and the sales to Valley Gas Transmission, Incorporated, as well as the sale of sour gas at 12.0 cents by Texas Eastern to Lone Star Gathering Company in Docket No. CP63-192. The Staff excluded from consideration all sales made under temporary certificates.

In the numerous decisions of the Commission establishing the standards under which in-line prices are to be determined, the Commission in adopting the Staff presentations invariably started with initial contract prices of 14.0 cents per Mcf and higher. In *Skelly Oil Co., et al.*, 28 FPC 401, 408, the Commission said in adopting Staff Exhibit No. 24 "the study shows only contracts at prices of 14.0 cents per Mcf and higher." In *Texaco Seaboard, Inc., et al.*, 29 FPC 593, 596, the Commission said in adopting Staff's Exhibit No. 48 "the Staff has introduced evidence to show * * * rates of 14.0 cents per Mcf and higher as accepted by us for both permanently and temporarily certificated sales." In *El Paso Natural Gas Company, et al.*, 29 FPC 1175, 1179, the Commission re-examined and reaffirmed its decisions in *Skelly* and *Texaco, supra* and again considered only prices of 14.0 cents per Mcf and higher. In *Hassie Hunt Trust, (Operator), et al.*, 30 FPC 1438, 1444, the Commission said in adopting Staff Exhibit No. 236, "A tabulation of the producer contracts executed in this District (Texas Railroad Commission District No. 2) in the three years immediately prior to the Policy Statement having total initial prices of 14.0 cents per Mcf and higher" were used. In *Amerada Petroleum Corp., et al.*, Opinion No. 422, 31 FPC at 631, the Commission said "This study shows pertinent data for all sales in Texas District No. 4 with total initial rates of 14.0 cents per Mcf or more." Furthermore, many of the sales proposed herein by the applicants are being made under temporary authorizations, conditioned so that all monies collected at a rate in excess of the in-line price, but no less than 14.0 cents per Mcf, are to be refunded. The Staff witness testified upon cross-examination that in preparing his direct testimony and his supporting Exhibits (4 and 5), he relied upon the Staff Exhibits as presented in *Skelly, Amerada* and *Hassie Hunt Trust, supra*, for the format of his testimony, and supporting exhibits therein, placing particular reliance upon the *Hassie Hunt Trust* decision since it concerned Texas District No. 2 (Tr. 3, pp. 355-57).

Having placed his reliance upon the format of the Staff exhibits in *Hassie Hunt Trust, (Operator), et al.*, Opinion No. 412, *supra*, the Staff witness then promptly turned away from that format to one of his own selection and only included in his exhibit all permanently certificated prices thus abandoning the Commission precedent of considering only prices of 14.0 cents and above. The Commission had said, in conditioning several of the temporary certificates here under consideration, that no refunds would be ordered below 14.0 cents. Therefore, in determining a proper in-line price in this proceeding, only initial contract prices of 14.0 cents and above will be considered. Also, upon the grounds set forth by the Commission in *Skelly Oil Company, et al.*, 28 FPC 401, 408, fn. 14, and *Amerada Petroleum Corporation, et al.*, Opinion No. 422, p. 635, fn. 33, sales *to* or *by* Valley Gas Transmission have been eliminated from consideration in determining an in-line price herein.

In its original Statement of General Policy No. 61–1, issued on September 28, 1960, 24 FPC 818, 820, the Commission established a guideline price of 18.0 cents per Mcf for initial service for gas sold in interstate commerce from Texas District No. 2. Thereafter, on December 9, 1963, by its Eighth Amendment to the Statement of General Policy, 30 FPC 1435, the Commission reduced the price to 16.0 cents per Mcf. On this same date the Commission issued its Opinion No. 412, *Hassie Hunt Trust, (Operator), et al.*, 30 FPC 1438, in which it re-examined the question of the in-line price for Texas District No. 2 prior to September 28, 1960, in light of subsequent court decisions dealing with the initial price question in producer certificate cases and determined the in-line price for sales of natural gas from Texas District No. 2 prior to September 28, 1960, to be 15.0 cents per Mcf. In its Opinion No. 412–A, *Hassie Hunt Trust, (Operator), et al.*, issued January 24, 1964, 31 FPC 181, the Commission denied a rehearing of Opinion No. 412, *supra*, but granted a conditional stay of the rate reduction and refund requirements pending judicial review. In a later order issued on February 24, 1964, 31 FPC 447, the Commission modified the conditions of the rate reduction provisions of its stay order and ordered a moratorium on all price increases in excess of 18.0 cents per Mcf for sales of gas in interstate commerce from Texas District No. 2 until January 1, 1968, or until a final decision in the *Texas Gulf Coast Area* Rate proceeding, Docket No. AR64–2, depending on which came first.

The beginning point in any in-line price decision is, of course, *Atlantic Refining Co.* v. *F.P.C.*, (Catco), 360 U.S. 378. Following the Catco decision there have been a long series of court and Commission cases establishing the standards for the determination of in-line prices to comply with the requirements of Section 7 of the Natural Gas Act. In applying the standards, thus established, to the evidence of record, the starting point is, as was contended by the witness for the applicants and as stated by the Commission in *Amerada Petroleum Corp., et al.*, Opinion No. 422, p. 633, the initial "contract prices at which substantial volumes of jurisdictional gas were sold during the period under consideration."

In beginning his consideration of prices for the period subsequent to the date of the Policy Statement, the Examiner has eliminated from consideration all sales under 14.0 cents, (Exhibit 5, Chart 3), together with all sales made to or by Valley Gas Transmission, the remaining 14 permanently certificated sales have estimated first month's delivery volumes of 460,575 Mcf.[16] These 14 sales and associated volumes are only 10.5 percent of the total estimated first month's delivery volumes of 4,390,500 Mcf of jurisdictional gas moving in interstate com-

[16] Of these 14 sales, 13 were being made at or below 15.25 cents per Mcf and for estimated first month delivery volumes of 450,500 Mcf. The other, or 14th sale, was being made at 17.595 cents per Mcf with a first month estimated delivery volume of 10,075 Mcf.

merce from District No. 2 during the period from September 28, 1960, through March 10, 1964.[17] This 10.5 percent of the total volumes does not provide a broad enough base upon which to determine a proper in-line price.

The Examiner has prepared a tabulation (set forth below), which includes 33 temporarily certificated sales, together with the foregoing 14 permanently certificated sales. These 47 sales represent estimated first month's delivery volumes of 2,706,977 Mcf, or 61.6 percent of 4,390,500 Mcf, the latter being the total estimated first month's delivery volumes of all jurisdictional gas moving in interstate commerce from District No. 2 during the time period under consideration.

Contract price (cents per Mcf)	Number of contracts	Permanent or temporary certificate price (cents per Mcf)	Estimated first month volumes (Mcf)
14.00	5	14.00	210,000
14.18	2	14.18	45,000
15.00	3	15.00	93,500
15.00	3	15.00	92,500
15.20	1	15.20	60,000
15.25	2	15.25	42,000
16.00	1	16.00	28,500
16.00	1	16.00	62,000
17.00	3	17.00	151,000
17.59	2	17.59	85,075
18.00	19	18.00	1,354,457
20.00	1	18.00	31,000
20.045	4	18.00	451,945
Total	47		2,706,977

From this tabulation it can be seen that the total initial *contract* prices range from 14 cents per Mcf to 20.045 cents per Mcf. By volumes, 16.64 percent of the sales were contracted at prices between 14.0 and 15.25 cents per Mcf, 9.78 percent at prices between 16.00 and 17.59 cents per Mcf, and 73.58 percent of the production is priced by contract at 18 cents per Mcf or more. Thus, the sales at prices of 16 cents per Mcf and above account for fully 83.36 percent of the gas presently moving in interstate commerce under contracts executed in the time period here under consideration.

In considering, or giving evidentiary weight to, temporarily certificated prices, even though they are in line with the guideline prices established by the Statement of General Policy, the Examiner is aware they are in a suspect category. However, not to give consideration to them would leave the Examiner with an incomplete and narrow picture on which to base his in-line price decision. The fact that 83.36 percent of the gas moving in interstate commerce from District No. 2 during the period was contracted for and temporarily authorized at initial prices between 16.0 and 18.0 cents compels the Examiner to consider and give evidentiary weight to such prices and volumes in arriving at a proper in-line price. To ignore these temporarily certificated prices and volumes and to look only at the prices and volumes which have been permanently certificated is to see but a fractional part of the total volumes currently flowing in interstate commerce. To determine a proper in-line price based on current conditions in the industry, the Examiner must consider the total volumes currently flowing.

As the Court of Appeals, Ninth Circuit, said in *United Gas Improvement Co.* v. *F.P.C.*, 283 F. 2d 817, 824, "the price line is intended to reflect current condi-

[17] The 4,390,500 Mcf is comprised of 1,933,986 Mcf from Chart 3, Exhibit 5 and 2,456,514 Mcf relating to 35 temporarily certificated sales from Staff Exhibit No. 4.

tions in the industry. Therefore, comparative prices upon which it is based must be prices under which a substantial amount of natural gas presently moves in interstate commerce." The Court then went on to observe that "* * * by restricting the comparison to a small number of contracts under which little gas moves today" would defeat the objective sought and could require a rollback to prices having no current relevancy.

Applying the criteria for the determination of an in-line price, as developed by the numerous Commission and Court decisions following *Catco*, to the data in the foregoing tabulation, resulted in a numerically weighted average price of 16.68 cents per Mcf and a volumetrically weighted average price of 17.18 cents per Mcf. In according the proper evidentiary weight to the evidence of record, most reliance or the greatest weight has been accorded the 14 permanently certificated sales with an estimated first month's delivery volume of 460,575 Mcf. These sales and volumes do not "reflect current conditions in the industry" because of their limited nature. Having accorded the greatest weight to the permanently certificated sales and in giving appropriate consideration to temporary certificated sales at substantial volumes presently moving in interstate commerce, it is concluded the public convenience and necessity requires the natural gas here under consideration at an in-line price of 16.0 cents per Mcf at 14.65 psia.

The in-lineness of the 16.0 cents per Mcf here determined may be further demonstrated. The Commission said in *Texaco Seaboard, Inc., et al.*, 27 FPC 482, 485, and *Hassie Hunt Trust (Operator), et al.*, 30 FPC 1438, 1445, "* * * as brought out in *Catco* and * * * in Texaco Seaboard, the price line does not accord with the highest price or prices permanently authorized but falls between the highest group of prices and the median price." Applying this test to Staff Chart 3, Exhibit 4, after eliminating prices under 14.0 cents and the Valley Gas sales, reveals a median price of 14.57 cents (volumetric weighted average) which, when averaged with the highest price of 17.59 cents, produces an in-line price of 16.08 cents per Mcf.

A similar test further illustrates the in-lineness of the 16.0 price per Mcf.

Using *all* permanently (77) and *all* temporarily (35) certificated sales related to *all* volumes of natural gas (4,390,500 Mcf) moving in interstate commerce during the period after September 28, 1960, and through March 10, 1964, from District No. 2, a volumetrically weighted average price of 15.15 cents per Mcf is indicated. This median price when averaged with the highest temporarily certificated price of 18.00 cents per Mcf produces an in-line price of 16.57 cents per Mcf.

The Sour Gas Sale

In fn. 5, *supra*, reference was made to a pipeline field sale of sour gas by Texas Eastern to Lone Star Gathering [18] at an initial contract price of 12.0 cents per Mcf. A temporary certificate conditioned at 11.0 cents per Mcf was issued to and accepted by *Texas Eastern* in Docket No. CP63-192. Lone Star states its processing costs approximate 3.0 cents per Mcf to bring this sour gas up to pipeline quality. Thus the cost of the gas (12.0 cents) plus the cost of processing (3.0 cents) amounts to 15.0 cents for pipeline quality gas. The Staff says in its brief the public convenience and necessity requires this gas at 15.0 cents per Mcf when processed to pipeline quality. It is therefore found the public convenience and necessity requires the gas described in Docket No. CP63-192, *Texas Eastern* Rate Schedule No. F-8, at 12.0 cents per Mcf and a permanent certificate will be issued.

[18] By its order issued herein on March 25, 1964, the Commission consolidated for hearing herein a sour gas sale by Socony Mobil Oil Company, Inc., to the Lone Star Gathering

In-Line Price for Period Prior to September 28, 1960

In *Hassie Hunt Trust (Operator), et al.*, issued December 4, 1963, 30 FPC 1438, the Commission determined an in-line price of 15.0 cents per Mcf for the only sale (Docket No. G–19119) remaining in that opinion for District No. 2 applicable to a contract executed prior to September 28, 1960. In that opinion the Commission arrived at the 15.0 cent price, after examining a tabulation of temporarily and permanently certificated prices for contracts in that District for the three years immediately prior to the Statement of General Policy No. 61–1 issued September 28, 1960.

The Staff's Chart 2, Exhibit 5, lists all sales and all volumes permanently certificated under initial contracts executed during the period January 1, 1957 through September 28, 1960 in District No. 2. Chart 2 includes all sales under 14.0 cents per Mcf, together with sales to or by Valley Gas. Because the Examiner has excluded these sales from consideration, a revised tabulation has been prepared as follows:

Total initial price (cents per Mcf)	Number of sales	Estimated first month volumes (Mcf)
14.00	3	150,480
14.18	14	1,246,124
14.30		
14.50	4	218,500
14.75	1	600,000
15.00	2	309,000
15.20	3	195,000
15.25		
17.00	2	438,000
17.59		
Total	29	3,157,104

The Examiner's tabulation shows a total of 29 permanently certificated sales (of jurisdictional gas from District No. 2 during the period January 1, 1957, through September 28, 1960) with an estimated first month's delivery volumes totaling 3,157,104 Mcf. These volumes are approximately 36.47 percent of the total volumes of 8,655,016 Mcf shown on Chart 2, Exhibit 5, by the Staff. This percentage affords an ample base upon which to determine a proper in-line price without having to consider the temporary certificates issued during this period.

The permanently certificated prices range from 14.0 cents to 17.0 cents per Mcf. By volumes 70.2 per cent of these sales are being made at prices from 14.0 cents to 14.75 cents per Mcf and 29.8 percent at prices from 15.0 cents to 17.0 cents per Mcf. There are seven sales in the 15.0 to 17.0 cent category with volumes of 942,000 Mcf. One of these (G–19119) is the Lamar Hunt Trust Estate sale to the Natural Gas Pipeline Company of America from the Zotler Field in Calhoun and Aransas Counties at 15.0 cents per Mcf with an estimated first month's volume of 219,000 Mcf. This sale was one of those considered by the Commission in *Hassie Hunt Trust, (Operator)*, 30 FPC 1438, *supra*, and is presently under review but held in abeyance by the Circuit Court of Appeals for the 5th

Co., Docket No. CI63–874, Socony Mobil Rate Schedule No. 327, from the Kawitt Field in Karnes and De Witt Counties, at an initial contract price of 12.0 cents per Mcf. Thereafter, the Commission, by its order issued October 14, 1964, in Socony Mobil Oil Company, Inc., Docket No. G–6030, *et al.*, issued a permanent certificate to Socony Mobil for this sale of sour gas to Lone Star at 12.0 cents per Mcf at 14.65 psia in Socony's Rate Schedule No. 327.

Circuit in Case No. 21286, entitled *Margaret Hunt Hill Trustee, et al.*, pending a final decision in *Callery Properties, Inc., et al.*, decided by the 5th Circuit on August 14, 1964. Petition for writ of certorari has been filed. This litigation on this sale at the 15.0 cent per Mcf price level not only causes it to fall into the suspect class but causes the remaining six sales also to be suspect. In the category of being non-suspect there remains only the 22 permanently certificated sales with prices ranging from 14.0 cents to 14.75 cents per Mcf with estimated first month's volumes of 2,215,104 Mcf, or 70.2 percent of the 3,157,104 Mcf total shown in the above tabulation.

As brought out in *Catco* and referred to by the Commission in *Texaco Seaboard* and *Hassie Hunt Trust, supra*, "* * * the price line does not accord with the highest price or prices permanently authorized but falls between the highest group of prices and the median price." This rule cannot be literally applied here for the reason that 70.2 percent of the sales volumes under consideration are being made under permanently certificated authorizations and 29.8 percent are in the median to high group of prices and are suspect because of the Margaret Hunt Hill review petition above.[19] Therefore, the greatest evidentiary weight, or consideration, must be accorded the 70.2 percent of the sales and less weight, or consideration, accorded the 29.8 percent, which are the suspect sales. However, only one of the seven sales being made in the 15.0 to 17.0 cent price category is in litigation. No petitions to review the other six sales have been filed. As the Commission said in *Texaco Seaboard, Inc.*, 29 FPC 593, 598, "* * * the suspect price doctrine was not intended as a rigid exclusionary rule." The Commission then went on to say "* * * we think that merely because prices are in litigation or have been set aside after litigation and further proceedings ordered thereon, we should not entirely overlook the economic tendencies which they represent. But in such cases the prices cannot be taken at face value as reflecting firm prices in the area at the time * * * " For the 22 sales being made in the 14.0 to 14.75 cent price level in the above tabulation the numerically weighted average price is 14.24 cents and the volumetrically weighted average price is 14.35 cents per Mcf at 14.65 psia. However, the numerically weighted average price for the 29 sales is 14.58 cents per Mcf and the volumetrically weighted average price is 14.84 cents per Mcf at 14.65 psia. Considering the foregoing data and the evidence of record showing the history of prices and the price patterns in District No. 2, the Examiner is of the opinion that the present or future public convenience and necessity requires the natural gas here under consideration at an in-line price of 15.0 cents per Mcf at 14.65 psia.

Estimated Versus Actual First Month's Delivery Volumes (Mcf)

Beginning with *Skelly*, the Commission has consistently used estimated first month's delivery volumes in its decisions. FPC Form No. 301–B, the independent producers' report, as well as FPC Form No. 2, the annual report of the purchasing pipeline, furnish actual sales volumes (Mcf) on an annual basis only. Therefore, to obtain the first month's delivery volumes, it is necessary to divide the reported delivery volumes of a particular sale by the number of months covered by the report or a lesser number of months as related to the date of first delivery of the particular sale. This produces an average monthly delivery volume from which the actual first month's delivery volume is derived. Since Form No. 301–B and Form 2 do not show, nor do the rate schedules in many

[19] See *United Gas Improvement Co.* v. *F.P.C.*, 283 F. 2d 817; *Texaco Seaboard, Inc., et al.*, 29 FPC 593, 597.

cases indicate, the date of the commencement of deliveries, it is frequently not possible to ascertain the actual first month's delivery volumes in this fashion.

The estimated first month's delivery volume is set forth in the initial contract executed by the seller and the buyer which is filed with the Commission as the rate schedule. This represents the best judgment figure of the parties at the time the agreement was executed. As was indicated by the rebuttal witness for the applicants, there may be a wide variance between estimated and actual volumes in certain instances; however, his examples were too few in number of sales to form a basis for concluding broadly that there is an inaccuracy or unreliability in the use of estimated first month's delivery volumes. In one instance this witness furnished actual first month's delivery volume figures obtained from a personal inspection of a purchasing pipeline's records. In other instances he determined the first month's delivery volumes by the method heretofore described—the averaging of the reported sales volumes. There can be no question but that the average volumes would produce more accurate results. However, except for the few instances in rebuttal, average volumes are not in this record. Therefore, it is concluded that for the purposes of determining an in-line price the use of estimated first month's delivery volumes are sufficiently acceptable and reliable to warrant their use.

Sinclair's Sale in Docket No. G–16760

Sinclair sells about 32,000 Mcf of gas per month to the United Gas Pipe Line Company from the Normanna Field, Bee County, Texas, under a contract negotiated by Sinclair's predecessor in interest, Western Natural Gas Company, and dated May 12, 1958. On October 23, 1958, Western filed its application with the FPC for a certificate of public convenience and necessity to make this sale. Western's application was assigned Docket No. G–16760, which is the lead docket in this hearing. An unconditioned temporary certificate was issued to Western on June 18, 1959. This sale is being continued by Sinclair under authority of an FPC letter-order dated November 26, 1963, extending the temporary certificate. The gas is being sold at 17.0 cents per Mcf plus tax reimbursement of 0.59509 cents per Mcf at 14.65 psia. The May 12, 1958 contract is on file with the FPC as Sinclair's Rate Schedule No. 285. Sinclair and Tennessee Oil Company jointly own interests in the wells from which this gas is produced. Tenneco is the operator of the two units.[39]

On March 31, 1958, Tenneco's predecessor in interest, Midstates Oil Corporation, contracted to sell its portion of the gas from these units to United for 17.0 cents per Mcf plus tax reimbursement of 0.59509 cents per Mcf at 14.65 psia. Midstates filed its application with the FPC on April 4, 1958, for a certificate of public convenience and necessity to make the sale. The application was assigned Docket No. G–14836, and, after a hearing thereon, the FPC in *Middle States Petroleum Corporation* (formerly Midstates Oil Corporation), 21 FPC 492, on April 13, 1959, issued a certificate of public convenience and necessity to make the sale at the contract price of 17.59509 cents per Mcf. Thus, Tenneco, as the operator of these two units, is selling its gas under a permanent certificate at the contract price of 17.0 cents per Mcf plus tax reimbursement of 0.59509 cents per Mcf at 14.65 psia. Sinclair contends its sale of gas from these two units should receive the same price certification as was issued to Tenneco's predecessor in interest, that the imposition upon its sale at a price below the level of the current Tenneco price would be inequitable, unlawful and highly discriminatory.

[39] The Magnus-Beck and the Johnson-Beck units located in the Normanna Field, Bee County, Texas.

In issuing the permanent certificate on April 13, 1959 to Tenneco's predecessor in interest, the Commission there held the applicant had established a *prima facie* case for the issuance of a certificate and that, "There is no evidence showing that the proposed rate adversely affects the public convenience and necessity." Two months later, and on June 23, 1959, the Supreme Court decided *Atlantic Refining Company, et al.* v. *Public Service Commission of New York, et al.*, 360 U.S. 378 (Catco). This was the first of numerous Commission and court decisions establishing the standard under which producer prices are to be considered before a temporary or permanent certificate is issued. Consequently, these standards should be considered in determining the price at which Sinclair's gas under this docket is required by the public convenience and necessity. It has been determined herein that the in-line price for District No. 2 is 15.0 cents per Mcf prior to the Statement of General Policy (September 28, 1960) and 16.0 cents per Mcf thereafter. To require Sinclair to conform its sale herein to the in-line price brings to mind what Mr. Justice Jackson said in *Colorado Interstate Gas Co.* v. *F.P.C., et al.*, 324 U.S. 581, 610, "Any method of rate making by which an identical product from a single well, going to the same consumers, has three prices depending on who owns it does not make sense to me." The Commission, however, has been confronted with this particular discrimination problem at least once since *Catco* was decided, namely: *Pure Oil Company*, 23 FPC 704, issued May 16, 1960. In that case Pure and Petroleum Incorporated were selling gas from the same field "and in part from the same well to the same purchaser, Colorado Interstate," under identical contracts. Because sales under Pure's rate schedule began prior to January 1, 1959, it was required by FPC regulations to file an amended rate schedule for the new contract price of 16.0 cents per Mcf which the Commission then suspended and made subject to a formal hearing. Since Petroleum's sales did not commence until January 8, 1959, it was permitted to file and collect the 16.0 cents rate without suspension or hearing. The Commission said "* * * it appears that the element of time caused the difference in the treatment of the two producers; that in this instance, this element should not have decisive weight in the determination of lawful rates; that in view of the identical nature of a part of the gas being sold, the identical source thereof, and the co-ownership in the Neff Unit, the allowing of one producer's rate to become effective without suspension and refund, while subjecting the other producer's identical rate of 16.0 cents to suspension and public hearing, denies to the latter a certain equality of treatment devoid of any counterbalancing advantage to the public interest in the effective administration of the Natural Gas Act." The Commission thereupon eliminated the discrimination and issued Pure the same permanent certificate as had been issued to Petroleum.

In the matter here at issue Tenneco's predecessor in interest filed its initial contract as its rate schedule with the Commission on April 4, 1958, and it was promptly acted upon by the Commission by the issuance of a permanent certificate at the initial contract price on April 13, 1959. On October 23, 1958, six months and 19 days after the Tenneco filing, Sinclair's predecessor in interest filed its initial contract as its rate schedule. Each initial contract contained identical pricing provisions. On June 18, 1959, eight months after the filing, Sinclair was issued an unconditioned temporary certificate. Sinclair here seeks an unconditioned permanent certificate the same as was issued to Tenneco nearly six years ago. The Commission said in *Graridge Corporation (Operator)*, issued October 31, 1963, 30 FPC 1156, 1162, that in producer succession proceedings, non-transferability provision of certificate is intended to focus on successor himself, not on the full scope of the 7(e) requirements and that while out of line

rates are not to be perpetuated, the Commission said it was presently conducting area rate proceedings to fix just and reasonable rates and it is in such proceedings that any question as to the reasonableness of permanently certificated sales is to be resolved. Here, as in *Graridge, supra*, the Commission has an area rate proceeding in hearing in which all rates will be adjusted to a just and reasonable level. To require Sinclair here to accept a permanent certificate conditioned at the in-line price herein determined would, under the Commission decision above, be unjust discrimination. Therefore, a permanent unconditioned certificate of public convenience and necessity is hereby issued to Sinclair in Docket No. G-16760, Rate Schedule No. 285, at the initial contract price of 17.0 cents per Mcf, plus tax reimbursement of 0.59509 cents per Mcf, at 14.65 psia.

FINDINGS AND CONCLUSIONS

Upon consideration of the entire record in this proceeding, the evidence adduced and the briefs filed, the Examiner finds and concludes, in addition to the findings and conclusions hereinabove stated, that:

(1) the following applicants:

	Docket Nos.
Sinclair Oil & Gas Company, *et al*	G-16760.
Union Oil Company of California	G-18389.
Trice Production Company (Operator), *et al*	G-19340.
George Parker	G-19718.
H. H. Howell (Operator), *et al*	G-20595, CI60-402, and CI60-640.
Carrl Oil, *et al*	CI60-403 and CI60-592.
Edwin L. Cox (Operator), *et al* (Formerly Paul R. Turnbull (Operator), *et al.*)	CI60-620.
Paul R. Turnbull (Operator), *et al*	CI61-1.
Richard M. Finder, d/b/a Texkan Oil Company (Operator), *et al.*	CI61-352.
Mrs. James R. Dougherty, *et al*	CI61-619.
W. A. Stockard	CI61-751.
Lone Star Producing Company	CI61-918.
Edwin M. Jones Oil Company	CI61-1202.
Producing Properties, Inc	CI61-1236.
Heritage Petroleum Corporation (Operator), *et al.* (Formerly Layton Brown Drilling Co., Inc.).	CI61-1567.
Lamar Hunt (Operator), *et al*	CI61-1736.
MPS Production Co. (Operator), *et al*	CI62-314.
Southland Royalty Company (Operator), *et al.* (Formerly Katz Oil Company).	CI62-334.
J. N. Pratt, *et al*	CI62-1373.
Shell Oil Company	CI62-653.
The Jupiter Corporation (Operator), *et al*	CI62-698.
Ralph E. Fair, Inc	CI62-780.
Monsanto Chemical Company (Operator), *et al*	CI62-824 and CI62-889.
Cities Service Company	CI62-959.
Continental Oil Company	CI62-961.
Rodney DeLange (Operator), *et al*	CI62-962.
H. B. Zachry Company Gasoline Production Division.	CI62-1023.
George R. Brown (Operator), *et al*	CI63-5.

	Docket Nos.
Ralph E. Fair	CI63–56.
Monsanto Chemical Company	CI63–58.
Montego Oil Company (Operator), *et al*	CI63–790.
Producing Properties, Inc. (Operator), *et al*	CI63–814.
H. D. Bruns (Operator), *et al*	CI63–820.
Highland Oil Company	CI64–346.
Tidewater Oil Company	CI64–788.
Texas Eastern Transmission Corporation	CP63–192 and CP63–193.

are each engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption and each is, therefore, a "natural-gas company" as that term is defined in Section 154.91(a) of the Commission's Regulations, and such sales, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(2) Subject to the requirements of the order herein and the conditions attached to the certificates of public convenience and necessity herein issued, the applicants named in paragraph (1) above are each able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(3) The sale of natural gas as proposed by each of the applicants named in paragraph (1) above, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are required by the public convenience and necessity and a certificate authorizing the same should issue to each of them upon the terms and conditions of the order herein, which terms and conditions are required by the public convenience and necessity.

(4) The public convenience and necessity requires that the initial prices charged by the applicants named in paragraph (1) above for the sales proposed in their certificate applications upon contracts executed on, or before, September 28, 1960, the date on which the Commission issued its Statement of General Policy No. 61–1, 24 FPC 818, as amended, be not greater than 15.0 cents per Mcf at 14.65 psia, except as hereinafter specifically provided in paragraph (7).

(5) The public convenience and necessity requires that the initial prices charged by the applicants named in paragraph (1) above for the sales proposed in their certificate applications upon contracts executed after September 28, 1960, the date on which the Commission issued its Statement of General Policy No. 61–1, 24 FPC 818, as amended, be not greater than 16.0 cents per Mcf at 14.65 psia except as hereinafter specifically provided in paragraph (6).

(6) The public convenience and necessity requires that the initial price charged by Texas Eastern Transmission Corporation in Docket No. CP63–192 to the Lone Star Gathering Company be not greater than 12.0 cents per Mcf at 14.65 psia.

(7) The public convenience and necessity requires that the initial prices charged by the Sinclair Oil & Gas Company, Docket No. G–16760, to the United Gas Pipe Line Company be not greater than 17.0 cents per Mcf plus tax reimbursement of 0.59509 cents per Mcf at 14.65 psia.

ORDER

WHEREFORE, *It is ordered*, subject to review by the Commission on appeal, or review by the Commission on its own motion, as provided in its Rules of Practice and Procedure, that:

(A) Certificates of public convenience and necessity are hereby issued to each of the applicants named in paragraph (1) of Findings and Conclusions above for the sale of natural gas in interstate commerce for resale as proposed in their respective applications, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, upon the terms and conditions hereinafter set out in this order.

(B) A certificate of public convenience and necessity is hereby issued to the Texas Eastern Transmission Corporation authorizing the sale of natural gas from the Kawitt Field, Karnes and De Witt Counties, Texas, to the Lone Star Gathering Company at the initial contract price of 12.0 cents per Mcf at 14.65 psia as set out in Docket No. CP63–192, Texas Eastern Rate Schedule No. F–8.

(C) A certificate of public convenience and necessity is hereby issued to the Sinclair Oil & Gas Company authorizing the sale of natural gas from the Normanna Field, Bee County, Texas, to the United Gas Pipe Line Company at the initial contract price of 17.0 cents per Mcf, plus tax reimbursement of 0.59509 cents per Mcf at 14.65 psia as set out in Docket No. G–16760, Sinclair's Rate Schedule No. 285.

(D) Except as ordered in paragraphs (B) and (C) above a certificate of public convenience and necessity is issued to the remaining applicants, not hereinabove referred to in paragraphs (B) and (C), named in Findings and Conclusions paragraph (1) above, conditioned as to those initial contracts executed on or before September 28, 1960, to prohibit any total initial price, including all reimbursements and charges, greater than 15.0 cents per Mcf at 14.65 psia; and as to those initial contracts executed after September 28, 1960, the certificates of public convenience and necessity are conditioned to prohibit any total initial price, including all reimbursements and charges, greater than 16.0 cents per Mcf at 14.65 psia; all such conditioned prices are effective from the date of the issuance of this order and until such price may be lawfully changed in the manner provided by the Natural Gas Act.

(E) The certificates issued herein are further conditioned upon their acceptance in writing by the respective applicants within 30 days of the issuance of this order.

(F) In accordance with the conditions attached to the temporary authorizations in Docket No. G–18389, Union Oil Company of California and Docket No. G–19718, George Parker, each of such applicants shall refund to their respective purchasers within 60 days of the issuance of this order any sums collected from such purchasers in excess of 15.0 cents per Mcf, with interest thereon at the rate provided in the temporary authorization from the time of receipt to the date of refund and shall report to the Commission in writing the details of such refunding within 15 days after such revenues have been made.

(G) In accordance with the several conditions attached to the temporary authorizations in Docket Nos. CI62–698, The Jupiter Corporation (Operator), *et al.*; CI62–780, Ralph E. Fair, Inc.; CI62–824 and CI62–889, Monsanto Chemical Company (Operator), *et al.*; CI62–959, Cities Service Company; CI62–961, Continental Oil Company; CI62–962, Rodney DeLange (Operator), *et al.*; CI62–1023, H. B. Zachry Company, Gasoline Production Division; CI63–5, George R. Brown (Operator), *et al.*; CI63–56, Ralph E. Fair; CI63–58, Monsanto Chemical Company; CI63–790, Montego Oil Company (Operator), *et al.*; CI63–814, Producing Properties, Inc. (Operator), *et al.*; CI63–820, H.D. Bruns (Operator), *et al.*; CI64–346, Highland Oil Company; CI64–788, Tidewater Oil Company; and CP63–193, Texas Eastern Transmission Corporation, each of such applicants shall refund to their respective purchasers within 60 days of the issuance of this

order any sums collected from such purchasers in excess of 16.0 cents per Mcf, with interest thereon at the rate provided in the temporary authorization from the time of receipt to the date of refund and shall report to the Commission in writing the details of such refunding within 15 days after such refunds have been made.

(H) The decision as to whether refunds should be ordered as a condition to the remaining certificates herein issued is, in accordance with the Commission's order issued herein on October 5, 1964, deferred to the further order of the Commission.

(I) The certificates herein issued are not transferable and shall be effective only so long as each of the applicants continues the acts and operations hereby authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations and orders of the Commission.

(J) The grant of the certificates herein shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act or of Part 154 of the Commission's Regulations under said Act requiring the filing of rate schedules for the service herein authorized and is without prejudice to any findings or orders which may have been or hereafter may be made by the Commission in any proceeding now pending or hereinafter instituted by or against the applicants. Further, the action taken in these proceedings shall not foreclose nor prejudice any further proceeding or objection relating to the operation of any price or related provisions in the gas contracts here involved.

HARRY W. FRAZEE,
Presiding Examiner.

Before Commissioners: Joseph C. Swidler, Chairman; Charles R. Ross, David S. Black and Carl E. Bagge.

PERRY R. BASS (OPERATOR), ET AL.

ORDER REJECTING RATE FILING

(Issued September 23, 1965)*

Perry R. Bass (Operator), *et al.* (Bass) on August 24, 1965, tendered for filing a proposed rate increase from 16¢ to 17¢ per Mcf for the sale of residue gas from gas-well gas to El Paso Natural Gas Company under its FPC Gas Rate Schedule No. 1, from the Brown-Bassett Field, Terrell County, Texas (R. R. Dist. No. 7c). Bass requests that the statutory 30-day notice requirement be waived, and that the proposed increased rate be made effective as of August 24, 1965, for the reason that the increase was contractually due on January 1, 1963. Bass has not shown good cause for a waiver of the notice requirement; consequently, the notice period would expire September 24, 1965.

In Opinion No. 468, issued August 5, 1965, in Docket No. AR61–1, 34 FPC 159, we determined, among other things, that the just and reasonable ceiling under Section 5(a) of the Natural Gas Act effective as of September 1, 1965, for the sale of "new" residue gas (from gas-well) was 16.5¢ per Mcf [1], subject to adjustment for quality differentials below the standards applicable to pipeline quality gas. The Section 5(a) determination there made is applicable to all producer-respond-

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* See order granting rehearing issued November 22, 1965, 34 FPC 1353.

[1] Since the contract comprising Bass' FPC Gas Rate Schedule No. 1 was entered into on December 16, 1961, the gas is "new gas" under Opinion No. 468.

ents for all sales of natural gas made by them in the Permian Basin Area. Since Bass was a producer-respondent in Permian and the sale under its FPC Gas Rate Schedule No. 1 is and was being made in that area, the Section 5(a) determination is applicable to Bass' sale. We also imposed in Opinion No. 468 a moratorium effective as of September 1, 1965, prohibiting any increased rate filing in excess of the just and reasonable rate ceilings determined there.

The circumstances of the instant filing are similar to those involved in a filing tendered by Socony Mobil Oil Company, Inc. (Operator), *et al.* (Socony) on June 28, 1965. Socony's proposed rate increase filing was rejected by order issued August 26, 1965, 34 FPC 595. For all of the reasons set forth in that order, we are rejecting the instant proposed rate increase tendered by Bass.

The Commission orders:

The proposed increased rate of 17¢ per Mcf tendered by Bass on August 24, 1965, for sales under its FPC Gas Rate Schedule No. 1, is rejected.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

CENTRAL ILLINOIS ELECTRIC AND GAS COMPANY AND PANHANDLE EASTERN PIPE LINE COMPANY, DOCKET NO. CP66-23

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued September 24, 1965)

On July 20, 1965, Central Illinois Electric and Gas Company (Applicant), filed in Docket No. CP66-23 an application pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Panhandle Eastern Pipe Line Company (Respondent) to establish physical connection of its transportation facilities with the facilities proposed to be constructed by Applicant and to sell and deliver to Applicant up to 502 Mcf per day of natural gas for resale and distribution in the villages of Metcalf and Sidell, Illinois, and their environs, all as more fully set forth in the application.

The application states that Respondent's facilities extend approximately 1,500 feet from the southern village limits of Metcalf. Applicant proposes to construct an odorizer station at the proposed point of connection and construct a high pressure 4-inch pipeline lateral north from the odorizer station to Metcalf and Sidell. Sidell is approximately seven miles north of Metcalf. Applicant will also construct and operate the town border stations and distribution systems in each village.

Applicant estimates that the requirements for the villages for natural gas will be as follows:

	First year	Second year	Third year
Annual (Mcf)	17,420	34,330	44,770
Peak day (Mcf)	345	401	502

The estimated cost of construction of the facilities proposed by Applicant is $218,190 in the third year. Applicant proposes to finance the construction with funds available for this purpose.

On July 23, 1965, Respondent was duly advised of the application filed in this proceeding, and due notice of the filing and opportunity for hearing thereon has been given by publication in the Federal Register on July 31, 1965 (30 F.R. 9603). No protest, petition to intervene or request for hearing has been filed in this proceeding. The Applicant's gas requirements will be taken from the gas allocated in Respondent's expansion program approved in Docket No. CP65-255.

The Villages of Metcalf on October 9, 1963, and Sidell on December 4, 1963 granted Citizens Gas Company (Citizens) and its successors franchises to supply natural gas in the said villages. On November 4, 1964, Citizens was merged into Applicant and the franchises with the Villages of Metcalf and Sidell now belong to it. On May 5, 1965, the Illinois Commerce Commission in its Docket No. 51309 granted Applicant a certificate to construct and operate the necessary facilities and to sell gas to the public in the above-mentioned villages.

The Commission finds:

(1) Panhandle Eastern Pipe Line Company, a Delaware corporation having its principal place of business in Kansas City, Missouri, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of October 17, 1945, in Docket No. G-254 (4 FPC 1081).

(2) Applicant, Central Illinois Electric and Gas Company, an Illinois corporation having its principal place of business in Rockford, Illinois, is a corporation legally authorized to engage in the local distribution of natural gas to the public.

(3) It is necessary and desirable in the public interest to direct Respondent to establish physical connection of its transmission facilities with the facilities proposed to be constructed and operated by Applicant, and to sell and deliver to Applicant under a service agreement to be executed by Applicant with Respondent in accordance with the Commission's Regulations, up to 502 Mcf per day of natural gas for distribution and resale as hereinbefore described.

(4) The requirement that Respondent serve Applicant, as hereinafter ordered, will not impair Respondent's ability to render adequate service to its existing customers.

(5) Applicant should be prepared to receive natural gas from Respondent for distribution in Metcalf and Sidell, Illinois, and environs within one year from the date of the issuance of this order.

The Commission orders:

(A) Panhandle Eastern Pipe Line Company is directed to establish physical connection of its facilities with the facilities proposed to be constructed and operated by Applicant, Central Illinois Electric and Gas Company as herein described, and to sell and deliver up to 502 Mcf of natural gas daily to Applicant under a service agreement to be executed by Applicant with Respondent in accordance with the Commission's Regulations, for transportation, distribution and resale as hereinbefore described. Such service shall be rendered pursuant to Panhandle Eastern's presently filed appropriate rate schedule.

(B) Respondent shall report to the Commission in writing the date of commencement of service to Applicant within 15 days after such service begins.

(C) Applicant shall be prepared to receive service as directed herein within one year from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

CENTRAL ILLINOIS PUBLIC SERVICE COMPANY AND NATURAL GAS PIPELINE COMPANY OF AMERICA, DOCKET NO. CP65-303

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued September 24, 1965)

On March 25, 1965, Central Illinois Public Service Company (Applicant), filed in Docket No. CP65-303 an application pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Natural Gas Pipeline Company of America (Respondent) to establish physical connection of its natural gas transmission facilities with the facilities proposed to be constructed by Applicant, and to sell and deliver natural gas to Applicant for resale and distribution in Gorham, Jackson County, Illinois, and environs, all as more fully set forth in the application.

Applicant seeks physical connection of its proposed lateral transmission facilities with Respondent's pipeline at a point approximately 1.7 miles northeast of Gorham, Illinois, and the sale and delivery of the third year maximum day requirements of Applicant for Gorham of 107 Mcf at such connection.

Total estimated volumes of natural gas involved to meet Applicant's annual and peak day requirements for the initial three-year period of proposed operations are stated to be:

	First year	Second year	Third year
Annual (Mcf)	4,475	7,625	10,500
Peak day (Mcf)	47	78	107

Total estimated cost of Applicant's proposed construction, including transmission facilities and distribution system, is $51,914, and will be financed with internally generated funds. The data reflected in the application indicates the proposals with reference to Gorham are economically feasible.

On April 8, 1965, Respondent filed an answer to the application in the proceeding stating it had no unallocated capacity available for the service requested by the Applicant, but would be able and willing to render the requested service should the Commission approve its application in Docket No. CP65-404. Respondent was authorized to construct and operate the said facilities proposed in Docket No. CP65-404 on August 24, 1965, 34 FPC 568.

The Illinois Commerce Commission has approved the proposals of the Applicant made in the instant application.

Due notice of the filing of the subject application and opportunity for hearing thereon have been given by publication in the Federal Register on April 7, 1965 (30 F.R. 4509). No protest, petition to intervene, notice of intervention or request for hearing has been filed in this proceeding.

The Commission finds:

(1) Natural Gas Pipeline Company of America, a Delaware corporation having its principal place of business in Chicago, Illinois, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order issued November 7, 1958, in Docket No. G-9966 (20 FPC 694).

(2) Applicant, Central Illinois Public Service Company, having its principal place of business in Springfield, Illinois, is legally authorized to engage in the local distribution of natural gas to the public within the meaning of Section 7(a) of the Natural Gas Act.

(3) It is necessary and desirable in the public interest to direct Respondent to establish physical connection of its transmission facilities with the facilities proposed to be constructed and operated by Applicant, and to sell and deliver to Applicant under a service agreement to be executed by Applicant with Respondent in accordance with the Commission's Regulations up to 107 Mcf per day of natural gas for distribution and resale as hereinbefore described and as more fully described in the application in this proceeding.

(4) Applicant should be prepared to receive natural gas from Respondent for distribution in Gorham, Illinois and environs, within one year from the date of the issuance of this order.

(5) The requirement that Respondent serve Applicant, as requested, will not place an undue burden upon it nor impair its ability to render adequate service to its existing customers.

The Commission orders:

(A) Natural Gas Pipeline Company of America, Respondent, is directed to establish physical connection of its facilities with the facilities proposed to be constructed and operated by Applicant, as herein described, and to sell and deliver up to 107 Mcf of natural gas daily to Applicant under a service agreement to be executed by Applicant with Respondent in accordance with the Commission's Regulations for distribution and resale as hereinbefore described and as more fully described in the application in this proceeding. Such service shall be rendered pursuant to Respondent's presently filed appropriate rate schedule.

(B) Respondent shall report to the Commission in writing the date of commencement of service to Applicant within 10 days thereof.

(C) Applicant shall be prepared to receive service as directed herein within one year from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; Charles R. Ross, David S. Black and Carl E. Bagge.

THE DETROIT EDISON COMPANY AND CONSUMERS POWER COMPANY, DOCKET NO. E-7206; THE DETROIT EDISON COMPANY, DOCKET NO. E-7207

ORDER DISMISSING APPLICATION

(Issued September 24, 1965)

Applicants have heretofore sought to withdraw their applications concerning construction of facilities at the international boundary and transmission of electric energy to Canada. Subsequently, Applicants failed to attend scheduled prehearing conferences and Detroit Edison, by letter of August 4, has indicated its unwillingness to follow the special procedures authorized in the Commission's order of July 20, 1965, 34 FPC 80; see also p. 83. By letter of August 26, 1965, Detroit Edison stated its unwillingness to go forward on any basis which would require a public hearing responsive to the Commission's order of February 4, 1965, 33 FPC 177, even under the expedited schedule referred to in the Commission's letter of August 10, 1965.

We have no alternative but to terminate this proceeding for want of prosecution.

The Commission orders:

The applications in the above entitled dockets are hereby dismissed without prejudice to their reinstatement at any time.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

EL PASO NATURAL GAS COMPANY, DOCKET NO. CP66-6

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued September 24, 1965)

On July 9, 1965, El Paso Natural Gas Company (Applicant) filed in Docket No. CP66-6 an application as supplemented on August 2, 1965, and September 7, 1965, pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of facilities and the sale and delivery of natural gas for resale, as hereinbefore described and as more fully described in the application as supplemented.

Applicant proposes to modify its existing Kellogg-Wardner meter station and to sell and deliver natural gas through said facilities to The Washington Water Power Company (Water Power) for resale and distribution in Big Creek, Elk Creek, Osburn, Polaris, Silverton, and Wallace, Idaho, and environs. The estimated cost of the modification of the meter station is $3,000, to be financed from funds on hand.

Applicant proposes to sell and deliver natural gas to Intermountain Gas Company (Intermountain) through Applicant's existing Idaho Falls meter station for resale and distribution in Rexburg and Rigby, Idaho. Applicant also proposes to sell and deliver natural gas to Intermountain through Applicant's existing Gooding meter station for resale and distribution in Bellvue, Hailey, Ketchum, Shoshone, and Sun Valley, Idaho.

Water Power and Intermountain propose to construct and operate distribution systems in the various communities at a cost of $4,749,981. They have received authorization from the Idaho Public Utilities Commission to construct and operate distribution systems in the areas proposed to be served and have received franchises from all of the incorporated communities except Wallace and Ketchum. Water Power and Intermountain do not propose to initiate service to Wallace and Ketchum, respectively, until 1966 and franchises to serve those communities will not be available until that time.

Sales will be made pursuant to Applicant's Rate Schedules DI-1, DS-1, C-1 and I-1. Estimated peak day and annual natural gas requirements in Mcf at 14.73 psia for the first three full years of operation are as follows:

Year of service	Peak day		Annual	
	Water power	Intermountain	Water power	Intermountain
1	988	5,643	169,346	833,544
2	1,581	6,778	262,638	1,038,628
3	1,958	7,726	301,672	1,126,255

Based on third year estimates, Applicant will receive total revenues of $559,186 per year. Purchased gas costs are estimated to be $229,896, and other incremental costs are *de minimis*. Therefore, Applicant's proposal appears to be economically feasible.

After due notice no petition to intervene, notice of intervention or protest to the granting of the application has been received.

At a hearing held on September 23, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, as supplemented, and exhibits thereto, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, El Paso Natural Gas Company, a Delaware corporation having its principal place of business in El Paso, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of January 11, 1944, in Docket No. G–288 (4 FPC 486).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, will be used for the transportation and sale of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof and the sale and delivery of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The proposed construction and operation of facilities and the sale and delivery of natural gas by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is issued authorizing Applicant, El Paso Natural Gas Company, to construct and operate facilities and to sell and deliver natural gas as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The construction authorized in paragraph (A) above shall be completed and the sale and delivery of natural gas shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 12 months of the date on which this order issues.

(D) Authorization granted herein to sell and deliver natural gas to Water Power and Intermountain for resale and distribution in Wallace and Ketchum, Idaho, is conditioned upon the receipt of appropriate local authorization by Water Power and Intermountain to engage in such activities.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

FLORIDA GAS TRANSMISSION COMPANY, DOCKET NO. CP66-53

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued September 24, 1965)

On August 16, 1965, Florida Gas Transmission Company (Applicant) filed in Docket No. CP66-53 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of the facilities necessary to sell and deliver natural gas to the Ocean Highway and Port Authority (Authority) for resale in and around Fernandina Beach and Yulee, in Nassau County, and Oceanway, Garden City, Dinsmore and Marietta, in Duval County, Florida, all as more fully set forth in the application.

Applicant proposes to construct and operate a line tap and meter station, and appurtenances, for the sale and delivery of natural gas to the Authority. The facilities are to be located at a point on Applicant's existing 16-inch Jacksonville lateral pipeline approximately 2.5 miles south of the community of Marietta, Florida, near the point of intersection of Normandy Boulevard (State Road 228) and Hammond Boulevard.

The Authority is a Political Subdivision created by the Legislature of the State of Florida. In addition to its proposed natural gas system, the Authority will operate an extensive water and sanitary sewer system. The cost of gas facilities of the Authority is $1,885,000. The debt service ratio based on third year leveling of sales is 1.60. The project will be financed by the sale of revenue bonds; a buyer's commitment has been made.

Authority proposes to construct and operate an integrated pipeline system, consisting of approximately 12.90 miles of 8-inch and 30.58 miles of 6-inch pipe, to transport the gas from the proposed delivery point to the various distribution systems as well as for resale to various customers along the route of its proposed pipeline system. The proposed distribution systems in Fernandina Beach, Yulee, Oceanway, Garden City, Dinsmore and Marietta also will be owned and operated by the Authority.

The estimated third year annual and peak day requirements of natural gas for the proposal are 207,710 Mcf and 3,031 Mcf, respectively.

The total estimated cost of the facilities to be constructed by Applicant is $32,500, which will be paid for out of cash on hand.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on September 23, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization, and upon consideration of the record,

The Commission finds:

(1) Applicant, Florida Gas Transmission Company, a Delaware corporation having its principal place of business in Winter Park, Florida, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order issued July 3, 1963, in Docket No. CP63-277 (30 FPC 27).

(2) The proposed construction and operation of facilities and sale of natural gas, as hereinbefore described and as more fully described in the application and exhibits in this proceeding, are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed construction and operation of facilities and sale of natural gas are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Applicant, Florida Gas Transmission Company, authorizing the construction and operation of facilities and the sale of natural gas as more fully described in the application in this proceeding, subject to the jurisdiction of the Commission, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be completed and placed in actual operation and the sale of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 12 months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

NORTHERN NATURAL GAS COMPANY, DOCKET NO. CP64-255 (PHASE II)

ORDER AMENDING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued September 24, 1965)

On August 6, 1965, Northern Natural Gas Company (Petitioner) filed in Docket No. CP64-255 (Phase II) a petition to amend the order accompanying Opinion No. 463 issued by the Commission in said docket on June 2, 1965, 33 FPC 1163, by deleting the authorized 3,400 horsepower compressor unit at the Mullinville, Kansas, compressor station, as more fully described in the petition to amend.

On June 15, 1965, 33 FPC 1264, the Commission issued an order in Docket Nos. CP64-255 (Phase I) and CP65-188 authorizing Petitioner to construct and operate a 12,500 horsepower turbine compressor unit at the Mullinville compressor station in lieu of two 3,400 horsepower reciprocating units previously authorized.[1]

[1] Each of the Commission's orders in Docket Nos. CP64-255 (Phase I) and CP65-188 issued on December 21, 1964, 32 FPC 1491, and March 31, 1965, 33 FPC 659, respectively, authorized Petitioner, among other things, to construct and operate a 3,400 horsepower reciprocating compressor unit at Petitioner's Mullinville compressor station.

In the petition to amend which was filed in those dockets on April 28, 1965, Petitioner stated that if the Commission authorized the 12,500 horsepower turbine unit in lieu of the two 3,400 horsepower units, there would be an excess of 5,700 horsepower of compression and it would, subsequent to approval of the Phase II portion of CP64–255, petition to delete the third 3,400 horsepower unit.

Due notice of the filing of the petition to amend was published in the Federal Register on August 21, 1965 (30 F.R. 10922). No protest, petition to intervene, notice of intervention, or request for hearing has been filed in this proceeding.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the certificate of public convenience and necessity accompanying Opinion No. 463 issued in Docket No. CP64–255 (Phase II) on June 2, 1965, be amended as hereinafter ordered.

The Commission orders:

(A) The certificate of public convenience and necessity accompanying Opinion No. 463 issued in Docket No. CP64–255 (Phase II) on June 2, 1965, is amended by deleting therefrom the authorization to construct and operate the 3,400 horsepower compressor unit for the Mullinville, Kansas, compressor station, which is more fully described in the petition to amend.

(B) In all other respects the order in Docket No. CP64–255 (Phase II) shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

TRANSCONTINENTAL GAS PIPE LINE CORPORATION, DOCKET NO. CP65–403

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued September 24, 1965)

On June 16, 1965, Transcontinental Gas Pipe Line Corporation (Applicant) filed in Docket No. CP65–403 an application, as supplemented on August 23, 1965, pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of a tap and sales metering station near Belle Mead, Somerset County, New Jersey, and the delivery of a heretofore allocated supply of natural gas to Public Service Electric and Gas Company (Public Service) for resale, all as more fully set forth in the application as supplemented.

Public Service has requested Applicant to establish the new delivery point so that Public Service may sell and deliver natural gas to Minnesota Mining and Manufacturing Company for process drying and space heating. The estimated third year annual gas requirement is 87,600 Mcf.

The subject facilities are estimated to cost $34,000 and will be financed from cash on hand. Public Service will reimburse Applicant for this amount.

At a hearing held on September 23, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, as supplemented, and exhibits thereto, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Transcontinental Gas Pipe Line Corporation, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of November 18, 1948, in Docket No. G–1143 (7 FPC 145).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, will be used in the transportation and sale of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof and delivery of natural gas by Applicant are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the delivery of natural gas by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is issued authorizing Applicant, Transcontinental Gas Pipe Line Corporation, to construct and operate the proposed facilities and to deliver natural gas, as hereinbefore described and as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be constructed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within three months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

ATLANTIC SEABOARD CORPORATION, ET AL., DOCKET NO. RP65–49, ET AL.

ORDER DENYING RECONSIDERATION

(Issued September 27, 1965)

Atlantic Seaboard Corporation (Seaboard) on September 9, 1965, filed an "Application for Rehearing"[1] of the order issued herein August 26, 1965, 34

[1] An application for rehearing of an interlocutory order, such as herein involved, may not properly be filed (Section 1.30(e) of the Commission's Rules of Practice and Procedure [18 CFR 1.30(e)]). The subject tender has been considered as a motion for reconsideration pursuant to Section 1.12 of the Rules.

FPC 593, which permitted intervention by the Coal Interests and also by Appalachian Power Company (Appalachian), Seaboard requests reconsideration of the order insofar as it grants intervention to Appalachian and requests that such intervention be denied, or alternatively, that a preliminary hearing be held to require Appalachian to present evidence in support of its allegations that it would be injured or aggrieved by a final order approving Seaboard's proposed restructured tariff.

Seaboard contends that the Commission misconstrued its opposition to Appalachian's intervention in stating that Seaboard had not challenged Appalachian's claims that it might in fact be competitively injured by a determination permitting the proposed rates to go into effect. Seaboard further urges that Appalachian has not alleged facts sufficient to indicate (a) that it is a competitor of Seaboard, or (b) that it would suffer any competitive injury from the proposed rates.

We do not find that Appalachian's petition is fatally defective for failing to allege, as Seaboard claims it does, that the retail rates of Seaboard's customers, Lynchburg Gas Company and Roanoke Gas Company, will be directly or immediately affected by the proposed tariff in a manner so as to lower the gas charges for space heating service in those cities. For the purposes of determining whether to permit Appalachian to intervene in the exercise of our discretion pursuant to Section 15 of the Natural Gas Act, we do not need to decide whether it is in a strict sense a "competitor" of Seaboard. However, in a similar competitive situation, the court held that retailers of oil were in direct competition with *both* the gas distributor and its supplier-pipeline company, the same Respondent as in this proceeding, Seaboard.[2] With respect to the cities of Lynchburg and Roanoke, Virginia, Appalachian competes for the space heating market with gas distributors who are supplied by Seaboard.

We conclude, therefore, that Appalachian has alleged facts to show that for the purposes of these proceedings it is a "competitor" of Seaboard. On the basis of the pleadings before us, Seaboard has not demonstrated either that a preliminary hearing upon Appalachian's intervention is warranted or that the petition for intervention should be denied.

The Commission finds:

Seaboard's motion for reconsideration sets forth no new facts or new principles of law which were either not fully considered by the Commission when it issued its order of August 26, 1965, or which now having been considered warrant any change or modification of said order.

The Commission orders:

Seaboard's motion for reconsideration filed on September 9, 1965, is hereby denied.

[2] *Virginia Petroleum Jobbers* v. *F.P.C.*, 259 F. 2d 921, 926 (CADC–1958).

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

ALABAMA POWER COMPANY, PROJECT NO. 2165

ORDER FIXING ANNUAL CHARGES FOR USE OF GOVERNMENT DAM

(Issued September 28, 1965)*

On September 12, 1957, 18 FPC 327, the Commission issued a license under the Federal Power Act for a period of 50 years, effective as of September 1, 1957, to

*See order issued November 26, 1965 dismissing application for rehearing, etc., 34 FPC 1370.

Alabama Power Company for the then proposed Project No. 2165 located within the State of Alabama. The project, which is now constructed, consists of: (1) the Lewis Smith Development on the Simpsey Fork of the Black Warrior River comprising principally a dam, a reservoir with power storage of 400,000 acre-feet, controlled flood storage of 293,000 acre-feet, and surcharge flood storage of 517,000 acre-feet, and a powerhouse having an installed capacity of 157,500 kw; and (2) the John Hollis Bankhead powerhouse development downstream on the Black Warrior River located at and affecting the U.S. John Hollis Bankhead Dam (U.S. Lock and Dam No. 17) with an installed capacity of 45,000 kw.

In addition to fixing the annual charges for the purpose of reimbursing the United States for the costs of administration of Part I of the Act, the license provides in subparagraph (iii) of Article 42 thereof for a determination of the amount of annual charges to be fixed for the purpose of recompensing the United States for the use by licensee of the John Hollis Bankhead Dam.

Pursuant to this provision of the license, the Commission staff prepared an analysis respecting Alabama Power Company's use of the John Hollis Bankhead Dam for power purposes. The staff has concluded as a result of this analysis that the annual charge to be paid by Alabama Power for its use of the Government Dam should be fixed at $92,000.

This figure was arrived at through a method of computation whereby the annual costs of the joint facilities[1] of the Government were allocated between the Government and the licensee in direct proportion to the net annual benefits which each derives from the use of the joint facilities. The Corps of Engineers agrees that the value of the net annual navigation benefits created by the project are equal to the annual costs of the lock, dam and land. The net annual benefits attributable to power were assumed to be equal to the cost that the Company would have to pay for the same amount of power if produced by a steam electric plant as an alternative source.

By letter of December 10, 1964, the Corps of Engineers commented that while the basic cost and benefits data relating to the Government dam are considered adequate for the present, modernization of the existing lock and spillway is being studied and the additional cost of such improvements could well change the amount of the annual charge in the future.

The Alabama Power Company, by letter of November 15, 1956, expressed the view that in determining annual charges for the use of the Government dam, consideration should be given to flood control, navigation, water supply, pollution abatement, and recreation benefits provided to the public by Alabama Power's upstream Lewis Smith Development. However, the grant to a licensee of the privilege of exploiting the hydroelectric potential of one of the nation's streams can only be justified on the theory of a resulting benefit to the public (See *Alabama Power Company* v. *F.P.C.*, 128 F. 2d 280, 288–89, (D.C. Cir., 1942) cited with approval in *California* v. *F.P.C.*, 345 F. 2d 917, (CA9–1966)). Thus the fact that the licensee's upstream use of the Black Warrior River may be beneficial to the public cannot be utilized as an offset to the statutory requirement that licensees pay for the use of government dams. See, *South Carolina Electric & Gas Company* v. *F.P.C.*, 338 F. 2d 898, 903–904 (4th Cir. 1964).

The Commission finds:

The annual charge for the purpose of recompensing the United States for the use by the licensee of the U.S. John Hollis Bankhead Dam in the amount of $92,000 is reasonable and proper.

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[1] The joint facilities of the John Hollis Bankhead project consist of the project land and the dam but do not include the locks.

The Commission orders:

(A) The license for Project No. 2165 is hereby amended, effective as of July 12, 1963, the date of commencement of commercial operation of Licensee's generating unit at the U.S. John Hollis Bankhead dam, by modifying subparagraph (iii) of Article 42 to read as follows:

(iii) The annual charge for the purpose of recompensing the United States for the use of the John Hollis Bankhead Dam shall be $92,000, which charge may be readjusted in the future pursuant to the provisions of Section 10(e) of the Federal Power Act.

(B) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license amendment. It shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

OPINION NO. 477

MIDWESTERN GAS TRANSMISSION COMPANY, DOCKET NOS. RP61–19 AND RP62–7; NATURAL GAS PIPELINE COMPANY OF AMERICA, DOCKET NO. RP63–6

OPINION AND ORDER DETERMINING RATES

(Issued September 28, 1965)*

Syllabus

1. Commission is not bound by *Atlantic Seaboard* as evidenced by its readiness to make substantial adjustments from straight *Seaboard* rates where warranted, particularly where such adjustments have been necessary to meet competitive circumstances. PP. 981, 982.
2. Until alternative methods of rate design are devised to overcome *Seaboard* infirmities, Commission will continue to look to that formula as at least a starting point while continuing to search for better method. P. 982.
3. While Coal Interest may have standing to participate in proceedings on rate design, mere fact that a particular rate may result in loss of a market to them does not in itself make rate invalid. P. 983.
4. Although Commission has no authority to order rate increases, it is empowered to determine appropriate differentials in rates and authorize pipeline to balance its revenues. P. 984.
5. Commission *concludes* no finding can be made here that Midwestern's existing rates are unjust, unreasonable, unduly discriminatory or preferential. P. 984.
6. No revision in Natural's rate design will be made here for reason that evidence adduced does not support a change at this time. P. 984.
7. In a proceeding under Section 5(a) of the Natural Gas Act, Commission *allows* pipelines to continue existing rates and rate design.

George R. Perrine, Harry S. Littman, Jack Werner and *Melvin Richter* for Midwestern Gas Transmission Company.

Clarence H. Ross, Charles C. McDugald and *William W. Brackett* for Natural Gas Pipeline Company of America.

Charles V. Shannon, Louis Flax and *Paul S. Davis* for Michigan Wisconsin Pipe Line Company.

John J. Melaniphy and *J. J. Danaher* for City of Chicago.

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*Rehearing denied by order issued November 16, 1965, 34 FPC 1327. Affirmed, *Fuels Research Council, Inc.* v. *F.P.C.*, 374 F. 2d 842 (CA7–1967).

Jerome J. McGrath, and *Thomas C. Williams* for Fuels Research Council, Inc., National Coal Association, United Mine Workers of America, Mid-West Coal Producers Institute, Inc., Upper Lake Docks Coal Bureau, Inc.

W. F. Spurrier for North Central Public Service Company.

Mark W. Putney for Iowa Power and Light Company.

A. R. Renquist for Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin).

Edward J. Hartman for Iowa-Illinois Gas and Electric Company.

Clarence H. Ross, Charles C. McDugald, William W. Brackett and *Richard Babcock* for The Peoples Gas Light and Coke Company.

Glen H. Bell for Wisconsin Southern Gas Company, Inc. and Wisconsin Fuel & Light Company.

Justin A. Stanley and *Robert A. Helman* for Northern Illinois Gas Company.

John F. Gaston for Iowa Electric Light and Power Company.

Robert S. Hunt and *James Van Vliet* for Illinois Power Company.

Joseph T. Morrow and *Edmund A. Schroer* for Northern Indiana Public Service Company.

Charles R. S. Anderson for Iowa Southern Utilities Company.

Barnabas F. Sears and *Hamilton K. Beebe* for Midwestern Coal Producers Institute.

Julius Meier and *Milton Grossman* for the Staff of the Federal Power Commission.

Before Commissioners: Joseph C. Swidler, Chairman; Charles R. Ross, David S. Black and Carl E. Bagge.

BAGGE, *Commissioner:*

These consolidated proceedings involve, at present, investigations by the Commission, pursuant to Section 5(a) of the Natural Gas Act, to determine whether the rates, charges and classifications of Midwestern Gas Transmission Company (Midwestern) for sales of natural gas from its systems are just and reasonable. Also under investigation herein are the rates of Natural Gas Pipeline Company of America (Natural) to determine whether its rate design is just and reasonable and not unduly discriminatory or preferential.

As initially constituted the proceedings included, in addition to the questions now before us, certain cost of service issues with respect to Midwestern. Determination of those issues was the subject of Opinion No. 444, 32 FPC 993, issued October 13, 1964. The matters there involved, except for remand of the question of the depreciation to be used as a deduction in computing the tax allowance,[1] were finally determined by an order issued December 30, 1964, 32 FPC 1548, approving a settlement proposal. As noted in Opinion No. 444, the examiner, in the interest of bringing the Midwestern cost of service issues to the Commission at the earliest possible date, did not prepare an initial decision on the rate design phase of the case. The rate design issue is presently before us by virtue of an order issued in these proceedings on April 21, 1965, 33 FPC 835, waiving an initial decision thereon and directing Chief Examiner Joseph Zwerdling to certify the record without an intermediate decision. Briefs addressed to the rate design issue have been filed by respondents, Midwestern and Natural, Peoples Gas Light and Coke Company (Peoples), Northern Illinois Gas Company (Northern Illinois), Northern Indiana Public Service Company (NIPSCO), Fuels Research Council, Inc., *et al.*[2] (Coal Interests), and the Commission's staff.

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[1] Hearings on the reserved depreciation issue commenced on July 13, 1965, and were concluded on September 10, 1965.

[2] Fuels Research Council, Inc., National Coal Association, Mid-West Coal Producers Institute, Inc., Upper Lake Docks Coal Bureau, Inc. and United Mine Workers of America.

Background of Proceedings

The original Midwestern certificate applications were adjudged in a comparative hearing in the proceedings *American Louisiana Pipe Line Company, et al.*, Docket No. G–2306, *et al.* In Opinion No. 316 issued October 31, 1958, 20 FPC 575, the Commission concluded:

> * * * we look with favor on the construction of large capacity pipeline facilities for serving the growing needs of this [Midwest] area. Particularly desirable is a well-founded project to serve the seemingly endless requirements of the Chicago market for both industrial and space-heating gas. (20 FPC at p. 585)

Nevertheless, for reasons fully set forth in that decision (*e.g.*, failure to show an adequate firm gas supply and failure to show service to industrial markets in the Chicago area which met the standards of the public convenience and necessity), the Commission denied the applications and established a procedure for the prompt filing of new applications designated to meet the objections raised.

Subsequently, Midwestern and Tennessee Gas Transmission Company (Tennessee), its parent company, filed a new application under Sections 7(c) and 7(e) of the Act for authorization to supply gas to the Chicago-Gary area of northern Illinois and northern Indiana. The certificates were granted by Opinion No. 320, issued May 12, 1959, 21 FPC 653. Under the authorization Tennessee sells and delivers gas to Midwestern near Portland, Tennessee, and Midwestern transports gas via its Southern System to Joliet, Illinois, where it sells the gas to three major distributors, Peoples, Northern Illinois, and NIPSCO. Delivery at Joliet is made to Chicago District Pipeline Company, a Peoples subsidiary, which transports the gas for the account of the various distributors.[3]

In granting the certificate it was necessary that a rate structure be established for sales to the distribution companies. Midwestern proposed a two-part contract demand rate with a monthly demand component of $4.00 per Mcf and a commodity component of 22 cents per Mcf at 14.73 psia. Despite the fact that Midwestern's suggested commodity charge of 22 cents was less than the commodity component of Tennessee's rate to Midwestern of 22.16 cents per Mcf (at 14.73 psia), the certificate was issued at a two-part rate with a $3.85 demand component and a 22-cent commodity component. The rate schedule embodying this commodity charge was accepted "without making a determination of what would constitute proper rate levels." Instead, both because the rate could become discriminatory under changed load factors of the distributors and in order to allow for a period of actual operating experience, it was decided that Midwestern's rate should be reconsidered at a later date. The Commission ordered that "within one month after the end of the first year of operation of its proposed project, Midwestern shall file a new rate schedule which shall contain either a two-part or straight rate and shall be satisfactory to the Commission." (21 FPC at p. 664) The Commission also provided for the scheduling of a Section 5(a) hearing to determine the justness and reasonableness of the rate so filed.

On December 14, 1960, Midwestern filed a statement and supporting data in purported compliance with Opinion No. 320. On February 13, 1961, 25 FPC 275, the Commission ordered institution of a Section 5(a) proceeding in Docket No. RP61–19 to determine whether Midwestern's rates for its Southern System were just and reasonable.

In Opinion No. 331, issued October 31, 1959, 22 FPC 775, the Commission authorized construction and operation of Midwestern's Northern System bringing

[3] Midwestern's Southern System competes principally with Natural.

Canadian gas to Marshfield, Wisconsin, where it is purchased by Michigan Wisconsin Pipe Line Company, Midwestern's largest Northern System customer. Midwestern also sells gas to other buyers in northern Minnesota and Wisconsin. The basic rate for contract demand service was then $4.75 demand and 25.3 cents commodity at 14.73 psia. As with the earlier certification, that order required Midwestern to file revised rate schedules after one year's operation so that the Commission could determine the propriety of the relative levels of Midwestern's demand and commodity components, including an initially permitted 14.4 percent deviation to demand from the *Atlantic Seaboard*[4] cost classification and allocation formula in its two-part rates and also including a lateral line charge imposed for service under one of the schedules.

On December 29, 1961, Midwestern proposed retaining its original rate schedules and filed supporting cost data. On May 28, 1962, 27 FPC 1041, the Commission ordered a Section 5(a) investigation of Midwestern's Northern System rates in Docket No. RP62–7. The two Midwestern investigations subsequently were consolidated.

By Opinion No. 367, issued October 25, 1962, 28 FPC 731, the Commission approved a settlement proposed by Natural which set its basic contract demand rate at a monthly demand component of $2.40 per Mcf and a commodity component of 20.6 cents per Mcf at 14.65 psia. The major reason for setting the commodity component at this level was that Midwestern's commodity component was only 20.642 cents per Mcf to Northern Illinois and 20.829 cents per Mcf to NIPSCO (both were 22 cents per Mcf at 14.73 psia); therefore, a higher rate would give Midwestern a competitive advantage in making sales to the distributors.[5] The Commission noted that it would reopen the question of Natural's rate design pursuant to its powers under Section 5(a) when it reconsidered Midwestern's rate design and stated, "It may be that review will lead us to order an increase in Midwestern's commodity rates, and thus relieve Natural from some of the competitive pressure which justifies the rate design in this settlement." (28 FPC at p. 735).

On February 29, 1963, 29 FPC 399, the Commission, to effectuate the intent of Opinion No. 367, ordered the present Section 5(a) investigation against Natural in Docket No. RP63–6 and consolidated it with the Midwestern dockets.

The Parties and Their Relationships

The Northern and Southern Systems of Midwestern, which are not interconnected at any point, have been described previously. Natural also has two systems. The older system brings Hugoton-Panhandle gas from Kansas, Oklahoma and Texas to the Chicago area where it is delivered, through the Chicago District Pipeline, to Peoples, Northern Illinois and NIPSCO. The newer Natural system, formerly Peoples Gulf Coast Natural Gas Pipeline Company, picks up gas in the Gulf Coast area of Texas and transports it north to Chicago, where it connects with Natural's other system. Natural also serves customers elsewhere in Illinois, Kansas, Nebraska, Missouri, Iowa and Wiconsin. Natural has been owned by Peoples since 1948.

Neither Midwestern nor Natural makes any significant nonjurisdictional sales. Midwestern makes no direct sales, and Natural makes only minor sales, none

[4] *Atlantic Seaboard Corp., et al.*, Opinion No. 225, 11 FPC 43, 52–57 (1952).

[5] The 20.6-cent Natural commodity component is approximately equal to the Midwestern Southern System 22-cent commodity component at equivalent Btu heating values, billings and pressures. The Southern System of Midwestern has a 75 percent minimum bill. On the Northern System the bill on firm sales to Michigan Wisconsin was raised from 75 to 87.5 percent by the order issued in Docket No. RP64–8, 32 FPC 1087, concurrently with Opinion No. 444; otherwise, there is no minimum bill on the system. Natural has no minimum bill applicable to the commodity charge.

in the Chicago area. Peoples and Northern Illinois are Natural's two largest customers; NIPSCO is Natural's fourth largest customer.

Peoples sells gas only within the City of Chicago. Northern Illinois sells and distributes gas throughout northern Illinois, outside the City of Chicago. NIPSCO is a combination gas and electric utility operating only in northwestern Indiana. The Coal Interests are associations of coal producers, distributors and companies which transport coal. Among them are members who allegedly market coal in the area served by Natural and Midwestern.[6] Gas and coal compete vigorously in the Chicago area for the industrial market.

Position of Parties

Numerous interventions were granted in the consolidated proceedings. The only parties actively participating in the rate design phase, in addition to the pipelines themselves and staff, were the three distribution customers and the Coal Interests. Only the Coal Interests have proposed a change in the existing rate design of Midwestern and Natural. They advocate the establishment of a straight, one-part rate for each of Midwestern's systems. It is apparent from the record, however, that the Coal Interests' primary, if not sole, concern is with the 22-cent commodity charge for service from Midwestern's Southern System in the supply of gas to the Chicago market area. They stated that they had no recommendations to offer with regard to the appropriate form or level of rates for Natural.

(A) *Coal Interests*—The basic challenge of the Coal Interests goes to the legality of Midwestern's two-part rate.[7] They allege that the commodity component of the rate expressly has been designed to foster and promote the sales for resale of large quantities of interruptible gas for boiler fuel and other industrial uses.[8] They argue that the commodity component, rather than being based upon the cost of the gas, is predicated upon and is designed to be below the price of coal in order to supplant coal in the industrial markets. The Coal Interests contend further that under the Natural Gas Act, the Commission may not take the existence of competition with other fuels into consideration in fixing a pipeline's rates and that by designing rates pegged at or below the price of coal the "laws against unfair competition" have been violated in that the existing rates foster an unfair advantage in competitive markets. They conclude that the only form of rate which is based upon costs and independent

[6] Although requested to do so during the hearings, the Coal Interests declined to disclose information concerning sales by the members of their associations. There is only the unsupported assertion of a Coal witness that members "market coal in the areas served by Natural and Midwestern." For the purposes of these proceedings the allegation has been accepted.

[7] During the course of the proceedings the examiner excluded testimony and exhibits offered by the Coal Interests relating to such matters as the conservation and end use of natural gas and the effect of pipeline sales and rates on coal as a competing fuel. The examiner concluded that these matters were not proper factors for consideration in a Section 5 rate proceeding. An appeal from the ruling was rejected by Commission order issued September 16, 1963, 30 FPC 698, without our passing on the merits and without prejudice to renewal of the appeal, if warranted, in exceptions to the initial decision. With the waiver of the intermediate decision the procedural step of filing exceptions has been eliminated. Any necessity for renewed consideration of this matter has since been negated, however, by virtue of a filing made by the Coal Interests on May 25, 1965, wherein they waive their objections to the exclusionary ruling in this case. As the subject has thus been mooted, no final ruling will be made herein, and the record stands without the informally proffered evidence and related testimony.

[8] The claim that pipeline and distributor fixed costs are spread over more units of gas, thereby lowering the amount of fixed costs per Mcf which firm users must pay, is both disputed as a fact and, even if accepted, is held to constitute no justification for other than an equal charging of all costs to all consumers.

of the price of competitive fuels is a single-part rate representing the average cost of service per unit.

A witness for the Coal Interests testified that, in his opinion, the commodity component of the rates established in the Midwestern Southern System certificate case and in the last Natural rate case were artifically pegged to the price of coal in the Chicago area interruptible industrial market. He further testified that the trend in gas pricing is to shift more and more of the fixed costs to the small users so that the commodity rate can be depressed to underprice competitive fuels. Citing *Alabama-Tennessee*, Opinion No. 226, as precedent for ordering a one-part rate by the Commission,[9] the witness proposed that Midwestern be required to sell to the Southern System distributors on a one-part rate since "Midwestern sells under only one class of service and all its customers have similar load factors." Such a flat rate, calculated by dividing staff's computed revenue requirement by the estimated test year sales volume, aggregated 33.5 cents per Mcf. The witness stated that he would do the same for Midwestern's Northern System. As to Natural, he assumed that whatever rate is "good" for one company is "good" for the other.

Another witness for the Coal Interests testified that peak-season capacity can be increased with a substantially lower investment in underground storage than it can by increasing pipeline flow capacity. Disagreeing with the the distributors, the witness contended that a one-part rate would not discourage the development and use of underground storage. With the gas valued at its actual cost, he claimed, marginal dump sales of gas would be discouraged and its retention encouraged for the more remunerative sales to firm gas consumers.

Additional evidence submitted by the Coal Interests concerned the generally increasing quantities of gas (about 41 million Mcf annually) sold by the distributors on the interruptible electric utility boiler fuel market. The non-utility industrial interruptible sales by Peoples and NIPSCO (Northern Illinois makes none) were shown as having increased substantially in recent years to a total in excess of 43 million Mcf in 1961, the last year for which figures were available. The Coal Interests also pointed out that the interruptible boiler fuel sales by the distributors, while substantial in absolute quantities, account for only a small percentage of their total gross revenue and that the revenue contributions from these sales have not kept pace over the years with the unit revenues derived from firm sales.

(B) *Staff*—(1) *On Midwestern*—Staff argues that the conventional contract-demand form of rate is appropriate for Midwestern and that the existing commodity level should be retained.[10] They noted that, whereas the commodity rate on sales by Tennessee to Midwestern was in excess of 22 cents at the time the Southern System was certificated, as of March, 1963, Midwestern's purchases had a commodity cost of 21.08 cents.[11] Staff submitted evidence that (1) while the combined peak space-heating load of the distributors had tripled in the years from 1955–56 to 1960–61 and the annual space-heating load had increased 2½

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[9] 11 FPC 75, affirmed, *Alabama-Tennessee Natural Gas Co. v. F.P.C.*, 203 F. 2d 494 (CA3–1953). As pointed out by Midwestern, a straight volumetric allocation was adopted for Alabama-Tennessee Natural Gas Co. because of a wide differential between system capacity and peak demand. Even so, the rate lasted only slightly over one year, May 1, 1952 to June 25, 1953. It was replaced with a two-part rate by Opinion No. 254, 12 FPC 161. See also conversion from one-part to two-part rate, over objection of Coal Interests, in *Michigan Wisconsin Pipe Line Co.*, Docket No. G–17512, 22 FPC 603.

[10] The Public Service Commission of Wisconsin stated by letter that it supported staff's position on rates.

[11] This has now been reduced to below 21 cents per Mcf (*infra*, p. 983).

times, the annual space-heating load factor was only 22 percent; (2) the combined interruptible sales of the distributors in 1961 were only 10 percent over 1955 sales; (3) Peoples makes no utility boiler fuel sales, Northern's are declining and only NIPSCO had greater interruptible sales in 1961 than in 1955; (4) the distributors had increased their storage capacity by 300 percent in the six years. Based on the foregoing, staff concluded that the industrial valley-filling sales are important to the distributors and that, since their sales growth had not been great under the 22-cent rate, it is not advisable to disturb that rate at present.

Staff's argument is primarily a reply to the Coal Interests' contentions. They disputed the Coal Interests' claim that a two-part wholesale rate, which allows the distributors to employ an incremental pricing approach to the making of industrial sales, is a practice contrary to the policy of the antitrust laws. As Staff stated, if the Commission has valid reasons for employing the demand and commodity form unrelated to the status of gas in the competitive struggle with other fuels, we are not obligated to desist merely because use of the form has the effect of lowering the distributors' incremental costs. Staff noted that the usual differences in service conditions between firm and interruptible customers negate any valid contention of discrimination. They also noted that a necessary element of an antitrust violation—that the price discrimination must be calculated to have a deleterious effect on competition and must be for the predatory purpose of driving competitors out of business—is missing in the industrial gas sales since, as the evidence shows, the distributors have a fully independent purpose for such sales, namely valley-filling and improving their system load factors. Moreover, in actual result over the years, the existing commodity rate has occasioned only a moderate increase in industrial sales, and there are still many markets in which coal underbids gas in the distributors' service areas.

On the lateral line issue staff recommends that we direct the elimination of the 25-cent per Mcf added charge imposed in the demand component of the CRL–2 rate schedule on sales from the Northern System as compensation to Midwestern for the cost of constructing laterals to furnish city-gate service to small customers.[12] While admitting that the $94,719 cost of service for the laterals exceeds the revenues received from the added demand charge, they base their argument on the grounds that, as a matter of principle, they oppose segregating jurisdictional pipeline facilities and that it would simplify the rate structure.

(2) *On Natural*—By letter dated April 11, 1963, addressed to all parties, staff advised that they would not advocate any change in Natural's existing rate design and would offer no evidence in these proceedings on that company.

(C) *Midwestern*—Midwestern opposed the Coal Interests' recommendation of a one-part 33.5-cent rate on the grounds that (1) it would price a large part of Midwestern's gas out of the market because the distributors now sell to industrials at less than 33.5 cents; (2) if the distributors are priced out of the interruptible market, Midwestern's load factor will decline from its present 88 percent, resulting in lower revenues and possibly a need for a rate increase which would cause further sales losses and trigger a still further rate increase, etc.; (3) its valley gas sales are obviously important to the distributors.

Midwestern contends that by its actual operations it has shown that its existing rates and rate structure are not unjust or unreasonable as applied to its customers and that, therefore, there is no valid basis for change. Midwestern's arguments in reply to the Coal Interests are that some fixed costs are recovered

[12] This issue was reserved in the certification decision. 22 FPC at p. 786, 802.

under the commodity charge, that pipeline capacity for off-peak sales is available free of fixed costs, and that a competing fuel interest is not a "person" who must be protected under the Act.

(D) *Natural*—No rate design evidence was adduced by Natural. It noted that its present 20.6-cent commodity charge makes a substantial contribution toward the fixed costs on its system. In most respects its argument duplicates the opposition by the other parties on the position of the Coal Interests. Natural concluded that the Coal Interests' proposal for rate regulation "does not have support in reason, economic theory, Commission policy or ruling law."

(E) *Distributors' Position*—The positions taken and the evidence adduced by the distribution companies can be summarized briefly. NIPSCO showed that a one-part 33.5-cent rate would have resulted in losses of at least 34,344,486 Mcf of interruptible sales in 1962. The sales returned gross revenues of $9.6 million and a net of $2 million;[13] of this amount 9,433,100 Mcf was sold to Commonwealth Edison Company at 23.6 cents for a profit of $142,054.36 (1.51 cents per Mcf). The volume of NIPSCO's interruptible sales for 1963 were estimated to be just short of 40 million Mcf. Its space-heating load, which has a load factor of only 25 percent, is growing at the rate of 20,000 new customers annually, creating an ever-increasing valley during the non-heating season. NIPSCO also showed that its present load factors of 94 percent and 94.5 percent from Midwestern and Natural, respectively, for firm purchases would be reduced to 77.5 percent and 53.7 percent, respectively,[14] under the straight rate proposal.

Northern Illinois and Peoples contended that an increase in the commodity rate can only result in decreasing their storage activities which are of benefit to all their customers, firm and interruptible. Peoples pointed out that its underground storage capacity has increased from zero in 1952 to 30 percent of peak-day contract amounts in 1962 due to the increase in space-heating customers and that its valley gas sales, both in absolute quantity and as a percentage of total sales, decreased in the 10-year period, the latter from 43 percent to 24 percent, under the existing rates of its suppliers. Peoples argues that any increase in the Midwestern and Natural commodity charges can only further injure the competitive position of gas in the Chicago market.

The distributors' main argument for retention of the existing commodity charges is that the local regulatory commissions use "incremental cost" (commodity component plus local transportation costs plus state and local taxes) as the bottom level for their off-peak sales so that with the present close competitive balance between gas and coal, any increase in the commodity rate will drive them out of this market. Despite the small unit revenues from such sales, they are not, they show, a losing proposition and are important in maintaining their load factors. Further, they argue that the present rate structures have induced them to develop and increase their underground storage activities—notably the Herscher project. This incentive, they claim, would be diminished in proportion to a leveling between demand and commodity and would be absolutely eliminated with the adoption of a one-part rate. They contend that prevention of their interruptible sales would not help any class of gas consumers and, to the degree that these sales absorb some fixed costs, would harm every class. They also argue that, to the extent that a rate design changes would occasion sales losses, the need to secure the same revenues would be met by increased charges imposed on a smaller number of customers.

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[13] Gross revenues less cost of gas purchased, transportation costs and Indiana Gross Tax.

[14] By contract NIPSCO must maintain a 75 percent load factor with Midwestern.

Current Rate Structures[15]

Midwestern—Most, if not all, of the rates referred to in the record, both as then existing and as proposed by staff on the basis of their recommended cost of service, have been rendered obsolete by the changes in the cost of service and rates ordered by Opinion No. 444 and the December 30, 1964, settlement. In that Opinion we adopted the examiner's conclusion to reflect the entire rate reduction stemming from the excess revenues ($2,979,065 as finally determined) in the demand charge, retaining the existing commodity charges on both the Southern and Northern Systems pending determination of the rate design issue.[16] The effective basic rate (since January 1, 1965) for contract demand service, as approved in the settlement and subsequently adjusted, is: for the Southern System, $3.03 demand and 22 cents commodity; for the Northern System, $3.94 demand and 24.92 cents commodity.

Natural—Since the settlement approved October 25, 1962, in Opinion No. 367, *supra*, the demand component of Natural's rates has been lowered to reflect the Federal income tax changes. The present basic rate is $2.28 demand, 20.6 cents commodity. The liberalized depreciation issue reserved therein was the subject of Opinion No. 456 issued March 18, 1965, 33 FPC 574, and was before the Commission until recently on its reconsideration of that Opinion. By Opinion No. 456–A issued June 23, 1965, 33 FPC 1277, we required new rate filings within a stated period after our decision in *Alabama-Tennessee*, Opinion No. 417, 31 FPC 208, becomes final. Whatever rate reductions may be effected as a result of that decision have not yet been determined. Recently, by order issued April 2, 1965,[17] a new Section 5(a) investigation was initiated against Natural which also may result in a rate reduction.

Conclusions by Commission on Rate Design

Since the rate design to be established as a result of these Section 5(a) proceedings will have application prospectively only, it has been necessary to adjust the cost of service contained in the exhibit material and in the appendices to Opinion No. 444 to reflect properly the Commission's decision on the Midwestern cost of service issues and the settlement adjustments effected since that time. The revised cost of service is shown in Appendix A hereto. A revised cost of service for Natural in Docket No. RP61–8, adjusted to reflect the recent Federal income tax reductions, is also included as Appendix D. As can be seen, the total costs for each company have been subclassified (Appendices B and E) to demand and commodity in accordance with the *Atlantic Seaboard* formula. We recognize fully the infirmities in the formula and, as indicated by us on a number of recent occasions, we do not consider ourselves bound thereto, as evidenced by our

[15] While not a part of the formal record, these are matters of which we may take administrative notice.

[16] Ordering paragraph (F) of the Opinion reserved the question of whether Midwestern should be required to file substitute tariff sheets as of January 1, 1965, reflecting the reduction in the Federal income tax rate to 48 percent on that date. The reduction and the new rate filings were agreed to in the settlement, and the appropriate filings were made and have gone into effect. For the Northern System the reduction arising from the lowered Federal income tax rate was apportioned by Commission order 50 percent to demand and 50 percent to commodity. The Southern System reduction was carried through completely in demand. The current rates also reflect a lessening in Southern System purchased gas costs stemming from recent rate reductions by Tennessee Gas Transmission Company, which was also required by the settlement.

[17] "Order Instituting Investigation and Requiring Reporting of Cost and Revenue Data." *Natural Gas Pipeline Company of America*, Docket No. RP65–50, 33 FPC 666. Further orders in the proceeding were issued on April 30, June 3 and July 19, 1965, 33 FPC 929, 1204 and 34 FPC 72.

readiness to make substantial adjustments from straight *Seaboard* rates where warranted. This is particularly so where such adjustments have been necessary to meet competitive circumstances. See *American Louisiana Pipe Line Co.*, Opinion No. 387, 29 FPC 932; *United Gas Pipe Line Co.*, Opinion No. 428, 31 FPC 1180; *United Fuel Gas Co., et al.*, Opinion No. 430, 31 FPC 1342. We have also stated, however, that until alternative methods of rate design are devised to overcome the *Seaboard* infirmities, we will continue to look to the formula as at least a starting point "while we continue to search for a better method." [18] Appendix B shows Midwestern's basic demand-commodity rates compared to the cost of service approved in the December 1964 settlement order. As set out above the current rate for the Northern System, taking into account the decrease stemming from the reduction in the Federal tax rate to 48 percent, is $3.94 demand and 24.92 cents commodity; [19] the deviation to demand from straight *Atlantic Seaboard* costing is only five percent. For the Southern System the approved effective rate is $3.03 demand and 22 cents commodity; [20] the deviation to demand in this instance amounts to 13 percent. The rates on Midwestern's Northern and Southern Systems, the billing determinants and the revenues derived therefrom are in Appendix C.

Comparable cost and rate calculations for Natural are shown in Appendices D and E. The 1962 settlement rates resulted in 27 percent more costs being recovered by the demand charge than would have been the case under *Seaboard*. This is now down to 25 percent due to reductions in the demand component totaling 12 cents per Mcf to reflect the Federal tax reductions.

It appears that, except for the minor issue of the lateral line charge, the entire conflict on rate design relates to the efforts by the Coal Interests to secure an increase in Midwestern's commodity component in order to displace natural gas on interruptible utility and industrial boiler fuel sales by the three distributors in the Chicago area. The Coal Interests contend that the Commission should limit its activities under Section 5(a) "by determining a just and reasonable rate base, arriving at an average price and leaving the regulation of prices beyond the city gate where it belongs, in the local commissions." While the distributors' rates are regulated by the Illinois and Indiana Commissions, the commodity charges of Midwestern and Natural are the responsibility of this Commission. They are important for the reason that the State commissions apply a floor on industrial resale rates at the commodity cost of the gas plus incremental (local out-of-pocket) charges incurred in making deliveries. Thus, an increase ordered in Midwestern's and Natural's commodity components could be expected to be ultimately reflected in increases ordered by the State commissions in the distributors' rates.

Both Midwestern and its customers are satisfied with its current rate structure. The staff finds that the rates are just and reasonable and in the public interest. A competitive balance exists in the Chicago industrial markets between Coal and Natural Gas. Much of the credit for this balance is attributable to the Coal Interests success within recent years in reducing its costs by innovations in production and transportation methods; however, the record shows that coal may be approaching the point where further cost reduction is not possible. If it is to increase its share of the market, it must force an upward revision of the price of gas. The price balance is indeed precarious, particularly as to utility

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[18] *United Fuel Gas Co., et al.*, Opinion No. 430, 31 FPC 1342, 1348, modified on rehearing, Opinion No. 430–A, 32 FPC 1106.

[19] Filed February 19, 1965, accepted March 12, 1965, to be effective January 1, 1965.

[20] Filed January 22, 1965, accepted March 3, 1965, to be effective Jnauary 1, 1965.

boiler fuel. These gas sales can be diverted almost wholly to coal with the slightest increase in the gas commodity component.

In the *United Fuel* decision, *supra*, we indicated our readiness to receive and review alternative methods of rate design to both overcome the *Seaboard* infirmaties and to give recognition to known industry changes. The Coal Interests' argument in these proceedings for the imposition of a one-part rate (which is, after all, the maximum possible increase in the commodity charge) does not eliminate infirmaties. It creates them. Whatever justification existed for the Commission's allowance of an option to file a straight rate at the time of certification of Midwestern's Southern System has been eliminated by the changed load factors of the distributors. It seems likely that had Midwestern initially elected a one-part rate, ample justification would now exist for ordering a conversion to two-part rates closely approximating, if indeed not equal to, those currently charged.

Insofar as the Coal Interests' claim of "undue disadvantage" from the low commodity rate in violation of Section 4(b) is concerned, staff maintained that sellers of competing fuels are not within the class of "persons" protected by that Section. Since that time the position of the Coal Interests in proceedings of this nature has been thoroughly considered by us. Our conclusions are set forth in *United Fuel*, Opinion No. 430, 31 FPC at pp. 1356–57, that while the Coal interests may have standing to participate in proceedings on rate design, the mere fact that a particular rate may result in the loss of a market to them does not in itself make the rate invalid. Those findings are decisive in this case. The Coal Interests' attempt to distinguish the decision in *F.P.C.* v. *Hope Natural Gas Co.*, 320 U.S. 591, and *Alston Coal Co.* v. *F.P.C.*, 137 F. 2d 740, as "rate base" cases is without merit.

At the present time Tennessee's commodity charge to Midwestern at Portland is 20.84 cents per Mcf at 15.025 psia [21] or 20.43 cents at 14.73 psia. With incremental costs to Midwestern of about 0.2 to 0.4 cent per Mcf, there is approximately one cent per Mcf going toward fixed costs on the Southern System from the commodity charge. Even though this contribution is small it does represent the absorption of that much fixed system costs which would otherwise be borne by firm sales. Nevertheless, if this were the only consideration, we would have serious doubts as to its adequacy. It is not determinative herein for at least two reasons. First, it represents a significant improvement over the situation prevailing at the time of certification of the Southern System when the commodity charge to Midwestern actually exceeded the commodity resale rate. Second, the sales by Midwestern should be viewed within the framework of economic reality. Midwestern is a subsidiary of Tennessee. As such its sales also serve to contribute to the coverage of fixed costs of its parent in supplying the gas for the Southern System. Since Tennessee's own rates are established on almost a straight *Atlantic Seaboard* costs classification,[22] the difference between the price which Tennessee pays for gas in the field, approximately 18.7 cents per Mcf as shown in the record, and the 22-cent Midwestern commodity charge together constitute a substantial contribution to fixed pipeline costs of both companies. To this extent, any loss in sales to the distributors brought on by an increase in the Midwestern commodity charge could result in increased charges to firm consumers not only in the Chicago area but also downstream as well.

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[21] Tennessee Gas Transmission Co., FPC Gas Tariff, Eighth Revised Volume No. 1, Eighth Revised Sheet No. 8, effective January 1, 1965.

[22] *Tennessee Gas Transmission Company*, 27 FPC 202, 207 (1962).

The distributors, notably Peoples, go to great lengths in attempting to establish the claim that, under the Section 5(a) provision prohibiting the ordering of a rate increase, the commodity charges of Midwestern and Natural cannot be increased in these proceedings. This is the same argument made in the *United* rate case, Docket No. RP63–1, and rejected in Opinion No. 428, 31 FPC at p. 1201. As there stated, while we have no authority to order rate increases, we are empowered to determine appropriate differentials in rates and to authorize the pipeline company "to balance its revenues," citing *Interstate Power Co.* v. *F.P.C.*, 236 F. 2d 372 (CA8), cert. denied 352 U.S. 967.

Midwestern and Michigan Wisconsin Pipe Line Company, the largest customer on the Northern System, oppose staff's suggestion for elimination of the lateral line charge in the CRL–2 schedule. No customer paying the charge has complained in these proceedings. With the cost of service related to the laterals exceeding the revenues received from the additional charge, Midwestern's other customers are already contributing to the cost of lateral line service to the CRL–2 customers. Elimination of the charge would shift $79,000 in costs to other Northern System customers, of which $76,000 would be borne by Michigan Wisconsin. Recently, in Opinion No. 471,[22] we had occasion to consider the lateral line policy of Michigan Wisconsin. We there concluded that a rulemaking proceeding was necessary in regard to the lateral line policies of all natural-gas pipeline companies and stated our intent to initiate such a proceeding. Since that proceeding is pending, we believe that no action should be taken at this time to require modification or elimination of the charge from Midwestern's tariff.

After due consideration of the evidence in these proceedings it is our opinion that a finding cannot be made that the existing rates of Midwestern are unjust, unreasonable, unduly discriminatory or preferential; however, this finding should not be construed as a long-term approval of the rates or rate structure. The contribution toward Midwestern's fixed charges from the commodity component is barely more than marginal and is far from completely satisfactory. We expect that in the future Midwestern will be able to reflect reductions in costs or increased revenues in improved contributions of its commodity charge to the operation of the Southern System. With this in mind, we shall continue to review the changes in Midwestern's costs and revenues reported to us.

As to Natural, no revision in its rate design will be made herein for the reason that the evidence adduced does not support a change at this time. Natural's commodity charge returns a substantial amount, aproximately 6 cents per Mcf, toward the coverage of fixed costs. The issue of its commodity rate involved in Opinion No. 367, 28 FPC 731, related solely to the large deviation from *Seaboard* levels required to maintain a competitive balance with Midwestern if the latter was not to be in a position to destroy Natural's industrial market to the detriment of its other customers. We consolidated the Natural docket into this proceeding so that its commodity rate could be reconsidered in the event that Midwestern's was lower. Since we are not changing Midwestern's commodity rate and continue to adhere to our previous determination that the commodity rates of the two competing pipelines should, if possible, be kept in competitive balance, we shall confirm Natural's existing rates subject to the proceedings recently instituted in Docket No. RP65–50.

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[22] *Michigan Wisconsin Pipe Line Company*, Docket No. RP60–9, issued August 30, 1965, 34 FPC 621.

The Commission further finds:

(1) Midwestern and Natural are "natural-gas companies" under the Natural Gas Act, and their sales in interstate commerce of natural gas for resale involved in these proceedings are subject to the jurisdiction of the Commission.

(2) Midwestern's just and reasonable rates in Docket Nos. RP61–19 and RP62–7 from and after the date of this Opinion and Order, subject to the adjustment set forth in paragraph (A) below and until changed by further order of the Commission, are as follows:

Rate schedule	Demand charge	Commodity charge
		Cents
Northern system:		
CD-2	$3.94	24.92
CR-2	3.94	24.92
CRL-2	4.19	24.92
SR-2		57.30
I-2		24.92
Southern system:		
CDX-1	3.03	22.00
CD-1	3.03	22.00
SR-1		46.90
SI-1		26.98

(3) Natural's just and reasonable rates in Docket No. RP63–6 from and after the date of this Opinion and Order, subject to the adjustment set forth in paragraph (B) below and until changed by further order of the Commission, are as follows:

Rate schedule	Demand charge	Commodity charge
		Cents
CD-1	$2.28	20.60
CD-2	2.20	20.60
G-1		35.59
G-2		35.07
PL-1	2.28	20.60
I-1		20.60
I-2		25.0

The Commission orders:

(A) Subject to the requirements of the order accompanying Opinion No. 444 and the Order Approving Proposed Settlement issued December 30, 1964, the proceedings in Docket Nos. RP61–19 and RP62–7 are hereby terminated, *provided*, however, that the depreciation issue remanded to the examiner for hearing by ordering paragraph (D) of Opinion No. 444 shall not be terminated but shall proceed to decision in accordance with the order issued in said proceedings on April 21, 1965. The rates herein fixed are subject to change upon further order of the Commission to reflect the Commission's final disposition of this issue.

(B) Subject to the requirements of the orders accompanying Opinion Nos. 367, 456 and 456–A, the proceedings in Docket No. RP63–6 are hereby terminated. The rates herein fixed are subject to change upon further order of the Commission in any proceeding hereafter instituted or now pending against Natural, including but not limited to the proceedings in Docket No. RP65–50.

(C) All rulings by the Presiding Examiner in these proceedings, except as otherwise determined by the Commission, are hereby approved.

APPENDIX A

MIDWESTERN GAS TRANSMISSION CO.

COST OF SERVICE AND CLASSIFICATION OF COSTS—RATES EFFECTIVE JAN. 1, 1965

	Total [1]	Cost classification [2]	
		Fixed	Variable
Northern system:			
Operating expenses:			
Other gas supply expenses	$16,540,047	$5,106,000	$11,434,047
Transmission expenses	761,964	580,831	181,133
Administrative and general expenses	562,071	562,071	
Total operating expenses	17,864,082	6,248,902	11,615,180
Depreciation	1,515,759	1,515,759	
Amortization	21,898	21,898	
Federal income tax	1,202,764	1,202,764	
State income tax	106,093	106,093	
Other taxes	923,936	923,936	
Other gas revenues (credit)	(6,600)	(6,600)	
Return at 6.5 percent	2,773,381	2,773,381	
Subtotal Northern system	24,401,313	12,786,133	11,615,180
Southern system:			
Operating expenses:			
Other gas supply expenses	35,326,448	8,859,767	26,466,681
Transmission expenses	892,908	618,122	274,786
Administrative and general expenses	615,822	615,822	
Total operating expenses	36,835,178	10,093,711	26,741,467
Depreciation	1,526,295	1,526,295	
Amortization	22,101	22,101	
Federal income tax	1,094,919	1,094,919	
State income tax	20,649	20,649	
Other taxes	389,457	389,457	
Other gas revenues (credit)	(4,338)	(4,338)	
Return at 6.5 percent	2,699,649	2,699,649	
Subtotal Southern system	42,583,910	15,842,443	26,741,467
Total cost of service	66,985,223	28,628,576	38,356,647

[1] Settlement costs reflected by rates filed in compliance with Commission order of Dec. 30, 1964.
[2] Any cost which would have been classified 100 percent to commodity under *Seaboard* has been considered "variable." All other costs are classified as "fixed."

APPENDIX B

MIDWESTERN GAS TRANSMISSION CO.

FROM ATLANTIC SEABOARD FORMULA CALCULATION OF RATE DEVIATION

	Total	Classified cost of service [1]	
		Demand	Commodity
Northern system: Settlement cost of service	$24,401,313	$8,894,002	$15,507,311

SETTLEMENT

	Rates [2]	Billing units
Demand	$3.94	2,339,782
Commodity	24.92 cents	60,527,841

$$\text{Deviation to demand} = \frac{\$24,401,313 - (24.92¢ \times 60,527,841)}{\$8,894,002} = 1.048 \text{ or } 5\% \text{ deviation}$$

	Total	Classified cost of service [1]	
		Demand	Commodity
Southern system: Settlement cost of service	$42,583,910	$12,885,912	$29,697,998

SETTLEMENT

	Rates [2]	Billing uni
Demand	$3.03	4,800,000
Commodity	22.0 cents	127,552,500

$$\text{Deviation to demand} = \frac{\$42,583,910 - (22.0¢ \times 127,552,500)}{\$12,885,912} = 1.127 \text{ or } 13\% \text{ deviation}$$

[1] Costs classified in accordance with *Atlantic Seaboard* decision.
[2] Rates effective Jan. 1, 1965.

APPENDIX C

MIDWESTERN GAS TRANSMISSION CO.

RATES EFFECTIVE JAN. 1, 1965 AND REVENUES RESULTING THEREFROM

Rate schedules	Billing determinants		Rates		Revenues	Cost of service
	Demand	Commodity	Demand	Commodity		
Northern system:				*Cents*		
SR-2	20,364	247,767		[1] 57.30	$141,970	
CR-2	51,058	750,470	$3.94	24.92	388,186	
CD-2	1,896,000	53,443,500	3.94	24.92	20,788,360	
I-2		290,856		24.92	72,481	
CRL-2	372,360	5,795,248	4.19	24.92	3,004,364	
Total Northern system	2,339,782	60,527,841			24,395,361	$24,401,313
Southern system:						
CDX-1	3,600,000	95,569,500	3.03	22.0	31,933,290	
CD-1	1,200,000	31,983,000	3.03	22.0	10,672,260	
SR-1 [4]				[2] 46.90		
SI-1 [4]				[3] 26.98		
Total Southern system	4,800,000	127,552,500			42,605,550	42,583,910
Total					67,000,911	66,985,223

[1] Reflects CD-2 rate level at 40 percent load factor.
[2] Reflects CDX-1 and CD-1 rate level at 40 percent load factor.
[3] Reflects CDX-1 and CD-1 rate level at 200 percent load factor.
[4] No sales were made during the test year under these rate schedules. Rates are designed therefor, since sales are now being made. By letter dated June 28, 1963, the Commission accepted SR-1 for filing as an initial rate schedule, but conditioned acceptance to require Midwestern to revise rate to level of CD-1 rate in these proceedings at 40 percent load factor.

APPENDIX D

NATURAL GAS PIPELINE CO. OF AMERICA

COST OF SERVICE AND CLASSIFICATION OF COSTS—RATES EFFECTIVE JAN. 1, 1965

Costs per Opinion No. 367	Total	Cost classification [1]	
		Fixed	Variable
Operating expenses	$14,977,102	$7,422,705	$7,534,397
Other gas supply:			
Purchased gas	59,053,747		59,053,747
Purchased gas expenses	172,832		172,832
Gas used in utility operations (credit)	(3,001,297)		(3,001,297)
Administration and general expense	6,330,940	5,388,263	942,677
Customer accounts and sales	101,291	86,209	15,082
Exploration and development	18,097		18,097
Total operating expenses	77,652,712	12,917,177	64,735,535
Depreciation and depletion	17,115,707	16,061,641	1,054,066
Taxes—Other than income	6,090,955	4,754,208	1,336,747
Federal income tax	14,007,167	13,133,587	873,580
State income tax	144,679	135,642	9,037
Return at 6.12 percent	23,676,299	21,945,358	1,730,941
Other revenues (credit)	(1,762,696)	(183,517)	(1,489,179)
Total cost of service	137,014,823	68,764,096	68,250,727
Federal income tax reductions [2]	(2,140,736)	(2,140,736)	
Total adjusted cost of service	134,874,087	66,623,360	68,250,727

[1] All costs functionalized as "Production", "Products extraction" and "Production advances" classified as "Variable". Any transmission expense which would have been classified 100 percent to commodity under *Seaboard* has been considered "variable." All other costs are classified as "fixed."
[2] Voluntary reductions effective Jan. 1, 1964 and Jan. 1, 1965.

APPENDIX E

NATURAL GAS PIPELINE COMPANY OF AMERICA

CALCULATION OF RATE DEVIATION FROM ATLANTIC SEABOARD FORMULA

	Total	Classified cost of service [1]	
		Demand	Commodity
Settlement cost of service	$137,014,823	$33,641,384	$103,373,439

Billing units:
Demand 17,839,464
Commodity 457,293,765
Commodity Rate ..... 20.60¢ [2]

$$\text{Demand rate} = \frac{\$137,014,823 - (20.6¢ \times 457,293,765)}{17,839,464 \text{ Mcf}} = \frac{\$42,812,307}{17,839,464} = \$2.40\ [3]$$

$$\text{Deviation to demand} = \frac{\$42,812,307}{\$33,641,384} = 1.27, \text{ or } 27\% \text{ deviation}$$

Present rates: [3]
Demand $2.28
Commodity ..... 20.60¢

$$\text{Demand rate} = \frac{\$42,812,307 - (12.0¢ \times 17,839,464)}{17,839,464 \text{ Mcf}} = \frac{\$40,671,571}{17,839,464} = \$2.28$$

$$\text{Deviation to demand} = \frac{\$40,671,571}{\$33,641,384 - \frac{1}{2}(\$2,140,736)} = 1.25, \text{ or } 25\% \text{ deviation}$$

[1] Costs classified in accordance with *Atlantic Seaboard* decision.
[2] Effective Nov. 1, 1962.
[3] Effective Jan. 1, 1965. Demand rate reduced 6 cents effective Jan. 1, 1964 and 6 cents effective Jan. 1, 1965 due to Federal income tax reductions.

APPENDIX F

MIDWESTERN GAS TRANSMISSION CO., DOCKET NOS. RP61-19, RP62-7; NATURAL GAS PIPELINE CO. OF AMERICA, DOCKET NO. RP63-6

	Commodity billing units—Mcf	Present commodity revenues	Variable costs	Fixed costs recovered in commodity rates	
				Total	Unit (cents per Mcf)
	(1)	(2)	(3)	(4) (col. 2—col. 3)	(5) (col. 4÷col. 1)
Midwestern Gas Transmission Co.:					
Northern system	60,527,841	$15,083,538	$11,615,180	$3,468,358	5.73
Southern system	127,552,500	28,061,550	26,741,467	1,320,083	1.03
Natural Gas Pipeline Co. of America	457,293,765	94,202,516	68,250,727	25,951,789	5.68

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

FLORIDA POWER & LIGHT COMPANY, DOCKET NO. E-7210

ORDER AUTHORIZING INTERVENTION ON A LIMITED BASIS AND OUT OF TIME

(Issued September 29, 1965)

Pursuant to authority granted herein, the City of Clewiston, Florida (Clewiston), may participate hereafter as an intervenor in the above-entitled proceeding on condition that the City accepts this proceeding and record as presently constituted. By order issued February 26, 1965, 33 FPC 328, the Commission instituted this hearing on its own motion to determine the "public utility" status of Florida Power & Light Company (FP&L) as defined in Section 201 of the Federal Power Act. Hearing sessions convened initially April 12, 1965. They are currently in progress before a trial examiner of the Commission.

Asserted facts and interests set forth in Clewiston's petition to intervene, filed September 7, 1965 (out of time),[1] bear upon the regulatory jurisdictional questions raised by the Commission's February 26, 1965 order. Clewiston alleges FP&L to be a public utility within the meaning of the Federal Power Act; charges the Company with violations of the Act and the Commission's Regulations thereunder; and states that the Commission's determination of the jurisdictional questions in the above-entitled proceeding alternatively, may foreclose or constitute jurisdictional prerequisites to certain substantive regulatory relief which the City seeks in a related docket from FP&L as a public utility.

Concurrently, with its petition to intervene in this proceeding, Clewiston on September 7, 1965, filed an "Application For Interconnection and Complaint Against Unlawful Actions", *City of Clewiston, Florida* v. *Florida Power & Light Company*, Docket No. E-7243. Clewiston seeks, among other things, a direct interconnection and wholesale electric service from FP&L. That docketed matter is, of course, not here before the Commission.

The Company opposes Clewiston's petition to intervene through answer filed September 20, 1965.

In view of the foregoing circumstances, we are persuaded that Clewiston has an interest in the outcome of this proceeding. We are also mindful that the cross-examination phase of the hearing herein is scheduled to commence on October 4, 1965, and that both FP&L and the staff have filed prepared testimony and trial briefs on dates agreed upon at the prehearing conference held April 12, 1965. Accordingly, we shall permit Clewiston intervention on a limited basis to the extent of affording City an opportunity for an opening statement of position, cross-examination of witnesses, presentation of argument and such other participation as the Presiding Examiner or the Commission may authorize.

The Commission finds:

(1) Good cause exists for acceptance of the petition for leave to intervene filed by Clewiston on September 7, 1965, in the above-entitled proceeding subject to limited participation, as hereinafter provided.

(2) Participation of Clewiston in the above-entitled proceeding may be in the public interest. It is necessary and appropriate for the purposes of the Federal Power Act and the Commission's Rules and Regulations thereunder,

[1] The Commission's February 26, 1965 Order Initiating Investigation and Hearing directed that notices and petitions for intervention be filed with the Commission on or before March 23, 1965.

particularly Section 1.8 of the Rules of Practice and Procedure, to order as hereinafter provided.

The Commission orders:

(A) Clewiston is hereby permitted to intervene in the above-entitled proceeding subject to the rules and regulations of the Commission: *Provided, however,* that the participation of such intervenor shall be limited to matters affecting asserted rights and interests as specifically set forth in its petition for leave to intervene and to the record in this proceeding as it now stands: *Provided, further,* that the participation of such intervenor shall be limited to affording City an opportunity for an opening statement of position, cross-examination of witnesses, presentation of argument and such other participation as the Presiding Examiner or Commission may authorize; and *Provided, further,* that the admission of such intervenor shall not be construed as recognition by the Commission that such intervenor might be aggrieved by any order or orders of the Commission issued in this proceeding.

(B) Nothing contained herein shall be construed as justification for delay in the commencement or conduct of the hearing.

Before Commissioners: Joseph C. Swidler, Chairman; Charles R. Ross, David S. Black and Carl E. Bagge.

ANNUAL REPORT FORMS PRESCRIBED FOR CLASSES A AND B ELECTRIC UTILITIES, LICENSEES AND OTHERS AND FOR CLASSES A AND B NATURAL GAS COMPANIES, DOCKET NO. R-285

ORDER NO. 305

ELIMINATING THE OPTIONAL 30-DAY EXTENSION OF TIME FOR FILING CERTAIN SCHEDULES IN ANNUAL REPORT FORMS NOS. 1 AND 2

(Issued September 29, 1965)*

Section 141.1 of the Regulations under the Federal Power Act and section 260.1 of the Regulations under the Natural Gas Act presently provide that with the exception of certain designated schedules, the filing of the complete report may be postponed for 30 days beyond the established filing date (the last day of the third month after the close of the calendar year or other established fiscal year) without further authorization from the Commission. This order eliminates this optional 30-day extension of the time for filing the complete Annual Reports of Classes A and B electric utilities, licensees, and others and natural gas companies as provided in §§ 141.1(b) (1), (c) (1) and 260.1, respectively, of the Commission's Regulations.

The elimination of this optional period will make Commission analyses of company earnings and other studies more nearly current, and will expedite the compilation of industry-wide statistics for the information of the public and the industry.

Seventy-one percent of the 270 reporting Classes A and B companies filed their complete annual reports for the 1964 report year before the beginning of the optional period. In view of the recent advances in the art of keeping records through the use of electronic techniques, there appears to be no reason why the other 29 percent cannot do likewise without undue hardship. Furthermore,

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*Published in the Federal Register on October 6, 1965 (30 F.R. 12727).

§ 1.13 of the Rules of Practice and Procedure, which provides that extensions of time may be granted for cause, still remains in effect.

The Commission finds:

(1) The amendments herein adopted are necessary and appropriate for the administration of the Federal Power Act and the Natural Gas Act.

(2) Notice of rulemaking is not required herein by section 4 of the Administrative Procedure Act, because the change makes an amendment to a rule of agency procedure.

The Commission, acting pursuant to the provisions of the Federal Power Act, as amended, particularly sections 304, 309 and 311 thereof (49 Stat. 855, 858, 859, 16 U.S.C. 825c, 825h, 825j) and the Natural Gas Act, as amended, particularly sections 10 and 16 thereof (52 Stat. 826, 830, 15 U.S.C. 717i, 717o), *orders:*

(A) Part 141, Subchapter D, and Part 260, Subchapter G, Chapter I, Title 18 of the Code of Federal Regulations, are amended as follows:

(1) Paragraphs (b)(1) and (c)(1) of § 141.1 are amended by deleting the proviso in the first sentence of each so that the paragraphs read as follows:

§ 141.1 Form No. 1, Annual report for electric utilities, licensees and others (Class A and Class B).

* * * * * * *

(b)(1) Each Class A electric utility, licensee, and other, *i.e.*, each corporation, person, or licensee as defined in section 3 of the Federal Power Act, including any agency, authority or other legal entity or instrumentality and any agency, authority or instrumentality of the United States engaged in generation, transmission, distribution, or sale of electric energy, however produced, throughout the United States and its possessions, having annual electric operating revenues of $2,500,000 or more, whether or not the jurisdiction of the Commission is otherwise involved, shall prepare and file with the Commission for the year beginning January 1, 1961, or subsequently during the calendar year 1961 if its established fiscal year is other than the calendar year, and for each year thereafter, on or before the last day of the third month following the close of the calendar year or other established fiscal year, an original and such number of conformed copies of the above-designated F.P.C. Form No. 1 as are indicated in the General Instructions set out in that form, all properly filled out and verified. One copy of said report should be retained by the correspondent in its files. The conformed copies may be carbon copies, if legible.

* * * * * * *

(c)(1) Each Class B electric utility, licensee, and others; *i.e.*, each corporation, person, or licensee as defined in section 3 of the Federal Power Act, including any agency, authority or other legal entity or instrumentality and any agency, authority or instrumentality of the United States engaged in generation, transmission, distribution, or sale of electric energy, however produced, throughout the United States and its possessions, having annual electric operating revenues of more than $1,000,000 but less than $2,500,000, whether or not the jurisdiction of the Commission is otherwise involved shall prepare and file with the Commission for the year beginning January 1, 1961, or subsequently during the calendar year 1961 if its established fiscal year is other than the calendar year, and for each year thereafter, on or before the last day of the third month following the close of the calendar year or other established fiscal year, an original

and such number of conformed copies of the above-designated F.P.C. Form No. 1 as are indicated in the General Instructions set out in that form, all properly filled out and verified. One copy of said report should be retained by the correspondent in its files. The conformed copies may be carbon copies, if legible.

(2) Paragraph (b) of § 260.1 is amended by deleting the proviso in the first sentence, so that the paragraph reads:

§ 260.1 Form No. 2, Annual report for natural gas companies (Class A and Class B).

* * * * * * *

(b) Each natural gas company, as defined in the Natural Gas Act (52 Stat. 821) which is included in Classes A or B as defined in the Commission's Uniform System of Accounts Prescribed for Natural Gas Companies Subject to the Provisions of the Natural Gas Act, shall prepare and file with the Commission for the year beginning January 1, 1961, or subsequently during the calendar year 1961, if its established fiscal year is other than the calendar year, and for each year thereafter, on or before the last day of the third month following the close of the calendar year or other established fiscal year an original and such number of conformed copies of the above-designated F.P.C. Form No. 2 as are indicated in the General Instructions set out in that Form, all properly filled out and verified. One copy of said report should be retained by the correspondent in its files. The conformed copies may be carbon copies if legible."

(B) The amendments herein made to Parts 141 and 260 shall be effective October 29, 1965.

(C) The Secretary shall cause prompt publication of this order to be made in the Federal Register.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

PACIFIC POWER & LIGHT COMPANY, DOCKET NO. E-7238

SUPPLEMENTAL ORDER AUTHORIZING ISSUANCE OF FIRST MORTGAGE BONDS

(Issued September 29, 1965)

By order issued September 16, 1965, *supra*, p. 866, in the above-entitled matter, the Commission authorized Pacific Power & Light Company, (Applicant), to issue and sell at competitive bidding $30,000,000, principal amount of First Mortgage Bonds, due 1995, subject, among other, to the provisions set forth in paragraph (B) of that order as follows:

> (B) The proposed issuance and sale of Bonds at competitive bidding shall not be consummated until:
>
> (i) Applicant shall have amended its application pursuant to the requirements of Section 34.2(g) of the Commission's Regulations under the Federal Power Act relating to compliance with competitive bidding requirements, and Section 34.2(h) of those Regulations relating to affiliation, and shall have advised the Commission by telephone and telegraph, as contemplated in Section 34.9 of the Regulations.
>
> (ii) The Commission, by further order, shall have approved the price to be received by Applicant for the proposed issuance of Bonds and the interest rate thereof.

Applicant, on September 29, 1965, filed an amendment, pursuant to the requirements of the afore-mentioned Commission order, setting forth, among other

things, that it proposes to accept as providing the lowest annual cost of money to it, the bid of Eastman Dillon, Union Securities & Co., Kidder, Peabody & Co., Stone & Webster Securities Corporation, to purchase the proposed issuance of $30,000,000, principal amount of Bonds for the price of 99.419% of principal amount, with an interest rate of 5%.

The Commission finds:

(1) Applicant has satisfactorily complied with the requirements of paragraph (B) of the Commission's order issued September 16, 1965, in the above docket, and under the bid it proposes to accept for the Bonds, the price to be received by Applicant therefor and the interest rate thereof are reasonable.

(2) The proposed issuance and sale of Bonds, as hereinafter authorized, will be for a lawful object, within the corporate purposes of the Applicant and compatible with the public interest, which is appropriate for and consistent with the proper performance by the Applicant of service as a public utility and which will not impair its ability to perform that service, and is reasonably appropriate for such purposes.

The Commission orders:

(A) The price to be received by Applicant for the proposed Bonds and the interest rate thereof under the bid referred to above, are approved as reasonable.

(B) The proposed issuance and sale of Bonds referred to above upon the terms and conditions and for the purposes specified in the application, as supplemented by the amendment referred to above, are authorized, subject only to the provisions of paragraphs (A), (C), (D), and (E) of the Commission's order issued September 16, 1965, in the above docket.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

BRIGHT & SCHIFF

ORDER REJECTING RATE FILING

(Issued September 30, 1965)

On August 9, 1965, Bright & Schiff tendered for filing a proposed notice of change in rate, as amended,[1] under its FPC Gas Rate Schedule No. 7, proposing a periodic rate increase from 18.0¢ to 19.0¢ per Mcf at a pressure base of 14.65 psia, amounting to $4,890 annually, for its jurisdictional sale of natural gas to South Texas Natural Gas Gathering Company from the NE Thompsonville Field in Webb and Jim Hogg Counties, Texas (Texas Railroad District No. 4). The proposed effective date is October 1, 1965, the contractually provided effective date.

The Commission on September 30, 1965, in Opinion No. 478, *Turnbull & Zoch Drilling Co. (Operator), et al.*, Docket No. G–17960, *et al.*, *infra*, p. 1001, issued a permanent certificate to Bright & Schiff (Docket No. CI61–1541), among others, authorizing it to make the subject sale under its FPC Gas Rate Schedule No. 7. Sales under that rate schedule had previously been made pursuant to an unconditioned temporary certificate issued May 26, 1961. The 19¢ per Mcf increased rate proposed here by Bright & Schiff exceeds the moratorium level of

[1] Amended by tender submitted August 27, 1965, to reflect the correct Btu content of the gas involved.

18¢ per Mcf imposed by the Commission in granting a permanent certificate to Bright & Schiff. Accordingly, Bright & Schiff's proposed rate filing shall be rejected.

The Commission orders:

For the reasons set forth above, the proposed increased rate of 19¢ per Mcf tendered by Bright & Schiff on August 9, 1965, for sales under its FPC Gas Rate Schedule No. 7 is rejected.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

FLORIDA GAS TRANSMISSION COMPANY, DOCKET NO. RP66-4

ORDER PROVIDING FOR HEARING, SUSPENDING PROPOSED REVISED TARIFF SHEETS ALLOWING PROPOSED REVISED TARIFF SHEETS TO BECOME EFFECTIVE SUBJECT TO REFUND, AND GRANTING MOTION FOR SHORTENED SUSPENSION PERIOD

(Issued September 30, 1965)

Florida Gas Transmission Company (Florida Gas), on August 16, 1965, tendered for filing First Revised Sheets Nos. 27 and 63, to its FPC Gas Tariff, Original Volume No. 2, to become effective October 1, 1965, proposing an increase in its transportation rates and charges of approximately $1,732,000 annually over the rates currently in effect, based on data for the year ended May 31, 1965, as adjusted.

In support of the proposed increase, Florida Gas states that the changes relate solely to the transportation rates (Rate Schedules T-1 and T-2) and are necessitated to recover increased costs related to such services. Additionally, Florida Gas states that its present transportation rates were established as a result of a settlement in the rate proceeding in Docket No. RP61-3, *et al.*, approved by Commission order issued June 8, 1962, 27 FPC 1123, and that the transportation rates established therein did not include, among other things, an allowance for federal income taxes. Florida Gas states that the consolidated operating tax loss carry forwards of its parent and the subsidiary companies have been exhausted, and that the consolidated group is now in a tax-paying position. The amount of the proposed rate increase which is alleged to be caused by federal income tax liability is $1,665,000, or 96 percent of the total proposed increase.

Florida Gas, on August 30, 1965, filed a motion herein, requesting that if its proposed increased rates were to be suspended, that the suspension period be shortened to thirty days rather than the five-month statutory maximum. In support of its motion, Florida Gas states that its proposed increase in rates is applicable directly to only two of its ultimate users, Florida Power Corporation (Florida Power) and Florida Power & Light Company. Furthermore, Florida Gas states that, under the gas purchase contracts of those power companies, Sun Oil Company (Sun), the producer of the gas in the field, will be required to absorb more than 80 percent of this rate increase. Thus, Florida Gas argues, the shortened suspension period would be a more reasonable balance of equities, in that Florida Gas will be permitted to collect its additional costs through the proposed increased rates, while the electric utility companies and Sun will be protected through the refund provision provided in the suspension order.

Sun filed an answer and objection, on September 10, 1965, to Florida Gas' motion for a shortened suspension period, wherein Sun contends that Florida

Gas has not proved that it will have to pay any income taxes or that an allowance for such taxes is required. Florida Power, in its petition to intervene herein filed on September 13, 1965, included a response to Florida Gas' motion for a shortened suspension period, wherein it stated that it will have to pay approximately $300,000 of the proposed increase requested by Florida Gas, that it will pass this additional cost along to its customers through its fuel adjustment clause, and that a shortened suspension period would complicate its problem of making refunds, if any, to its customers. Florida Power also alleges that Florida Gas has been accruing federal income taxes on its books, even though such taxes were not, in fact, paid and the Commission found such accruals to be an improper accounting practice in Docket No. RP61-3, *et al.* Florida Power, however, acknowledges the fact that that issue has not been finally adjudicated and is now pending on appeal.

We believe that a shortened suspension period would be proper and Florida Gas' motion to that effect should be granted. If Florida Gas should sustain its burden of proving the lawfulness of its proposed rates, it will have been irreparably harmed for the period of suspension. If, on the other hand, Sun or Florida Power should be successful in controverting Florida Gas' allegation, Florida Gas' obligations as to refunds and interest provided herein will serve as sufficient protection for them. Admittedly a refund obligation is not complete protection to ultimate consumers with respect to the usual application for a rate increase (see *F.P.C.* v. *Tennessee Gas Transmission Co.*, 371 U.S. 145, 154–155), but this case is not the usual one. There are no ultimate consumers of gas involved in this proceeding, for whom a refund obligation would be "somewhat illusory." (371 U.S. 145, 154.) As heretofore noted, approximately 82 percent of the proposed increase will be borne by Sun. It will be the beneficiary to the same extent of any refunds that may result from this proceeding, and such refunds would not be "trickling down" to ultimate consumers. Further, Florida Power's contention that a shortened suspension would complicate the application of its fuel clause adjustment, and the relatively minor percentage of refunds it may receive, do not warrant suspension of the total increase proposed for the full five-month statutory period.

In addition to the question of Florida Gas' income tax liability, there are other issues raised by the data submitted in justification of the proposed rate increase, including, but not limited to, allocation of costs, rate base, and depreciation.

The Commission finds:

(1) The rate increase contained in the revised tariff sheets tendered for filing by Florida Gas on August 16, 1965, has not been shown to be justified, and may be unjust, unreasonable, unduly discriminatory, preferential, or otherwise unlawful.

(2) It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the rates, charges, classifications and services contained in Florida Gas' FPC Gas Tariff, and that proposed First Revised Sheets Nos. 27 and 63 to Original Volume No. 2 be suspended and the use thereof deferred as hereinafter provided.

(3) It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the increase in transportation rates contained in Revised Sheets Nos. 27 and 63 to Florida Gas' FPC Gas Tariff, Original Volume No. 2, be made effective as hereinafter provided and that Florida Gas be required to file a motion and an undertaking as hereinafter ordered.

(4) The motion by Florida Gas for a shortened suspension period should be granted as hereinafter provided.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly Sections 4 and 15 thereof, the Commission's Rules of Practice and Procedure and the Regulations under the Natural Gas Act (18 CFR, Chapter I), a public hearing shall be held on a date fixed by notice from the Presiding Examiner as hereinafter provided, concerning the lawfulness of the rates, charges, classifications and services contained in Florida Gas' FPC Gas Tariff, as proposed to be amended by First Revised Sheets Nos. 27 and 63 to Original Volume No. 2.

(B) Pending such hearing and decision thereon, Florida Gas' proposed revised tariff sheets, identified in Paragraph (A) above, are suspended and their use deferred until November 1, 1965; *Provided, however*, that, within 20 days from the date of this order, Florida Gas shall file a motion as required by Section 4(e) of the Natural Gas Act and concurrently execute and file with the Secretary of the Commission the agreement and undertaking described in Paragraph (D) below. Unless Florida Gas is advised to the contrary within 15 days after the date of filing such agreement and undertaking, the agreement and undertaking shall be deemed to have been accepted.

(C) Florida Gas shall refund at such times and in such amount to persons entitled thereto, and in such manner as may be required by final order of the Commission, the portion of rates and charges found by the Commission in this proceeding not justified, together with interest thereon at the rate of 7 percent per annum from the date of payment to Florida Gas until refunded; shall bear all costs of any such refunding; shall keep accurate accounts in detail of all amounts received by reason of the tariff sheets made effective as of November 1, 1965, for each billing period, specifying by whom and in whose behalf such amounts were paid; and shall report in writing (original and four copies) and under oath to the Commission monthly, for each billing period and for each customer, the amount charged to such customer for transportation of natural gas as computed under the tariff sheets in effect immediately prior to November 1, 1965, and under the tariff sheets allowed herein to become effective, together with the differences in the revenues so computed.

(D) As a condition of this order, Florida Gas shall execute and file in triplicate with the Secretary of this Commission, its written agreement and undertaking to comply with the terms of paragraph (C) hereof, signed by a responsible officer of the corporation, evidenced by proper authority from the Board of Directors, and accompanied by a certificate showing service of copies thereof upon all customers under the tariff sheets involved as follows: [Agreement Form omitted in printing]

(E) If Florida Gas shall, in conformity with the terms and conditions of its agreement and undertaking, make the refunds as may be required by order of the Commission in this proceeding, the undertaking shall be discharged; otherwise, it shall remain in full force and effect.

(F) The dates for service of testimony by the Commission staff and interveners, the date for a prehearing conference and the designation of the Presiding Examiner will be specified by a future order of the Commission.

(G) The motion by Florida Gas for a shortened suspension period is granted to the extent provided in paragraph (B) above.

Commissioner Ross *dissenting*.

Ross, *Commissioner, dissenting:*

I dissent to the shortened suspension period provided in the order. In my opinion, the Natural Gas Act contemplates that only those rates found to be just and reasonable by the Commission should be charged by natural gas companies. This policy is explicitly set forth in Section 4(a) of the Act which states: "All rates and charges made, demanded, or received by any natural-gas company * * * shall be just and reasonable. * * *" However, in order to preclude an arbitrary Commission from unjustifiably delaying action on possibly meritorious rate increase filings, a provision was included in Section 4(e) allowing increased rate filings to become effective, subject to refund, after they had been on file for a period of five months without a Commission determination of their justness. While, under current procedure, it is seldom possible to complete consideration of rate increase filings within that period of time, the overriding intent of Section 4(a) remains true. This background, I think, explains why the Commission generally suspends rate increases that may be unjust or unreasonable for the full period of time provided by the statute.

In this case, the rate increase proposed by Florida Gas has not been shown to be just and reasonable. Obviously, the mere fact that Florida Gas may incur, or may have incurred, additional costs in but one category, *i.e.*, federal income taxes, far from establishes the need of the company for additional revenues. To the contrary, a consideration of all of the costs of Florida Gas is required, as the majority implies on page 996 of the order. For all the Commission knows at this point pending determination of the overall cost of service of Florida Gas, a rate decrease rather than an increase may be the proper remedy in this proceeding. Indeed, the Commission order itself clearly finds that the proposed rate increase "has not been shown to be justified, and may be unjust, unreasonable, unduly discriminatory, preferential, or otherwise unlawful."

Thus, this situation differs essentially from, for example, the rate filing by Utah Power & Light Company (Docket No. E-7127) which the Commission suspended for a period of only one day in view of information showing a reasonable likelihood that the proposed increase was required. Ultimately, that rate increase was found to be just and reasonable and the proceeding was terminated. Yet, in that case, two members of the present majority dissented to the shortened suspension period.

The majority recites two reasons why it thinks that this is not the usual case, but these "reasons" are not convincing. First, the majority states that Florida Gas may be irreparably harmed if it should sustain its burden of proving the lawfulness of its proposed rates. However, this much is true in every case and hardly constitutes a basis for granting Florida Gas special treatment. Moreover, this suggestion directly conflicts with the majority's above-cited finding that the proposed rate has not been shown to be justified and may be unreasonable.

Secondly, the majority indicates that we are not faced with the usual problem with respect to the flow-through of any refunds that may be ordered since a relatively small amount of the refunds would be borne by ultimate consumers by operation of Florida Power's automatic fuel adjustment clause. The proposed rate increase raises Florida Power's rates approximately $300,000 annually. In my opinion, it is bad policy to base a suspension period on the dollars involved. If the rate increase had been $600,000, would the majority have suspended for two months? In any event, this approach ignores the basic policy of Section 4(a) of the Act upon which Sun Oil Company, which will bear the brunt of this increase, as well as "ultimate consumers" has a right to rely.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

APPLICATION FOR EXEMPTION FROM THE PROVISIONS OF THE NATURAL GAS ACT PURSUANT TO SECTION 1(C), DOCKET NO. R-286

ORDER NO. 306

AMENDING PART 152 OF REGULATIONS UNDER THE NATURAL GAS ACT

(Issued September 30, 1965)*

Certain persons, otherwise subject to the provisions of the Natural Gas Act, are exempt from its provisions by section 1(c) under stated conditions and "* * * provided that the rates and service of such person and facilities be subject to regulation by a State Commission." We are in this order amending §§ 152.1, 152.2, 152.4, and 152.5 of the Regulations under the Natural Gas Act to interpret the meaning of "rates" as used in the above-quoted proviso and to prescribe additional procedural requirements.

Experience has indicated that confusion can arise in situations where a State Commission cannot or does not regulate the wholesale rates of an applicant for exemption. It is clear from the legislative history of section 1(c) that Congress did not intend any aspect of natural gas transportation and sale to be free of regulation, but rather to eliminate some duplications of regulation where both the Commission and a state agency had jurisdiction. Hence any exemption pursuant to section 1(c) can be granted only if and to the extent that all rates, *including wholesale rates*, service and facilities are subject to State regulation. The amendments to §§ 152.1 and 152.4 will definitively construe "rates" as used in section 1(c).

The amendments to §§ 152.2 and 152.5 are matters of practice and procedure designed to insure that both the State Commission and this Commission are continuously informed of all matters of fact and law relevant to exemption under section 1(c) of the Natural Gas Act.

The Commission finds:

(1) The notice provisions of section 4 of the Administrative Procedure Act are not applicable since the amendments herein adopted are either interpretative in that they make explicit in the Regulations the proper meaning of a statutory term, or else prescribe rules of agency practice and procedure.

(2) The amendments adopted herein are necessary and appropriate for the purposes of administration of the Natural Gas Act.

The Commission, acting pursuant to the authority granted by the Natural Gas Act, as amended, particularly sections 1(c) and 16 thereof (68 Stat. 36, 52 Stat. 830; 15 U.S. 717(c), 717(o)) *orders:*

(A) Part 152, Subchapter E of Chapter I, Title 18 of the Code of Federal Regulations, is amended as follows:

1. In § 152.1 insert after the word "rates" in the proviso the following:

"(including rates for sales for resale)"

2. In § 152.2 add to the title the following:

"service",

and add at the end of the section:

"A copy of the application shall be served on the State Commission which has jurisdiction over the applicant and upon each wholesale customer of the applicant."

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*Published in the Federal Register on October 6, 1965 (30 F.R. 12728).

3. In § 152.4 insert after the word "rates" the following:
"(including rates for sales for resale)".

4. In § 152.5 add at the end the following:
"The exempted person shall also be responsible for calling to the attention of the Federal Power Commission any change, amendment, or judicial or administrative interpretation of the State law pursuant to which it is regulated by the State Commission, which may make the exemption inapplicable to it."

As thus amended, these sections will read as follows:

§ 152.1 Who may apply.

Application for exemption from the provisions of the Natural Gas Act and the rules and regulations of the Commission issued pursuant thereto may be made by any person as defined in the Natural Gas Act engaged in, or authorized to engage in the transportation in interstate commerce or the sale in interstate commerce for resale, of natural gas received by such applicant from another person within or at the boundary of a State, if all of the natural gas so received is ultimately consumed in such State: *Provided*, That the natural-gas rates (including rates for sales for resale) and service of the applicant and its natural-gas facilities are subject to regulation by a State commission, as defined in the Natural Gas Act, and that such State commission is exercising that jurisdiction.

§ 152.2 Form of application; number of copies; service.

An original and 7 conformed copies of an application under this part shall be furnished to the Commission and shall conform in all other respects with §§ 1.15 and 1.16 of this chapter. The Commission reserves the right to request additional copies. A copy of the application shall be served on the State Commission which has jurisdiction over the applicant and upon each wholesale customer of the applicant.

* * * * * * *

§ 152.4 Certificate from State Commission.

Applications for exemption under § 152.3 shall contain, or there shall be separately filed, a certificate from the appropriate State Commission that the natural-gas (a) rates (including rates for sales for resale), (b) service, and (c) facilities of the applicant are subject to the regulatory jurisdiction of the State Commission and that the State Commission is exercising such jurisdiction.

§ 152.5 Applicability of exemption.

Nothing in this part shall be construed to relieve any person exempted from the provisions of the Natural Gas Act by section 1(c) thereof from compliance with valid State regulatory requirements. If an exemption from the provisions of the Natural Gas Act is effective pursuant to section 1(c), the exempted person shall be responsible for calling to the attention of the State Commission by which it is regulated and of the Federal Power Commission any future operations in which it may engage which may make the exemption inapplicable to it. The exempted person shall also be responsible for calling to the attention of the Federal Power Commission any changes, amendment, or judicial or administrative interpretation of the State law pursuant to which it is regulated, which may make the exemption inapplicable to it.

[Sections 1(c), 68 Stat. 36, 16, 52 Stat. 830; 15 U.S.C. § 717(c), 717o]

(B) The amendments prescribed herein shall become effective on November 1, 1965.

(C) The Secretary shall cause prompt publication of this order to be made in the Federal Register.

OPINION NO. 478

TURNBULL & ZOCH DRILLING CO. (OPERATOR), ET AL., DOCKET NO. G–17960; SUSANOIL, INC., G–18212; TENNECO OIL COMPANY, G–18223, CI60–325, CI63–1513; GETTY OIL COMPANY (OPERATOR), ET AL., G–18378; MCCURDY & MCCURDY, G–18434; SHELL OIL COMPANY, G–18439, CI63–1509, CI64–310, CI64–655, CI64–703; HERMAN BROWN ESTATE, ET AL., G–18479; M. W. CROCKETT, ET AL., G–18522; INVESTORS SYNDICATE OF THE SOUTHWEST, INC., G–18590; G. H. VAUGHN, JR., ET AL., G–18678; GEORGE K. TAGGART, JR., OPERATOR, G–18796; V. F. NEUHAUS, G–18861; ZIMET BROTHERS, INC., AGENT (OPERATOR), ET AL., G–18987; PHILLIPS PETROLEUM COMPANY, G–19498; DIVERSA, INC., ET AL., G–20458; AMERICAN PETROFINA CO. OF TEXAS, CI60–134; JONNELL GAS, INCORPORATED (OPERATOR), ET AL., CI60–323, CI63–925; JAMES A. WOOD, TRUSTEE (OPERATOR), ET AL., CI60–383; JOSEPH E. SEAGRAM & SONS, INC., D/B/A TEXAS PACIFIC OIL COMPANY, ET AL., CI60–506; LIVINGSTON OIL COMPANY, CI60–508; BREUER & CURRAN OIL CO., CI60–581; GEORGE H. COATES, CI60–591; AUSTRAL OIL COMPANY, INCORPORATED, CI61–427; BLANCO OIL CO. (OPERATOR), ET AL., CI61–618; KILLAM & HURD, CI61–626; H. J. MOSSER, CI61–694; SHELL OIL COMPANY (OPERATOR), ET AL., CI61–783; BRIGHT & SCHIFF, CI61–1541; K. D. OWEN, ET AL., D/B/A OWEN AND MOSS, CI61–1579; APPELL PETROLEUM CORP. (OPERATOR), ET AL., CI61–1591; MAYFAIR MINERALS, INC., CI61–1661; KATZ OIL COMPANY, CI61–631; ROY A. LAMB & A. G. GALT, D/B/A PAN AMERICAN ENGINEERING COMPANY, CI62–21; J. C. TRAHAN, DRILLING CONTRACTOR, INC., CI62–123; SOHIO PETROLEUM COMPANY (OPERATOR), ET AL., CI62–826; W. H. HUDSON (OPERATOR), ET AL., CI62–1074; RAMADA OIL & GAS CO., CI63–304; TENNECO OIL COMPANY (OPERATOR), ET AL., CI63–334; MCWOOD CORPORATION, CI63–751; SUN OIL COMPANY, CI63–989, CI64–470; PAN AMERICAN PETROLEUM CORPORATION, CI63–1263, CI64–377; CLARK FUEL PRODUCING COMPANY (OPERATOR), CI63–1495; CITIES SERVICE OIL COMPANY (OPERATOR), ET AL., CI64–211; HUMBLE OIL & REFINING COMPANY, CI64–297, CI64–298, CI64–299, CI64–244; TEXACO INC., CI64–375; R. C. TURNER (OPERATOR), ET AL., CI64–439; LUNDELLS, INC. (OPERATOR), ET AL., CI64–810; THE ATLANTIC REFINING COMPANY, CI64–837; GULF OIL CORPORATION, CI64–883; L. B. HORN (OPERATOR), ET AL., CI64–908; GINTHER, WARREN & COMPANY, CI64–916; RUSSELL MAGUIRE, ET AL., CI64–933; CONTINENTAL OIL COMPANY, CI64–1307, CI64–1310, CI64–1311

OPINION AND ORDER ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

(Issued September 30, 1965)*

Syllabus

1. In-line price for Railroad District No. 4 sales found to be 15 cents per Mcf for pre-Policy Statement contracts and 16 cents for those executed after September 28, 1960. P. 1005.
2. In past and present proceedings District No. 4 has been shown to be a gas producing area of substantial similarity throughout its constituent coun-

*Initial decision appears on p. 1014. See order issued November 24, 1965, denying rehearing and granting stay, 34 FPC 1367. See Opinion No. 499 on refund issued July 25, 1966, 36 FPC 164. Affirmed, *Continental Oil Co., et al.* v. *F.P.C.*, 378 F. 2d 510 (CA5–1967); Cert. denied 391 U.S. 919 (1968).

ties sufficiently identifiable as to constitute a unit for regulatory purposes under the Natural Gas Act. P. 1005.

3. Area boundaries as now defined are not fixed and immutable; Policy Statement itself indicates that these may be altered from time to time to eliminate inequities. P. 1005.
4. Pending accumulation of additional information being developed in area rate proceedings, carving out of separate fields or counties, or groups thereof, for special treatment should be limited to situations of a distinctly compelling nature—evidence here is unconvincing that District No. 4 cannot continue to be used as a unified pricing area. P. 1005.
5. Since Policy Statement played a part in effecting change in area in-line price, it is appropriate to use issuance date thereof in looking to comparability of area contracts. PP. 1005, 1006.
6. Evidence is too fragmentary to support inference urged by producers that increased intrastate deliveries have been due to low interstate prices. PP. 1006; 1023.
7. Commission *reaffirms Hawkins* holding that "the issue of public need properly belongs in pipeline certificate cases, not producer applications." P. 1006.
8. Commission *finds* that the flexible take provision is not unusual in the area and *disallows* premium allowance therefor. P. 1006.
9. Judgment as to uniqueness of an exceptional benefit allegedly deserving separate allowance is not linked to specific pricing period in which contract was made—this prerequisite requires only a determination of whether feature is in fact unusual for the area. PP. 1006, 1007.
10. For purposes of issuing certificate, Commission accepts date that "meeting of minds" occurred as execution date of contract, in lieu of contract's earlier effective date. PP. 1007; 1039.
11. Citing *Sinclair*, Commission *rejects* producers' argument of entitlement to higher price on ground that from same fields, and in some cases, same wells, sales have been permanently certificated at higher amounts. P. 1007.
12. Commission *prescribes* moratorium, for specified period, on rate increase filings in excess of 18 cents per Mcf. P. 1007.
13. Commission *provides* for refunds with respect to those temporary authorizations having refund conditions but *requires* producers to hold amounts pending determination of entitlement thereto. P. 1008.
14. In a proceeding under Section 7 of the Natural Gas Act, Commission *issues* certificates of public convenience and necessity; *determines* in-line price and *requires* refunds.

Commissioner Black *concurring* in result.

Commissioner Bagge *concurring*.

Commissioner Ross *dissenting*.

H. F. Aby for Tenneco Oil Company.

Joseph C. Johnson, Thomas Burton and *Bruce R. Merrill* for Continental Oil Company.

Oliver L. Stone and *Thomas G. Johnson* for Shell Oil Company.

J. P. Hammond, Clifford O. Stone, Jr., and *Carroll L. Gilliam* for Pan American Petroleum Corporation.

Gentry Lee, R. J. Leithead and *Graydon D. Luthey* for Cities Service Company.

Warren M. Sparks and *Donald R. Arnett* for Gulf Oil Corporation.

John A. Ward III, Phillip D. Endom, Charles F. Hedrick, J. Colbert Peurifoy, Robert E. May and *Francis H. Caskin* for Sun Oil Company.

Richard F. Generelly and *Dixon Morgan* for Sohio Petroleum Co.

Richard F. Generelly for McCurdy & McCurdy; H. L. Hawkins & H. L. Hawkins, Jr.

Kenneth Heady, John R. Rebman and *Stanley L. Cunningham* for Phillips Petroleum Company.

Royal J. Voegeli and *Richard L. McGraw* for Harry J. Mosser.

Sherman S. Poland, Stuart J. Scott and *Bradford Ross* for The Atlantic Refining Company.

W. H. Drushel, Jr. and *J. Evans Attwell* for Austral Oil Company, Incorporated and Clark Fuel Producing Company.

Leo J. Hoffman for Jonnell Gas, Incorporated and J. C. Trahan, Drilling Contractor, Inc.

George B. Mickum III and *Richard E. Rubenstein* for Blanco Oil Company and Killam & Hurd.

Jesse H. Foster, Jr. and *Albert C. McClain* for Humble Oil & Refining Company.

Robert B. Payne for Bright & Schiff.

Kent H. Brown for Public Service Commission of the State of New York.

James R. Lacey, J. Harry Mulhern and *Edward S. Kirby* for Public Service Electric & Gas Company.

John A. Glendening for Berkshire Gas Company.

Edwin F. Russell, Harry G. Hill, Jr., and *Barbara M. Suchow* for The Brooklyn Union Gas Company.

William T. Coleman, Jr. and *Robert W. Maris* for Philadelphia Gas Works Division of the United Gas Improvement Company.

Morton L. Simons, Edward M. Barrett and *Bertram D. Moll* for Long Island Lighting Company.

Charles McDugald, Philip A. McKinsey and *Paul E. Goldstein* for Natural Gas Pipeline Company of America.

Alan R. Squires, Herbert E. Squires and *Joseph C. Bruno* for Pennsylvania Public Utility Commission.

Ronald D. Jones and *E. B. Thomas, Jr.* for Consolidated Edison Company of New York, Inc.

W. H. Drushel, Jr. and *J. Evans Attwell* for K. D. Owen, *et al.*, d/b/a Owen and Moss and Appell Petroleum Corporation.

Richard J. Dent for Getty Oil Company.

David B. Ward for the Staff of the Federal Power Commission.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

SWIDLER, *Chairman:*

This proceeding, the third in a recent series of south Texas "in-line" pricing cases,[1] involves 67 applications for permanent certificates of public convenience and necessity under Section 7 of the Natural Gas Act for sales of gas by producers in Texas Railroad Commission District No. 4. The buyers are Florida Gas Transmission Company, South Texas Natural Gas Gathering Company, Tennessee Gas Transmission Company, Natural Gas Pipeline Company of America and Valley Gas Transmission Company. The sales are proposed under contracts executed between August 8, 1956, and March 25, 1964, at prices ranging from 14.5 cents to 20.045 cents per Mcf (at 14.65 psia). Temporary authorizations have been granted in all dockets but one at prices up to 18 cents per Mcf; four

[1] See *Sinclair Oil & Gas Company, et al.*, Opinion No. 476, issued September 22, 1965, *supra*, p. 930; *Hawkins & Hawkins, et al.*, Opinion No. 475, issued September 22, 1965, *supra*, p. 897. These cases involved certification of producer sales in Texas Railroad Commission Districts No. 2 and 3, respectively.

specify a rate for the period of the temporary which is less than the contract rate while two others have express refund conditions for amounts collected in excess of 15 cents per Mcf. The record does not establish whether service has ever commenced under four of the temporary authorizations.

The principal issue concerns the initial price or prices required in the public interest for certification of these sales. The case is before us at this time on exceptions to the initial decision of Presiding Examiner Dyer Justice Taylor, issued June 22, 1965, which recommends that certificates be issued conditioned to a price of 15 cents per Mcf for gas sold under contracts executed on or before September 28, 1960, the date of the Commission's Statement of General Policy No. 61–1 (24 FPC 818), and to 16 cents per Mcf for contracts executed after that date. The Examiner also recommended that 0.5 cent per Mcf be added to the basic 15-cent price allowed three producers as compensation for a particular premium feature provided in their contracts.

The exceptions have been filed by a number of producers,[2] a group of eastern distributors,[3] and the staff. Answers have been submitted by the producers and staff. The producers argue primarily (1) that the Examiner's price conditions are erroneous for some of their sales; (2) that he improperly excluded evidence and testimony relating to costs, financial requirements, economics and prices paid under intrastate and nonjurisdictional sales; and (3) that certain other conditions, particularly one involving the take-or-pay requirements in their contracts, are unsupported by the evidence and are illegal. Other exceptions not generally common to a large number of producers are discussed subsequently. The distributors object to the 16-cent per Mcf price for contracts executed after the Policy Statement. They also oppose the premium allowances granted by the Examiner. They argue that there is no evidence of need for the gas here involved at a price over 15 cents per Mcf and ask that refunds be required on all amounts collected in excess thereof. The staff is in agreement with the 15-cent and 16-cent price determinations made in the initial decision. It excepts to the premium allowances and to the 16-cent initial price for the sale in Docket No. CI61–1514.

The facts are set out in detail in the initial decision of the Examiner and need not be repeated. They will be referred to here to the extent necessary to explain the reasons for our findings and conclusions.

In-Line Prices

First and foremost, in the matter of the basic in-line prices for the periods before and after the Policy Statement, we agree with the Examiner's decision.[4]

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[2] H. J. Mosser, Pan American Petroleum Corporation, Continental Oil Company, Shell Oil Company, Mayfair Minerals, Inc., Jonnell Gas, Incorporated and J. C. Trahan, American Petrofina Company of Texas, Texaco Inc., Sun Oil Company, McCurdy & McCurdy, Phillips Petroleum Company, Blanco Oil Co. (Operator), *et al.* and Killam & Hurd, Humble Oil & Refining Company, Appell Petroleum Corporation, *et al.* and K. D. Owen, *et al.*, d/b/a Owen and Moss, Austral Oil Company.

[3] The Brooklyn Union Gas Company, Long Island Lighting Company and Philadelphia Gas Works Division of The United Gas Improvement Company. The Public Service Commission of the State of New York stated that it concurs in and adopts the distributors' exceptions.

[4] We approve specifically the exclusion of cost and related evidence and the inclusion of sales under 14 cents per Mcf in finding the in-line prices. The treatment of the sales to gatherers and use of the estimated first month's delivery volumes also is approved. The Examiner's refusal to follow the Fifth Circuit's decision in *Callery Properties, Inc.* v. *F.P.C.*, 335 F. 2d 1004, pending its review by the Supreme Court (cert. granted, October Term, 1964, Nos. 671, *et al.*) accords with our decisions in *Union Texas*, Opinion No. 436–A, 32 FPC 952, and *Sun Oil*, Opinion No. 445, 32 FPC 1183, wherein we declined in the interim to accept that decision as binding on us. The appeals taken by Continental and others from the Examiner's ruling excluding the cost evidence will be denied.

The pertinent cases regarding the requirements applicable to the issuance of certificates under Section 7 have been considered, the relevant data was weighed and properly applied and, in our opinion, the correct in-line price found. The 15-cent per Mcf pre-Policy Statement rate is the same as the in-line price found for the same period for District No. 4 sales in *Skelly*, Opinion No. 362, 28 FPC 401; *Texaco Seaboard, Inc.*, Opinion No. 383, 29 FPC 593; *Jake L. Hamon, et al.*, 29 FPC 784, and *Hassie Hunt Trust*, Opinion No. 412, 30 FPC 1438. Both this price and the 16-cent in-line price for post-Policy Statement contracts were found appropriate in the *Amerada* case, Opinion No. 422, 31 FPC 623. The *Hassie Hunt Trust* and *Amerada* decisions are presently under judicial review[5] and the objections to the price determinations made in this proceeding are substantially the same as the objections to our similar determinations in those cases. The issue will be settled by the courts' decisions. On our part we are convinced now, as we were then, that no other prices are required by the public convenience and necessity or would be in keeping with the public interest.

The producers excepting to the initial decision claim that District No. 4 is not an appropriate pricing area, that the grouping of contracts on the basis of whether they were executed before or after the Policy Statement is arbitrary, and that the Examiner mistakenly refused to consider intrastate prices. As to the possibility that District No. 4 is not a proper pricing area the Examiner held that any inequity was provided for in the premium benefits allowances. We do not subscribe to this panacea. In our opinion District No. 4, in past proceedings and herein, has been shown to be a gas producing area of substantial similarity throughout its constituent counties sufficiently identifiable as to constitute a unit for regulatory purposes under the Natural Gas Act. This same finding, we may add, holds true for the other Texas Districts for which guideline prices were set in the Policy Statement. This is not to say that the area boundaries as now defined are fixed and immutable; the Policy Statement itself indicates that these may be altered from time to time to eliminate inequities.[6] Pending the accumulation of additional information currently being developed in the area rate proceedings, however, we believe that any carving out of separate fields or counties, or groups thereof, for special treatment should be limited to situations of a distinctly compelling nature. The evidence in this proceeding is unconvincing that District No. 4 cannot continue to be used as a unified pricing area.

The reason that the contracts are grouped on the basis of whether executed before or after the Policy Statement is explained in the *Skelly* and *Hassie Hunt Trust* Opinions. In both those cases we determined that it was necessary that evidence be adduced for evaluating changes which might have occurred after September 28, 1960, including (but not limited to) the effect, if any, of our announcement of the original 18-cent guideline ceiling for this area. Subsequently, in *Amerada*, we found that the producers and pipelines had acted in reliance on our guideline price and by their actions had changed the in-line price for the area for the period after the Policy Statement. This new price line, as we find herein, has now held constant through at least March 25, 1964. Since our Policy Statement played a part in effecting the change, it is appropriate to

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[5] *Margaret Hunt Hill, Trustee for H. L. Hunt, et al.* v. *F.P.C.*, CA5, No. 21286; *U.G.I., et al.* v. *F.P.C.*, CADC, No. 18660, *et al.* Other appeals from the *Amerada* decision are pending in the Third, Fifth, Sixth and Tenth Circuits.

[6] See also "Order Deferring Further Consideration of Proposed Changes in Pricing Area Boundaries Fixed Under Statement of General Policy, No. 61–1," issued November 27, 1963, 30 FPC 1374, particularly the proposals regarding the possible consolidation of Texas Districts 2, 3 and 4.

use the date of issuance thereof in looking to the comparability of the contracts executed in this area.

The exceptions involving the failure to give weight to intrastate sales and intrastate prices is answered adequately in the initial decision in the Examiner's finding that the evidence was too fragmentary to support the inference urged by the producers. We may note that this is the same finding made by us, for the same reason, in the *Hawkins* case, Opinion No. 475. The distributors' contention that the producers are deficient in their presentations in not having shown a public need for the gas (although limiting their exception to only those sales where a certificate would be issued at prices over 15 cents per Mcf), is also answered in *Hawkins* where we held that "the issue of public need properly belongs in pipeline certificate cases, not producer applications."

Other Exceptions

Issues raised in the exceptions not directly related to the in-line pricing question and requiring comment involve the premium allowance, the date of the Bright & Schiff sale, claims by Shell and others that they will be discriminated against unless they are given certificates at their initial contract prices, and the take-or-pay condition. We consider these seriatim.

Premium allowance—The particular feature for which the Examiner would allow an additional 0.5 cent per Mcf is a provision permitting the pipeline buyer to vary its daily takes from zero to the maximum quantity of gas which the wells are capable of delivering under prudent operation and not in violation of law. As noted, the allowance is opposed in exceptions by the distributors and staff. The producers receiving the increment contend that the amount is too low and ask a minimum of 2 cents per Mcf over the price line.

The Examiner found that the feature is exceptional in the District No. 4 area, is for the sole benefit of the pipeline and is objectively measurable to the extent of being worth the added amount. He based his conclusion largely on an analysis made by the producers showing that many contracts in the area do not have the feature. We find that the provision is not unusual and, therefore, that the premium allowance is not in order.

A review of Exhibit No. 7[7] shows that there are a substantial number of contracts for sales from District No. 4 to the same buyer having exactly the same flexible take provision as the contracts herein. Some have been permanently certified while others still await issuance of the final certificate. In none of the certificated cases, however, has any extra allowance been granted over the in-line price. Moreover, the feature is present in all but two contracts executed by the pipeline or its predecessor, Peoples Gulf Coast Natural Gas Pipeline Company, for purchases in District No. 4 since September 1960. This is not surprising for, as stated by the Examiner, Peoples, in referring to the provision in 1960, said that it could not prudently make additions to its gas supply under contracts obligating it to take a constant or nearly constant quantity. Since, as we find, the feature is not unusual for this area and is common for purchases by this pipeline, indeed, was apparently a necessary condition to its agreement to accept the sale, no premium allowance is warranted.[8]

The producers point out that the flexible take provision is unusual for contracts executed in the area before the Policy Statement, contemporaneous

[7] The exhibit shows the pertinent provisions of all jurisdictional gas sales contracts made in District No. 4 between June 7, 1954 and March 1, 1964.

[8] Accord; *Amerada, supra; Superior Oil Co.*, Opinion No. 437, 32 FPC 241; *Edwin L. Cox*, Opinion No. 446, 32 FPC 1301. See also *California Oil Co., Western Div.* v. *F.P.C.*, 312 F. 2d 652 (CA10-1963).

with their own. In our opinion, judgment as to the uniqueness of an exceptional benefit allegedly deserving of a separate allowance is not limited to the specific pricing period in which the contract was made. For this prerequisite it requires only a determination whether the feature is in fact unusual for the area. Having found to the contrary we deny the premium allowances.

Bright & Schiff sale—The Examiner concluded that the necessary "meeting of the minds" for the effectuation of this sale occurred in February 1961. The fact that the parties chose at that time to make the contract effective "as of" September 15, 1960, he would dismiss as immaterial. Staff, which accepting February 1961 as the time of physical signing, argues that the earlier date should control in this case and that the producer is entitled to only a 15-cent per Mcf initial price. While the matter is not entirely free from doubt we are inclined to accept the Examiner's determination of February 10, 1961, as the date of execution of the contract in this case for the purpose of issuing the certificate. We may caution all parties to Commission proceedings that when, as here, the existence of a mistake in a filing comes to their attention they inform us of that fact immediately so that we may not be led into mistaken action on the basis of erroneous information.

Shell, et al.—Shell, Phillips, Appell and *Owen* each have contracts executed before the Policy Statement for which the Examiner would allow an initial price of 15 cents per Mcf. They seek a higher price on the ground that other producers have received permanent certificates for sales from the same field, and in some cases from the same wells, at more than this amount. This is the identical argument made before us and rejected on a number of past occasions, most recently in regard to the Sinclair sale, Docket No. G–16760, certificated in the *Sinclair* decision. As we there stated:

> * * * Exceptions to the in-line price require a compelling justification. There is little more justification for equalizing all well prices at the highest level applicable to any owner than for a similar equalization for all producers in the field.

The sales referred to for comparison are either being made under a contract executed after the Policy Statement when the in-line price had changed, or is one of the earlier higher priced sales to Coastal when that company was a "paper pipeline," or were certificated in a settlement. In each case the circumstances so differed from those prevailing here as to render it non-comparable. The exceptions will be denied.

Take-or-pay condition—A large number of producers, including some to whom the Examiner recommended that certificates be granted at their initial contract prices, except to the take-or-pay condition included in the initial decision. The condition has been standard in all consolidated in-line certificate decisions issued by us since the *Panhandle* case, Opinion No. 350, 27 FPC 35, and has been upheld on judicial review.[9] The condition will be continued pending the final determination in the Docket No. R–199 proceeding.

Price Increases

As in previous proceedings we shall prescribe a moratorium on rate increase filings above a certain level. As explained *supra*, footnote 4, we realize that the *Callery* case has held that practice improper, but we adhere to the practice pending review of that decision by the Supreme Court, which has granted certiorari. In order to protect the public we think the appropriate level is 18.0 cents per

[9] *Public Service Comm. of the State of New York, et al. v. F.P.C.*, 329 F. 2d 242; cert. denied *sub nom.*, 377 U.S. 963.

Mcf until January 1, 1968, or until issuance of a final decision in the Texas Gulf Area Proceedings, Docket No. AR64–2, whichever is earlier. The level at which prices will be triggered or redetermined is apparently at the 18-cent price level, which reflects other prices now in effect in the area (although subject to refund) and represents the highest increased price which we have previously permitted to be filed without ordering an immediate hearing. We note that this triggering level is consistent with our Order No. 296 issued April 5, 1965, 33 FPC 682, which, of course, related only to applications filed after April 15, 1965. The in-line moratorium level must be based on the triggering level; therefore, if any of the producers involved here have a factual basis for taking a contrary view of the establishment of a moratorium at this level, they have opportunity so to state in applications for rehearing. As herein prescribed the moratorium will be applicable to the filing of any rate increase above 18 cents per Mcf, which rate is to be effective on or after the issuance of this decision.

Refunds

In the present proceeding there are only two applications involving temporary authorization with refund conditions and prices above the in-line price here determined. They are the applications of Ramada Oil & Gas Company in Docket No. CI63–304 and Tenneco Oil Company in Docket No. CI63–334. In these cases we shall provide for refunds but require that the producers hold the amounts involved until it is determined who is entitled to them. The distributors' request for an order directing refunds in all dockets, including those where the temporary authorization does not contain an express refund condition, is at variance with our order issued in this proceeding on October 5, 1964, deferring such consideration until our further order. We abide by that determination.

The exceptions by Austral,[10] Jonnell and Trahan,[11] and others not discussed herein are either sufficiently answered by the Examiner or are without substantial support or reasonable basis in law and should be denied. The Examiner's decision, to the extent not inconsistent herewith, should be approved and adopted as part of this Opinion and order.

The Commission further finds:

(1) The following applicants:

	Docket Nos.
Turnbull & Zoch Drilling Co. (Operator), *et al*	G–17960
Susanoil, Inc	G–18212
Tenneco Oil Company	G–18223
Getty Oil Company (Operator), *et al*	G–18378
McCurdy & McCurdy	G–18434
Shell Oil Company	G–18439
Herman Brown Estate, *et al*	G–18479
M. W. Crockett, *et al*	G–18522
Investors Syndicate of the Southwest, Inc	G–18590
G. H. Vaughn, Jr., *et al*	G–18678
George K. Taggart, Jr., Operator	G–18796
V. F. Neuhaus	G–18861
Zimet Brothers, Inc., Agent (Operator), *et al*	G–18987
Phillips Petroleum Company	G–19498
Diversa, Inc., *et al*	G–20458

[10] That not having accepted its temporary authorization until December 15, 1960, this date should control in fixing its price.

[11] Applicability of our *Graridge* decision, Opinion No. 408, 30 FPC 1156, in successorships under previously executed contracts.

	Docket Nos.
American Petrofina Company of Texas	CI60–134
Jonnell Gas, Incorporated (Operator), *et al*	CI60–323
Tenneco Oil Company	CI60–325
James A. Wood Trustee (Operator), *et al*	CI60–383
Joseph E. Seagram & Sons, Inc., d/b/a*	CI60–506
Livingston Oil Company	CI60–508
Breuer & Curran Oil Co	CI60–581
George H. Coates	CI60–591
Austral Oil Company, Incorporated	CI61–427
Blanco Oil Co. (Operator), *et al*	CI61–618
Killam & Hurd	CI61–626
H. J. Mosser	CI61–694
Shell Oil Company (Operator), *et al*	CI61–783
Bright & Schiff	CI61–1541
K. D. Owen, *et al.*, d/b/a Owen and Moss	CI61–1579
Appell Petroleum Corp. (Operator), *et al*	CI61–1591
Mayfair Minerals, Inc	CI61–1661
Roy A. Lamb & A. G. Galt, d/b/a Pan American Engineering Company.	CI62–21
J. C. Trahan, Drilling Contractor, Inc	CI62–123
Sohio Petroleum Company (Operator), *et al*	CI62–826
W. H. Hudson (Operator), *et al*	CI62–1074
Ramada Oil & Gas Co	CI63–304
Tenneco Oil Company (Operator), *et al*	CI63–334
McWood Corp	CI63–751
Jonnell Gas, Incorporated (Operator), *et al*	CI63–925
Sun Oil Company	CI63–989
Pan American Petroleum Corporation	CI63–1263
Clark Fuel Producing Company (Operator)	CI63–1495
Shell Oil Company	CI63–1509
Tenneco Oil Company	CI63–1513
Cities Service Oil Company (Operator), *et al*	CI64–211
Humble Oil & Refining Company	CI64–297
Humble Oil & Refining Company	CI64–298
Humble Oil & Refining Company	CI64–299
Shell Oil Company	CI64–310
Texaco, Inc	CI64–375
Pan American Petroleum Corporation	CI64–377
R. C. Turner (Operator), *et al*	CI64–439
Sun Oil Company	CI64–470
Shell Oil Company	CI64–655
Shell Oil Company	CI64–703
Lundells, Inc. (Operator), *et al*	CI64–810
The Atlantic Refining Company	CI64–837
Gulf Oil Corporation	CI64–883
L. B. Horn (Operator), *et al*	CI64–908
Ginther, Warren & Company	CI64–916
Russell Maguire, *et al*	CI64–933
Humble Oil & Refining Company	CI64–1244
Continental Oil Company	CI64–1307
Continental Oil Company	CI64–1310
Continental Oil Company	CI64–1311

*Texas Pacific Oil Company, *et al.*

are now, or upon commencement of the sales proposed will be, engaged in the sale of natural gas in interstate commerce for ultimate public consumption and each is, or will be, therefore, a "natural-gas company" within the meaning of the Natural Gas Act.

(2) The sales of natural gas hereinbefore described, as more fully described in the applications, are or will be made in interstate commerce, subject to the jurisdiction of the Commission, and such sales, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Subject to the requirements of the order herein and the conditions attached to the certificates herein issued, the applicants referred to in paragraph (1), with the possible exception of those listed in ordering paragraph (D) below, are able and willing properly to do the acts and to perform the services proposed, and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The sales of natural gas by the independent producers referred to in paragraph (1) above, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are required by the public convenience and necessity, and certificates therefor should be issued as hereinafter ordered and conditioned.

(5) The conditions attached to the certificates herein issued are required by the public convenience and necessity.

(6) The application in Docket No. CI61–631 should be dismissed.

(7) Except as herein granted, the exceptions to the examiner's decision should be denied.

The Commission orders:

(A) Certificates of public convenience and necessity are hereby issued to each of the applicants named in paragraph (1) above for the sale of natural gas in interstate commerce for resale as proposed in their respective applications, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, upon the terms and conditions hereinafter set out in this order.

(B) As to those sales where the contract or supplement was executed on or before September 28, 1960, the certificate is conditioned to prohibit any total initial price, including all reimbursements and charges, greater than 15.0 cents per Mcf at 14.65 psia; where the contract or supplement was executed after September 28, 1960, the certificate is conditioned to prohibit any total initial price, including all reimbursements and charges, greater than 16.0 cents per Mcf at 14.65 psia; all such conditioned prices are effective from the date of issuance of this order and until such prices may be lawfully changed in the manner provided by the Natural Gas Act.

(C) Notwithstanding the conditions of paragraph (B) above, certificates are required and are issued at the initial prices listed in the following dockets: Roy A. Lamb & A. G. Galt, Docket No. CI62–21, 16.5 cents; Shell Oil Co., Docket No. CI61–783, 16.0 cents.

(D) In addition to other applicable conditions imposed herein, the certificates issued above in Docket Nos. G–20458, CI60–506, CI62–21, and CI64–908, are subject to the following additional conditions:

(i) Each applicant shall notify the Commission, in writing, within 10 days whether or not service has ever commenced, and if so, when.

(ii) If service has never commenced, the certificate herein issued is void and the application is dismissed.

(iii) If service has ever commenced, the certificate issued herein is fully effective and subject to all conditions imposed herein.

(E) Within 30 days from the date of issuance of this order each of the applicants receiving certificates or grants of amendments in paragraph (A) hereof, whose proposed total initial price exceeds the applicable price listed in paragraphs (B) or (C) hereof, shall file a supplement to its presently filed rate schedule related to its respective applications, reflecting the conditioned price as the total initial price in lieu of the higher initial price provided in the contract or amendment; provided that with respect to the reduction in rates hereby ordered, applicants need not comply with the notice provisions of Section 154.94(b) and the detailed submittal provisions of Section 154.94(f) of the Regulations under the Natural Gas Act.

(F) Each certificate issued in paragraph (A) is further conditioned to provide for a moratorium until January 1, 1968, or until issuance of a final decision in Docket No. AR64–2, whichever is earlier, on the filing of any increased rate in excess of 18 cents per Mcf at 14.65 psia, inclusive of tax reimbursement, which rate is to be effective on or after the date of issuance of this order.

(G) Ramada Oil & Gas Company in Docket No. CI63–304 and Tenneco Oil Company in Docket No. CI63–334 shall compute amounts to be refunded to their respective pipeline purchasers. The refund shall include the difference between the amount charged and collected and 16 cents per Mcf applied to all volumes paid for by the purchaser from the date of the first delivery of natural gas under temporary authorization until the date of this order. Interest shall be included at a rate of 7 percent per annum to the date of this order. Within 90 days from the date of this order Ramada and Tenneco shall submit a report to the Commission, and serve a copy on the purchaser, setting forth the amount of refund related to each subject rate schedule (showing separately the principal and applicable interest), the basis used for such determination, the period covered, and a letter from the purchaser agreeing to the correctness of the amounts.

(H) Ramada and Tenneco shall retain the amounts shown in the report required under paragraph (G) above, subject to further order of the Commission directing the disposition of those amounts.

(I) If Ramada and Tenneco elect to commingle these retained refunds with their general assets and use them for their corporate purposes, they shall pay interest thereon at the rate of 4½ percent per annum on all funds thus available from the date of this order to the date on which they are paid over to the person ultimately determined to be entitled thereto in a final order of the Commission.

(J) If Ramada or Tenneco elect to deposit the retained refunds in a special escrow account, it shall each tender for filing within 90 days of the issuance of this order an executed Escrow Agreement, conditioned as set out below, accompanied by certificate showing service of a copy thereof upon the purchaser. Unless notified to the contrary by the Secretary within 30 days from the date of filing thereof, the Escrow Agreement shall be deemed to be satisfactory and to have been accepted for filing. The Escrow Agreement shall be entered into between each producer and any bank or trust company used as a depositor for funds of the United States Government and the agreement shall be conditioned as follows:

(i) The producer, the bank or trust company, and the successors and assigns of each, shall be held and formally bound unto the Federal Power Commission for the use and benefit of those entitled thereto, with respect to all amounts and the interest thereon deposited in a special escrow account, subject to such agreement, and such bank or trust company shall be bound to pay over to such person or persons as may be identified and designated by final order of the

Commission and in such manner as may be therein specified, all or any portion of such deposits and the interest thereon.

(ii) The bank or trust company may invest and reinvest such deposits in any short-term indebtedness of the United States or any agency thereof or in any form of obligation guaranteed by the United States which is, respectively, payable within 120 days as the said bank or trust company in the exercise of its sound discretion may select.

(iii) Such bank or trust company shall be liable only for such interest as the invested funds described in paragraph (ii) above will earn and no other interest may be collected from it.

(iv) Such bank or trust company shall be entitled to such compensation as is fair, reasonable and customary for its services as such, which compensation shall be paid out of the escrow account to such bank or trust company. Said bank or trust company shall likewise be entitled to reimbursement for its reasonable expenses necessarily incurred in the administration of this escrow account, which reimbursement shall be made out of the escrow account.

(v) Such bank or trust company shall report to the Secretary quarterly, certifying the amount deposited in the bank or trust company for the quarterly period.

(K) With respect to the applications of all producers listed in ordering paragraph (A) except Ramada Oil & Gas Co., Docket No. CI63–304, Tenneco Oil Company, Docket No. CI63–334, and Sun Oil Company, Docket No. CI64–470, the decision whether refunds should be ordered as a condition to the permanent certificates is deferred for subsequent determination. Within 30 days from the date of issuance of this order the parties to this proceeding, to the extent desired, may file briefs directed to the issue whether refund should be ordered in any or all of the dockets and the extent of such refunds, if any. Replies may be filed within 10 days of service of the briefs. Any party who wishes to introduce into the record evidence as to additional facts which might bear upon the ultimate determination of this matter shall file with its brief, within 30 days from the date of issuance of this order, a statement of such additional facts and of the evidence by which it is proposed to establish such facts.

(L) The certificate herein issued to Sun Oil Company in Docket No. CI64–470 is conditioned upon its being accepted in writing by the applicant within 30 days of the issuance of this order.

(M) The certificates herein issued, and the amendments herein granted, are upon the express condition that the allowance of the take-or-pay provisions in the applicant's contract or amendment is subject to the Commission's ultimate disposition with respect to such provisions in the rule-making proceeding in Docket No. R–199. Upon the establishment, by regulation or policy statement, of a general policy governing such provisions in producer contracts, each applicant shall, within 30 days, file its amended rate schedule in conformity therewith, acceptable to the Commission, provided that the applicant shall not be required to file a take-or-pay provision for less than 80 percent of the annual contract quantity and, provided further, that any rate schedule changes or modifications to be made in accordance with this paragraph shall be prospective only.

(N) The certificates issued by paragraph (A) hereof are not transferable and shall be effective only so long as each respective applicant continues the acts and operations hereby authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations, and orders of the Commission.

(O) The grant of the certificates and amendments herein shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act, or of Part 154 of the Regulations thereunder. Such grant is without prejudice to any

findings or order which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against the applicants or any one of them. Further, the action in this proceeding shall not foreclose or prejudice any further proceedings or objections by the Commission relating to the operation of any price or related provision in the gas purchase contracts or amendments here involved.

(P) The application in Docket No. CI61–631 is hereby dismissed.

(Q) The appeals taken by Continental, *et al.* from the examiner's September 2, 1964 ruling excluding non-in-line price evidence are denied.

(R) Except as herein granted, the exceptions to the examiner's decision are denied.

(S) The examiner's decision, to the extent not inconsistent herewith, is hereby adopted as part of this Opinion and Order.

Commissioner Black *concurring* in the result.

Commissioner Bagge *concurring* for the reasons set forth in his concurring statement accompanying Opinion No. 475 issued September 22, 1965, in Docket No. G–18077, *et al., H. L. Hawkins & H. L. Hawkins, Jr., Operator, et al., supra*, p. 908.

Commissioner Ross *dissenting.*

BLACK, *Commissioner, concurring in the result:*

The results here reached by the Commission confirm and in fact stabilize the pricing levels established by the Commission in the *Amerada* proceeding. Although I joined with the majority in the opinion in that case, I subsequently indicated dissatisfaction with the standards there employed by the Commission (*H. L. Hawkins & H. L. Hawkins, Jr., Operator, et al.*, Docket No. G–18077, *et al., supra*, p. 897). However, as the main opinion notes those standards are presently before the courts for final resolution. Reversal of these holdings prior to final action by the courts would merely undermine the price stability which we seek. I therefore concur with Commission results in this proceeding.

ROSS, *Commissioner, dissenting:*

I dissent to the Order granting permanent certificates at prices above 15¢/Mcf for the reasons set forth in my dissent in *Amerada Petroleum Corp.*, et al., Opinion No. 422, 31 FPC 623, 642 (1964).

I also disagree with the majority's acceptance of the Examiner's finding that the Bright & Schiff contract dated September 15, 1960, should be attributed an effective date of February 10, 1961, and thus entitled to the higher "in line" price of 16¢/Mcf. The Examiner's finding rested on the testimony of Mr. H. G. Schiff that neither he nor his three partners had signed the contract until February 10, 1961 (*infra*, p. 1039, Examiner's Decision).

The fact of the matter is that on September 26, 1960, Coastal States filed an application for a certificate to sell gas to South Texas. Underlying that application is a contract including Coastal States *and* Bright & Schiff as indivisible one-half owners of certain acreage, which is exactly the same acreage forming the subject of the Bright & Schiff contract involved in this proceeding. The Coastal States/Bright & Schiff contract was temporarily certificated and sales of gas from the acreage were begun in November, 1960 and have continued since that time. Subsequently Coastal States and Bright & Schiff received a permanent certificate to make this sale in the *Skelly* proceeding, *Skelly Oil Co.*, Opinion No. 362, 28 FPC 401, aff'd. in part and reversed in part and remanded *sub nom.*

With the artificial distinction between contracts dated before and after September 28, 1960, it is not difficult to understand the effort by Bright & Schiff to establish a later effective date. In view of this background, the testimony is far from

compelling that the February date should be controlling assuming *arguendo* that such testimony should have been received in evidence in the first place.

Moreover, it is elementary hornbook law that a formal written contract is governed by the intent expressed in the contract and not by unexpressed intentions, "Contracts," *C.J.S.*, Sec. 296(2). The majority ignores this fundamental principle to the detriment of gas purchasers and orderly administrative procedure. Thus, this decision will have the undesirable effect of permitting producers to impeach their own filings to obtain a higher price with the attendant, unnecessary and costly delay involved in considering such evidence in certificate proceedings.

INITIAL DECISION

OF THE PRESIDING EXAMINER UPON APPLICATIONS PURSUANT TO SECTION 7 OF THE NATURAL GAS ACT

(Issued June 22, 1965)

TAYLOR, *Presiding Examiner:* This is a consolidated proceeding under the certificate provision of Section 7 of the Natural Gas Act (52 Stat. 824 (1938), 15 U.S.C. Sec. 717(f)). Sixty-seven applicants, individually or as operator, seek certificates of public convenience and necessity under Sections 7(c) and (e) of the Act authorizing them to sell natural gas to five pipe line companies for resale in interstate commerce from fields in Texas Railroad Commission District No. 4 (Texas District No. 4), an area consisting of fifteen counties in the southern tip of the State of Texas. The pipeline companies and the sales to each are as follows: Florida Gas Transmission Company (17 sales), South Texas Natural Gas Gathering Company (15 sales), Tennessee Gas Transmission Company (18 sales), Natural Gas Pipeline Company of America (16 sales), Valley Gas Transmission, Inc. (1 sale). The most important issue is the determination of the maximum initial price appropriate in the interest of the public convenience and necessity for new jurisdictional sales of gas from the area.

The sales are made under long term contracts (18–20 years), or amendments of earlier contracts, dated from August 8, 1956 to March 25, 1964. One contract in 1956, one contract in 1957 and three in 1964, and the remaining 62 contracts between January 1, 1958 and December 31, 1963. The proposed total initial prices range from 14.5 cents per Mcf to 20.045 cents per Mcf.[1] Upon application the Commission has granted temporary authorization to commence deliveries in each docket except Docket No. CI64–470. Four of the temporary authorizations require a rate for the period of temporary authorization which is less than the contract rate; two contain express refund conditions. Most of the sixty-seven applications involve initial sales of gas. Certain of the applications involve successions to sellers' interest and acreage additions. Details of the numerous applications, contracts, temporary certificates, and prices certificated by the Presiding Examiner, are shown in Appendix A hereto which is incorporated herein by reference. The Presiding Examiner finds, based upon a consideration of the whole record and as supported by and in accordance with the reliable, probative, and substantial evidence, and for the reasons expressed herein, that the prices shown in the last column of Appendix A hereto are required in the public convenience and necessity.

Procedural Matters

This proceeding was instituted by order of the Commission issued May 28, 1964 under the lead docket, *Turnbull & Zoch Drilling Co. (Operator), et al.*, Docket No. G–17960, *et al.*, which consolidated 67 pending applications for hear-

[1] Unless otherwise stated, all rates are expressed inclusive of applicable tax reimbursement. All volumes are at 14.65 psia.

ing. Subsequent orders and notices severed and consolidated applications so that at present there are 67 applications to be acted upon.[2]

On June 30, 1964, a prehearing conference was held in accordance with the Commission's May 28, 1964 order.[3] The Staff mailed its comparative price exhibit (now Hearing Exhibit No. 7) on July 6, 1964 to all participants.

A second prehearing conference was held on September 2, 1964. The prepared testimony and supporting exhibits of all participants, except for the refund issue, were mailed on or before September 11, 1964. On July 27, 1964, between the first and second prehearing conferences, the Commission issued its order permitting the intervention in this proceeding of Florida Gas Transmission Company (Florida Gas), Natural Gas Pipeline Company of America (Natural), and 29 eastern gas distributors. The Public Service Commission of New York and the Pennsylvania Public Utility Commission filed timely notices of intervention. The hearing commenced on September 29, 1964, and was concluded on October 9, 1964 after eight actual hearing days.

Thirteen initial briefs were filed on behalf of 20 applicants in 33 dockets. Answering briefs were filed by Staff and two interveners. On or before December 18, 1964 nine reply briefs were filed on behalf of 12 applicants.[4] Insofar as the briefs concern matters of general application, they will be considered as having been filed for the benefit of all to whom they might apply and will not be identified separately. A number of dockets present special problems which are not of general application. These will be considered separately.

Stipulations

In reaching a decision concerning the applications filed herein the Presiding Examiner is required by Section 7(e) of the Act to determine whether or not the applicants have established (1) that they are able and willing to do the acts and perform the services proposed in their applications; (2) that they are able and willing properly to conform to the provisions in the Act and the requirements,

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[2] *Further consolidations:* Docket No. CI62–1074 by Notice herein on June 25, 1964; Docket Nos. CI64–1307, CI64–1310, and CI64–1311 by Notice herein on October 27, 1964. *Severances:* Docket No. CI64–1277, by Notice herein on July 22, 1964; Docket No. CI61–158 by Orders of July 8 and August 7, 1964, under lead dockets, *Humble Oil & Refining Company,* Docket Nos. G–9287 and G–9288, *et al.,* 32 FPC 49, 542; Docket No. CI61–482 by Order of October 8, 1964, under lead dockets, *The Atlantic Refining Company,* Docket Nos. G–9283 and G–9284, *et al.,* 32 FPC 933; and Docket No. G–19052, *et al.,* by Order of April 7, 1965, under lead dockets, *Sunray DX Oil Company, et al.,* Docket No. G–4281, *et al.* (Docket No. CI62–1074 presents a special situation. See footnote "m" to Appendix A attached hereto.)

[3] Although the Commission had not yet acted on petitions to intervene, the Presiding Examiner allowed the participation pursuant to Section 1.8(f)(2) of the Rules of Practice and Procedure.

[4] Applicants: Appell Petroleum Corporation, *et al.;* Clark Fuel Producing Company (Operator) and K. D. Owen, *et al.,* d/b/a Owen and Moss; Austral Oil Company, Incorporated; Blanco Oil Co. (Operator), *et al.,* and Killam & Hurd; Bright & Schiff; Continental Oil Company; Gulf Oil Corporation; Jonnell Gas, Incorporated (Operator), *et al.* and J. C. Trahan Drilling Contractor, Inc.; H. J. Mosser; Pan American Petroleum Corporation; Phillips Petroleum Company; Shell Oil Company; Sun Oil Company; Tenneco Oil Company (Operator), *et al.,* Texaco Inc., and Humble Oil & Refining Company adopted the brief of Continental Oil Company. *Interveners:* The Brooklyn Union Gas Company and Long Island Lighting Company; The Philadelphia Gas Works, Division of United Gas Improvement Company adopted The Brooklyn Union Gas Company's brief. *Replies:* Appell Petroleum Corporation, *et al.,* Clark Fuel Producing Company (Operator) and K. D. Owen, *et al.,* d/b/a Owen and Moss; Austral Oil Company, Incorporated; Blanco Oil Co. (Operator), *et al.,* and Killam & Hurd; Bright & Schiff; Continental Oil Company and Gulf Oil Corporation; Pan American Petroleum Corporation; Shell Oil Company; Sun Oil Company; Texaco Inc. adopted Continental's brief.

rules, and regulations of the Commission thereunder; and (3) that the proposed services and sales are or will be required by the present or future public convenience and necessity.

As a result of stipulations and orders of the Commission, certain of the ultimate and subsidiary determinations required by Section 7(e) of the Act have been removed from consideration herein.

In prehearing conferences, and during the hearings, the participants stipulated that for the purposes of this consolidated proceeding all of the contracts underlying the certificate applications in this proceeding were entered into after arm's-length negotiations. They also stipulated that the contract and certificate filings by seventeen applicants[5] established, in the language of Section 7(e) of the Act, that such applicants were "able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Act and the requirements, rules, and regulations of the Commission thereunder. * * *" The latter stipulation usually is entered into as a routine matter on behalf of all applicants, regardless of whether or not all applicants appear at the hearing. Long Island Lighting Company, however, refused to stipulate that the twenty-eight applicants who did not appear at the hearing[6] were able and willing to conform to the provisions of the Act and the Commission's valid promulgations thereunder. Its refusal was based upon a recent experience wherein two producers, not parties to this case, took the position that they were mere conduits for revenues and therefore had no monies with which to make refunds required by Commission orders. In addition, six applicants[7] viewed the stipulation as an agreement by them to accept a permanent certificate at a price lower than the contract price, or an agreement to comply with any valid refund order of the Commission, or both, even though they might not be (1) willing to accept a price-conditioned permanent certificate (assuming a legal right to refuse a certificate where gas is flowing under a temporary certificate), or (2) able to comply with a refund order if one were issued. In short, they want to see the permanent certificate before deciding whether or not they were able and willing to comply with its terms. (The fact that the refund issue was severed from this phase of the proceeding by order of the Commission on October 5, 1964, did not change the position of any participant.) Out of an abundance of caution therefore, they refused to enter into the full stipulation. It was stipulated, however, that the six applicants were able and willing properly to do the acts and to perform the service proposed in their applications.

No similar stipulation was entered into concerning those applicants who failed to appear at the hearing and who are listed in Part II of Appendix B hereof. The evidence of record,[8] however, supports a finding, which is hereby made, that all such applicants who have commenced deliveries under their temporary certificates are able and willing properly to do the acts and to perform the service purposed in their applications. (Insofar as shown by this record, five of such applicants have not commenced service under their temporary cer-

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[5] Listed in Appendix B hereto, Part I.

[6] Listed in Appendix B hereto, Part II.

[7] McCurdy & McCurdy (G–18434); Jonnell Gas, Incorporated (Operator), *et al.* (CI60–323, CI63–925); J. C. Trahan Drilling Contractor, Inc. (CI62–123); Blanco Oil Co. (Operator), *et al.* (CI61–618); Killam & Hurd (CI61–626); and Bright & Schiff (CI61–1541).

[8] The applications and related rate schedules of all applicants were admitted into evidence by stipulation as items by reference. There is sufficient evidence, presented by other participants, to find the prices required by the public convenience and necessity for all applicants. Service has commenced under the temporary certificates issued to most of the absent applicants.

tificates.[9] As set forth subsequently herein, the Katz Oil Company application should be dismissed and the applications of the other four applicants should be conditioned as set forth hereinbelow.)

There remains to be made a finding that the six applicants referred to previously, and also the absent applicants listed in Part II of Appendix B, are able and willing to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder. At the hearing the Presiding Examiner stated that this finding could be based upon a statement by each of such applicants indicating its ability and willingness in the language of the Act, and that each certificate should be conditoned to require such a statement. In its brief, Staff contends that the Presiding Examiner can also make this finding on the basis of the fact that service has already commenced. Staff states that no one "who has committed himself to regulation by a lawful authority can be heard to say that he will not comply with its valid laws, orders, rules and regulations." (Br., p. 33). The Presiding Examiner agrees and finds that all of such applicants who have commenced deliveries under their temporary certificates are able and willing properly to conform to the provisions of the Act and the requirements, rules and regulations of the Commission thereunder.[10]

As previously shown, the record does not reflect whether or not service has commenced under the temporary certificates issued in the five dockets listed in footnote 9, below. The applicant in Docket No. CI61-631, Katz Oil Company, has indicated by letter that it does not intend to produce gas from its lease (Item TTT). Since this applicant has not shown good cause for its failure to appear and prosecute its application, this application will be dismissed and its proceeding terminated. (*Cf.*, Section 157.12 of the Commission's Regulations (18 CFR 157.12)).

The four other applicants who have not commenced service should be issued certificates containing the following conditions, among others: each must notify the Commission in writing within 10 days whether or not service has ever commenced, and if so, when; if the service has never commenced, then the certificate issued herein is void and the application will be dismissed and the proceeding terminated for failure to prosecute; if service has ever commenced, then the certificate issued herein is fully effective and subject to all conditions imposed herein.

Severance and Refund Issues

On July 15, 1964, the Presiding Examiner referred a petition and several severance motions to the Commission for ultimate determination pursuant to Section 1.12(d) of the Rules of Practice and Procedure. Two of the motions by Bright & Schiff requested rehearing of the May 28, 1964 order which initiated this consolidated proceeding and, in the alternative, severance of Bright & Schiff's Docket No. CI61-1541. These motions were denied by order of the Commission dated September 11, 1964. Except for a matter subsequently discussed in the in-line price section herein, the remaining pleadings related to whether or not there should be in this proceeding any consideration of refunds in cases where the temporary certificate does not contain an express refund condition.

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[9] Diversa, Inc., *et al.*, Docket No. G-20458, *et al.*; Joseph E. Seagram & Sons, Inc., Docket No. CI60-506; Roy A. Lamb & A. G. Galt, d/b/a Pan American Engineering Company, Docket No. CI62-21; L. B. Horn (Operator), *et al.*, Docket No. CI64-908; and Katz Oil Company, Docket No. CI61-631.

[10] The questions as to what should be done if a producer fails to comply with valid Commission orders or seeks to abandon its sale are not now presented.

By order issued October 5, 1964, 32 FPC 914, the Commission deferred such consideration until its further order.

At the September 30, 1964 hearing, counsel for Bright & Schiff made an oral motion to sever its docket from this proceeding. The Presiding Examiner ruled that he had no authority to dispose of the motion prior to his initial decision. He declined to find that extraordinary circumstances existed for the purposes of an appeal pursuant to Rule 1.28(a). In view of the Commission's October 5, 1964 order previously referred to, this matter is moot.

Exclusion of Cost and Economic Evidence

At the first prehearing conference on June 3, 1964 the Presiding Examiner ruled that he would sustain an objection to the introduction of evidence concerning costs, financial and revenue requirements, geological information, supply and demand relationships, and trends and economic evidence, if such evidence were offered.[11] This ruling was based primarily upon the position taken by the Commission in the *Skelly* case,[12] and in *Texaco Seaboard, Inc.*, Opinion No. 383, 29 FPC 593, rehearing denied, Opinion 383–A, 30 FPC 613; and its affirmance by the courts in *California Oil Co.* v. *F.P.C.*, 315 F. 2d 652, 660 (CA10), and *The Atlantic Refining Co.* v. *F.P.C.*, 316 F. 2d 677, 680 (CADC). The Presiding Examiner indicated that parties desiring to adduce such evidence would be permitted to make offers of proof. Subsequent to the first prehearing conference, and prior to the date set for the commencement of the hearing, the Fifth Circuit issued its opinion in *Callery Properties, Inc.* v. *F.P.C.*, 335 F. 2d 1004 (CA5). Continental Oil Company and various other applicants then requested that the Presiding Examiner convene a second prehearing conference to consider further the issues upon which evidence should be offered in these proceedings. A second prehearing conference was held on September 2, 1964. After extensive argument he ruled again that such evidence would not be permitted in this proceeding. He relied primarily upon the *Skelly* case principle and specifically refused to follow the holding in the *Callery* case, which states that such evidence should be admitted in a Section 7 initial price proceeding. *Cf.*, *Sun Oil Company, et al.*, Docket No. G–8592, *et al.*, Opinion No. 445, 32 FPC 1183, issued October 26, 1964. Humble Oil & Refining Company, joined in by Continental Oil Company, Shell Oil Company, Getty Oil Company, and Bright & Schiff, requested the Presiding Examiner to certify an appeal from his ruling to the Commission. The Presiding Examiner denied such request because the record did not support a finding that extraordinary circumstances existed. On September 21, 1964, Continental filed with the Commission an appeal from the aforesaid September 2, 1964, ruling excluding non-in-line price evidence. Similar appeals were taken by various other parties. Copies of the various appeals were transmitted to the Presiding Examiner. The Presiding Examiner has taken no action on such appeals and is unaware of any action having been taken by the Commission.

Numerous applicants in their briefs have urged with vigor that the Presiding Examiner erred in excluding the cost, financial, geological, and economic evidence offered in this proceeding and request that he reverse his ruling and reopen the proceeding for its admission. They particularly urge that the Presiding Examiner should have followed the *Callery* case, *supra*. The Presiding Examiner has

[11] The ruling was made in order to obviate the necessity of the parties bringing in witnesses and detailed evidence, and was made in response to a request by one of the applicants (Tr. 59–63).

[12] *Skelly Oil Company*, Opinion No. 362, 28 FPC 401, modified on rehearing, Opinion No. 362–A, 28 FPC 1065, affirmed in part and remanded, *sub nom. Public Service Commission of State of N.Y.* v. *Federal Power Commission*, 329 F. 2d 242 (CADC), certiorari denied, *sub nom. Prado Oil & Gas Co.* v. *F.P.C.*, 377 U.S. 963, *Skelly Oil Co.* v. *F.P.C.*, 377 U.S. 963.

reviewed carefully the excluded evidence, which is in the record as offers of proof, and finds that the admission of such evidence would accomplish the very thing the United States Supreme Court sought to avoid when it enunciated the hold-the-line principle in *Atlantic Rfg. Co.* v. *Public Service Commission*, 360 U.S. 378, 392 (1959), hereinafter referred to as the *Catco* case.

That case held, among other things, that where a proposed price is not in keeping with the public interest because it is out of line, the Commission may attach conditions to a certificate in order to afford standby protection to the "consuming public * * * while the justness and reasonableness of the price fixed by the parties is being determined under other sections of the Act."[13] Such procedure is a "stopgap" device which permits "the Commission to act upon certificate applications with reasonable dispatch."[14] The producer applicants are protected in the event the Commission errs on the low side in conditioning a certificate because the company under Section 4 of the Act can increase the price up to the contract price, assuming that the contract price is not at a triggering level, subject to disallowance by the Commission after a full rate proceeding, the public being protected with reference to refunds in the interim. The Presiding Examiner finds that the "hold the line" principle renders immaterial and irrelevant in this proceeding the cost, financial, geological and economic evidence sought to be introduced herein.

Markets and Present Public Need for Gas

In order to meet the public convenience and necessity test prescribed by Section 7 of the Act, a producer-applicant must show that there is a market for the natural gas it intends to sell in interstate commerce. At a prehearing conference held on September 2, 1964, the Presiding Examiner ruled that in this proceeding the long-term contracts entered into by each applicant with a pipeline company constituted proof of a market; that there was no market issue in this proceeding; and that such issue is one to be considered in acting on each pipeline's request for a permanent certificate. These ruling were excepted to but no appeal to the Commission was requested.[15]

The Long Island Lighting Company (Long Island Lighting) and the Brooklyn Union Gas Company (Brooklyn Union)[16] contend that the Presiding Examiner

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[13] A proceeding designed to determine the "just and reasonable" rate for the sales proposed herein, among others, was instituted by the Commission by order dated November 27, 1963, 30 FPC 1354, in Docket No. AR64–2, Area Rate Proceeding, *et al.*, (Texas Gulf Coast Area). By order issued November 27, 1964, 32 FPC 1373, the Commission prescribed certain procedures and appointed a Presiding Examiner. Since then five prehearing conferences have been held and the direct evidence of a non-cost nature has been placed in the record.

[14] *United Gas Improvement Co.* v. *Federal Power Commission*, 283 F. 2d 817, 822–823 (CA9), certiorari denied, *sub nom. Superior Oil Company* v. *United Gas Improvement Co.*, 365 U.S. 879.

[15] An appeal was taken from a related ruling of the Presiding Examiner. In its order of September 29, 1964, 32 FPC 877, herein, the Commission granted the appeal and ruled that in a case where the pipeline purchaser did not have a permanent certificate for the facilities required to receive the producer's gas, the certificate could still be issued to the producer but the producer would be on notice that if the pipeline does not receive certification this market will be gone In this proceeding the issuance of a certificate pursuant to this order is no longer necessary because all the pipelines purchasing gas from the applicants herein under the respective dockets now have been issued permanent certificates. See order issuing certificate, *Natural Gas Pipeline Company of America*, Docket No. CP61–96, November 23, 1964, 32 FPC 1354. (The fact that two transporters of gas (Docket No. CI61–282) to one of the pipeline companies have only temporary certificates is immaterial to this matter.)

[16] The latter's position on this matter, and others, was adopted by The Philadelphia Gas Works, Division of The United Gas Improvement Company. Hereinafter reference will be made only to Brooklyn Union.

erred in excluding from this proceeding the issue of the present public need for the gas. Brooklyn Union contends that at this period of time there is an "over-abundance of pipeline supply and the related serious take-or-pay position of many major pipelines is as much a matter of common knowledge as the former undersupply situation." (Br. p. 4) [17] Brooklyn Union contends that the issuance of a certificate to the pipeline purchaser cannot fill the evidentiary gap in this proceeding as to the present need for the gas.

As previously shown, all of the pipeline purchasers of natural gas from the applicants herein have been issued permanent certificates to construct the necessary facilities required to receive and transport the natural gas. These certificates could not have been issued unless there existed in the territory proposed to be served customers who could reasonably be expected to use such natural-gas service. *Kansas Pipe Line & Gas Company, et al.*, 2 FPC 29, 45. In this proceeding, therefore, the distributor interveners want a reappraisal of whether there now exist pipeline customers who can reasonably be expected to use the natural gas which will be purchased from the producers herein. Such a reappraisal is not required by the Natural Gas Act and, in view of the proceedings in Docket No. R–199 referred to hereinabove, is not required in the public interest.

One further matter: Long Island Lighting invited the Presiding Examiner's attention to the *Catco* case, *supra*, where the Court, in finding that there was insufficient evidence to support a finding of public convenience and necessity, stated as follows:

> Nor do we find any support whatever in the record for the conclusory finding on which the order was based that "the public served through the Tennessee Gas system is greatly in need of increased supplies of natural gas." 17 F.P.C. 880, 881. Admittedly, any such need was wrapped up in the Commission's action in Docket G–11107, where Tennessee was asking for permission to enlarge its facilities. However, the two dockets were not consolidated and the Presiding Examiner conditioned his approval here on the granting of the application in Docket G–11107, no part of which record is here. (360 U.S. at 393.)

It is apparent that the Court in the *Catco* case was referring to need as being synonymous with whether or not there were customers who could reasonably be expected ot use the natural gas. In the instant case there are no pipeline purchasers without permanent certificates and, therefore, the question posed by Long Island Lighting's reference to the *Catco* case is moot.

The In-Line Price

The United States Supreme Court in the *Catco* case, *supra*,[18] stated that "Section 7 procedures * * * act to hold the line awaiting adjudication of a just and reasonable rate." The Court also stated that where the "proposed price is not in keeping with the public interest because it is out of line * * * the Commission" might attach conditions to a certificate (360 U.S. at 391). Whether a proposed price is out of line requires a determination of what price is in-line. The Commission in *Union Texas Petroleum, et al.*, Docket No. G–13221, *et al.*, Opinion No. 436, 32 FPC 254, decided July 23, 1964, defined the in-line price as follows:

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[17] The Commission in Docket No. R–199 has under consideration proposed rules relating to take-or-pay-for provisions in producer contracts. On March 16, 1965 the Commission issued revised proposals which would permit provisions requiring pipeline customers to take or pay for 100 percent of their annual contract quantities of gas but would allow the companies five years to take gas previously paid for.

[18] 360 U.S. at 392

> The in-line price is not a mechanical reflection of certificated prices or of the market. It is, rather, the Commission's considered judgment as to the maximum initial price appropriate in the interest of the public convenience and necessity reflecting the current conditions in the industry. Further, it is our view that once an in-line price has been established for an area, it shall be presumed to continue until sufficient evidence is presented that there has been a change. (p. 260)

In the Presiding Examiner's considered judgment the maximum initial price appropriate in the interest of the public convenience and necessity reflecting current conditions in the industry is (a) 15 cents per Mcf at 14.65 psia for contracts executed during the period January 1, 1958 through September 27, 1960; (b) 16 cents per Mcf at 14.65 psia for contracts executed during the period September 28, 1960 through August 29, 1962, and (c) 16 cents per Mcf at 14.65 psia for contracts executed during the period August 30, 1962 through March 25, 1964.

Prior to the initiation of this consolidated proceeding on May 28, 1964 the Commission had issued certain policy statements, opinions and orders applicable to the pricing area here involved.[19]

Guideline prices for natural gas sold by independent producers in Texas District No. 4 were established by the Commission in Statement of General Policy No. 61–1, issued and effective on September 28, 1960 (18 CFR 2.56), at 18 cents per Mcf at 14.65 psia, for initial sales of natural gas, inclusive of all taxes. On August 30, 1962, 28 FPC 441, the Commission issued its Fifth Amendment to the Policy Statement (18 CFR, Supp. 1964, 2.56). It provided that effective on August 30, 1962 the ceiling price level for initial sales in Texas District No. 4, inclusive of state taxes, would be 16 cents per Mcf at 14.65 psia.

In its opinion in the *Skelly* case, *supra* at pages 408, 409, which involved sales to South Texas Natural Gas Gathering Company, the Commission found an in-line level of 15 cents per Mcf for the period immediately prior to September 28, 1960. The same in-line price for the same area and period was found in the following cases: *Jake L. Hamon*[20] involving sales to *United Gas Pipe Line Company; Texaco Seaboard, Inc., supra* at page 600, involving sales to Natural Gas Pipeline Company of America (Natural Gas Pipeline); and *Hassie Hunt Trust*,[21] also involving sales to Natural Gas Pipeline. In the *Amerada* case,[22] which involved sales to South Texas Natural Gas Gathering Co., Tennessee Gas Transmission Co., Ben Bolt Gathering Co., and Natural Gas Pipeline in Texas District No. 4, the Commission found an in-line price for the period September 28, 1960 to August 30, 1962 of 16 cents per Mcf.

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[19] Austral Oil Company, Blanco Oil Co. and Killam & Hurd contend that Texas District No. 4 is not a proper pricing area because "it is an artificially-drawn area which supports no inference of similarity among the wells, fields or counties therein. * * *" (Blanco Oil, Br. p. 40). Any inequities which may appear to exist in this proceeding because of the use of the area in question are considered and provided for in the premium benefits section of this decision.

[20] *Jake L. Hamon*, 29 FPC 784, rehearing denied, 29 FPC 1152, affirmed in part and remanded, *sub nom. Public Service Commission of New York* v. *F.P.C.* (CADC), No. 10852, issued February 11, 1964, 329 F. 2d 242 certiorari denied, *sub nom. Hamon* v. *F.P.C.*, 377 U.S. 963.

[21] *Hassie Hunt Trust, et al.*, Opinion No. 412, 30 FPC 1438, rehearing denied, but order stayed, in part, Opinion No. 412–A, 31 FPC 181, appeal pending, *Hill* v. *F.P.C.* (CA5), No. 21286.

[22] *Amerada Petroleum Corporation, et al.*, Opinion No. 422, 31 FPC 623, affirmed on rehearing, but stay order granted, in part, Opinion No. 422–A, 31 FPC 1315, appeals pending, *Long Island Lighting Co.* v. *F.P.C.* (CADC), No. 18790 and *Sunray DX Oil Co.* v. *F.P.C.* (CA10), No. 7781.

Bright & Schiff, an applicant herein in Docket No. CI61–1541, requested the Commission to rule that the decisions of the Commission in the *Skelly* and *Amerada* proceedings, *supra*, shall have no effect whatsoever upon the hearing and decision of this consolidated proceeding. By its order issued herein on October 5, 1964, 32 FPC 914, the Commission denied the request as premature. The precedential value of the above-mentioned Commission opinions, other Commission opinions, Commission orders, and court decisions relied upon by the participants is shown in the context of this initial decision.

The Staff witnesses in this proceeding presented in-line price evidence for the period prior to the issuance of the Policy Statement and also the two periods subsequent to its issuance. A witness sponsored by most of the active producer applicants who participated in the hearing (the producer witness) presented evidence for the two periods subsequent to the Policy Statement.[23] Although both Staff's and producer witness' methods of determining the in-line price differ in some respects, their conclusions are identical.

The Producer Witness

The producer witness presented information and conclusions concerning contract prices and certificated prices (Exhibits 1 and 2). She first presented information on market prices for recent interstate natural-gas sales in Texas District No. 4, together with related market data and, on the basis of this information, reached the conclusion "as a matter of judgment that if [market value] is given consideration the appropriate limiting price for Texas District No. 4 is at least 18 cents." (Tr. 443.)

Next she presented data concerning the prices at which recent sales had been certificated by this Commission in Texas District No. 4 and concluded that the in-line price for this area, in accordance with the considerations which guided the Commission in its previous in-line determinations for the District, was at least 16 cents for the two periods subsequent to the Policy Statement. She stated that she did not consider, and had no opinion, in regard to the in-line price prior to September 28, 1960. She testified that with respect to such first period the distribution of certificated prices was dominated by the sales authorized in the *Skelly* case.[24]

It was her further view that the two alternative approaches set forth above are not mutually exclusive; in other words, if the determination in the proceeding were made with reference to the current economic conditions affecting the gas producing industry, then past regulatory action (past certificated prices) would be of lesser significance. However, if the determination were made on the basis of the in-line price, the contract prices should still be considered because "it has never been suggested that the in-line price determination should be divorced from economic reality or made without respect to the market price." (Tr. 426). Her opinion that market value should be given consideration was based, except for cost and economic evidence which has been found to be

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[23] Humble Oil & Refining Company, Pan American Petroleum Corporation, M. W. Crockett, Gulf Oil Corporation, Tenneco Oil Co., Texaco Inc., Cities Service Oil Company, Shell Oil Company, Blanco Oil Company, Killam & Hurd, Jonnell Gas, Inc., J. C. Trahan Drilling Contractor, Inc., Continental Oil Company, Harry J. Mosser, Atlantic Refining Company, Sun Oil Company, Bright & Schiff and Phillips Petroleum Company.

[24] The producers who sponsored this testimony do not agree with the standards used by the Commission in determining the in-line price in the *Skelly* case and subsequent opinions. While not acquiescing in the standards used in those opinions, and while reserving the right to urge that the standards used are in error, for the purpose of this proceeding the producers who executed contracts subsequent to September 28, 1960, at 16.0 cents per Mcf assume that the opinions are not in error. This was done because, even under those standards, they contend that they are entitled to unconditioned certificates.

inadmissible in this proceeding, upon her unsupported opinion that there is "workable competition in the gas producers market." (Tr. 443).

In reaching her opinion that the appropriate limiting price for Texas District No. 4 is at least 18 cents per Mcf, the producer witness took into account certain facts and inferences concerning intrastate deliveries in Texas Districts No. 2, 3 and 4 (the Texas Gulf Coast area). Her testimony and related exhibits show a decline in new interstate commitments in Texas District No. 4[25] and an increase in intrastate deliveries in Texas Districts No. 2, 3 and 4.[26] (No information was available on gas commitments under intrastate producer contracts in Texas District No. 4 and no separate intrastate delivery figures were available for such District.) On the basis of this comparison of new interstate commitments with non-jurisdictional deliveries, she concluded that "sellers have found it advantageous to market an increased proportion of their supplies under non-jurisdictional contracts." (Tr. 439). But the real question is why?

The producer witness stated that an "important reason for the decline in interstate commitments appears to be the fact that the interstate market must compete with the large and growing intrastate market on the Texas Gulf Coast." (Tr. 437). The witness did not support this conclusion with any comparison of intrastate prices with interstate prices because the intrastate prices were unavailable, except for the testimony presented by Pan American Petroleum Corporation's (Pan American) witness. His testimony shows that Pan American is currently selling gas in Texas District No. 4 under nine contracts where the monthly quantities equal or exceed 10,000 Mcf (excluding two sales consolidated herein), four of which are jurisdictional and five of which are non-jurisdictional. The daily quantity of gas sold under the four jurisdictional contracts is approximately 15.9 Mmcf per day and that under the five non-jurisdictional contracts is approximately 46.4 Mmcf per day. He also testified that the weighted average price by volume under the four jurisdictional contracts is 14.9 cents per Mcf (prices not subject to refund) or 15.07 cents per Mcf (prices collected subject to refund). The weighted average price for gas sold under the five non-jurisdictional contracts is 17.4 cents per Mcf.

The use of testimony by one witness concerning nine sales is insufficient to provide a basis for finding that intrastate prices make it advantageous for sellers to market their supplies under non-jurisdictional contracts. The producers, however, would have the Presiding Examiner infer that the increased intrastate deliveries have been due to low interstate prices. Although one of the functions of the Commission is "to appraise the facts and to draw inferences from them,"[27] this record does not permit the Presiding Examiner to draw the inference urged by the producers as a basis for decision herein because it is not the only inference which might with equal propriety be drawn from the same facts. In short, the inference is no more than the assertion of one of two possibilities. The other permissible inference is as follows: that pipelines are

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[25] The new contract volume, expressed in terms of annual deliveries, declined from an average of 59 million Mcf in 1958–1960 to an average of 25 million Mcf during 1961–1963.

[26] Exhibit 12 sponsored by the producer witness, as revised during the hearing (Tr. 1180–1185), shows that during the period 1958–1963 total intrastate use increased from 1,047,470 Mmcf to 1,525,169 Mmcf. For the same period it shows that there was an increase in sales to interstate pipeline companies under independent producer rate schedules from 1,278,212 Mmcf in 1958 to 1,341,631 Mmcf in 1963, amounting to about a five percent increase. The total intrastate figure is a derived figure in that, to the best of the witness' knowledge, there is neither a published nor unpublished report which would show the comparable figure. In other words, the witness obtained the total marketed production figures of the Texas Railroad Commission and, after certain adjustments, deducted sales to interstate pipeline companies.

[27] *F.P.C. v. Transcontinental Gas Corp.*, 365 U.S. 1, 7.

cutting back on older Texas Gulf Coast contracts because of take-or-pay problems under later contracts in other areas. In fact, the producer witness recognizes that competition between the interstate market and intrastate market is not the exclusive reason for the decline in commitments (Tr. 835).

The Presiding Examiner finds that this record does not support the inference of fact urged by the producers.

The Staff Witness

The Staff witness presented Exhibits 7, 8 and 9 pertaining to contracts in Texas District No. 4 (Tr. 612).[28] The information in Exhibits 7 and 8 was taken from producer rate schedules and related certificate applications on file with this Commission. Schedule 1 of Exhibit 7 sets forth significant contract provisions of the sales proposed herein. Schedules 2–A through 2–L set forth similar data for sales under contracts in this same area executed on June 7, 1954 through December 31, 1963, and permanently certificated as of March 1, 1964.[29] Schedule 3 shows temporarily certificated sales that are not in Schedule 1, for contracts dated June 7, 1954 through March 1, 1964. The provisions include date of contract, term, location, delivery point, maximum delivery pressure, heating value, allowed sulphur, rates and price provisions and estimated first-month's production volumes.

Column 17 of each Schedule of Exhibit 7 shows the basic certificated price including tax and other reimbursements. Column 18 shows the current certificated price, which in some cases is higher than the basic certificated price due to rate settlements and permitted price escalations. The original price set forth in a contract filed as rate schedule was not shown on Exhibit 7 where it was higher than the basic certificated price. The charts attached to Staff's Exhibit 9, and also to its brief, used the prices in column 17 as their foundation.

The Staff witness set out the results of his in-line price studies in Charts 1 through 4 of Exhibit 9.[30] Because he wanted to see what impact the issuance of the Commission's Policy Statement and amendments thereto had on the pattern of permanently certificated prices in the area, and in keeping with the Commission's past pronouncements regarding time periods for determining in-line prices, he divided the Schedules 2–E through 2–L price and volume data into three time periods: January 1, 1958 through September 27, 1960 (Chart No. 1), September 28, 1960, through August 29, 1962 (Chart No. 3), and August 31, 1962 through December 31, 1963 (Chart No. 4), and finally, a composite of Charts Nos. 3 and 4 (Chart No. 2). He then compared the contract quality specifications of the contracts underlying the application herein (Table 1, Exhibit No. 9), with those of the contracts in Schedules 2–E through 2–L of Exhibit No. 7 (Table 2, Exhibit No. 9), and found that they are generally comparable (Tr. 615, 618). (The producer witness had a similar opinion.)[31] He concluded that the in-line

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[28] Exhibit No. 8 consists of errata to Exhibit No. 7.

[29] This latter date was subsequently revised to read "some time" after March 22, 1964—the date of the *Amerada* opinion, *supra* (Tr. 1782–83).

[30] The sales from Schedules No. 2–E through 2–L of Exhibit No. 7, which were used to construct these charts, included all sales by producers except a few sales found to be short term sales and sales of purchased gas. These charts include sales to gatherers, including Valley Gas Transmission Inc., and sales at rates less than 14 cents per Mcf. As subsequently shown, however, the Staff attached to its brief similar charts which eliminated all such sales in order to avoid needless argument.

[31] The Presiding Examiner has considered the evidence of record, and the contentions to the contrary, and finds that the contracts in Schedules 2–E through 2–L of Exhibit No. 7 are fairly comparable to the contracts in issue herein insofar as quality provisions are concerned. The matter of comparability of quantity provisions is discussed in the "Premium Benefits" section of this initial decision.

price for the first period should be 15 cents per Mcf and for the period of time encompassed by the last two periods 16 cents per Mcf.

As previously shown, the producer witness used the latter two time periods in her consideration of certificated prices. She testified that she did so as a result of Commission precedent and because the regulatory actions taken on September 28, 1960 and August 30, 1962 affected the subsequent contract prices, that is, the contract prices negotiated by producers were lower following the issuance of the Policy Statement and the Fifth Amendment. (This record contains the testimony of two producer parties who voluntarily reduced the initial price of a contract in order to obtain a permanent certificate without undue delay (Tr. 584, 592); and the testimony of one producer party who relied upon the Policy Statement before beginning deliveries of gas under a temporary certificate (Tr. 558)).[22] Several of the producers herein object to the use of the three time periods. Most of them have contracts dated several weeks prior to the issuance of the Policy Statement.[23] These applicants vigorously urge that the time periods used by the Staff witness be disregarded because they have no economic reality and result in a determination based upon Commission proceedings in which certain of the applicants were not parties.

The evidence herein shows that the issuance of the Policy Statement and the Fifth Amendment thereto were events which caused a change in the level of contract prices. As a result, before September 28, 1960, the parties were guided by one set of circumstances; after that date the parties also had the Policy Statement and later the Fifth Amendment as sources of reference in entering into their contracts. A comparison of prices both before and after September 28, 1960 would, therefore, be a comparison of prices based upon dissimilar circumstances, and would not reflect the current conditions in the industry. The Presiding Examiner finds that the public convenience and necessity require the use of the three separate time periods.

In preparing the tables set out below, which set forth relevant producer prices for comparative purposes, the Presiding Examiner (1) has included sales under 14 cents per Mcf; (2) has excluded sales to gatherers and to Valley Gas Transmission, Inc.; and (3) has used estimated first-month's volumes.

Inclusion of Sales Under 14 Cents

In its opinions concerning the in-line price for this area, as set forth at page 1021, *supra*, the Commission did not base its determination on certificates issued at prices under 14 cents.

Long Island Lighting, Brooklyn Union, and Staff, contend that the only reason for not doing so was because evidence as to such sales had not been placed into the record. They now contend that the record herein does contain a list of sales in the area under 14 cents per Mcf (Exhibit 7), and that no reason has been

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[22] This testimony is supported by Exhibit 2, Chart 1, and Schedule 1, which show that from January 1, 1958 to September 28, 1960 there were nine (9) sales in District No. 4 at prices ranging from 19.5 cents to 20 cents per Mcf at 14.65 psia. For the period September 28, 1960 to August 30, 1962 (Fifth Amendment to the Policy Statement), there was only one (1) sale above the 18 cents per Mcf guideline price. For the same period of time, however, there were twenty-two (22) sales concentrated in the 17-cent and 18-cent per Mcf price levels. Subsequent to August 30, 1962 there was only one (1) sale above the 16 cent per Mcf guideline price.

[23] Such as, Blanco Oil Co., Killam & Hurd, Austral Oil Company Incorporated, Appell Petroleum Corporation, *et al.*, and K. D. Owen, *et al.*, d/b/a Owen and Moss.

presented in this proceeding for not using them as an aid in finding the in-line price.[34]

The producer witness included sales under 14 cents per Mcf in her Exhibit 2 in those schedules wherein she was using initial contract prices, as distinguished from certificated prices, in order to establish a market value price. However, in those schedules of her exhibit which related solely to establishing an in-line price by use of sales certificated by the Commission, she excluded sales under 14 cents, stating that in such instances it was appropriate to proceed in the same way that the Commission did in its prior determination in this area.

As previously shown, the records in the prior cases contained no evidence of sales below 14 cents per Mcf. This record does contain evidence of such sales and the Presiding Examiner finds that where such sales are not excluded for other reasons, such as sales to gatherers, they should be used in order that the in-line price determination herein might be based on a complete range of relevant price data.

Sales to and by Gatherers

Sales to eleven buyers who are classified as gatherers have been eliminated by the Presiding Examiner in arriving at an in-line price in this proceeding.[35] In addition, 34 sales *to* Valley Gas Transmission, Inc. (Valley Gas) at 14 cents per Mcf, and one at 15 cents per Mcf, have also been excluded.[36] Schedules 2 and 3 of Exhibit 7 do not show any sales *by* Valley Gas, South Texas Natural Gas Co. (South Texas) or Ben Bolt Gathering Co. (Ben Bolt).

The gatherers referred to herein generally purchase gas from several locations at low prices and then resell the collected gas to major pipeline companies at prices typical of those paid to producers by such pipelines. The Presiding Examiner finds that such sales are not generally comparable to the producer sales in this proceeding.

Valley Gas, South Texas, and Ben Bolt require separate discussion. Sales to the latter two have not been excluded, whereas sales to Valley Gas have been excluded even though it is technically classified as a pipeline company (Tr. 1214).

In its brief Staff contends that the Commission has never outlawed consideration of sales to gatherers or Valley Gas. Long Island Lighting contends that the sales to Valley Gas should be included in arriving at an in-line price in this proceeding. It points to testimony of the witness for Pan American to the effect that Pan American has an application in this proceeding (Docket No. CI63-1263, Item SS-1) to sell natural gas to Valley Gas under a contract dated March 8, 1963. The witness for Pan American testified that the gas being sold was of pipeline quality and that after Valley Gas purchases it, it will be resold to Tennessee Gas Transmission Company and to Iroquois Gas Corporation. Prior to such sale Valley Gas transports the gas about 18 miles. Long Island Lighting

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[34] Although its presentation at the hearing specifically included sales under 14 cents, the Staff, in "an attempt to cut out needless argument," attached to its brief additional charts based upon the record herein and "upon the assumption *arguendo*, that the applicants are correct in their contentions." (Br. p. 47). In other words, the Staff position as to the in-line price is the same regardless of the exclusion or inclusion of sales under 14 cents per Mcf. (The new charts exclude sales under 14.0 cents per Mcf, sales to gathering companies, and sales to Valley Gas. Sales under temporary certificates were added.)

[35] W. J. Riley, d/b/a Banquete Gas Co.; Coastal States Gas Producing Co.; Engeo Gathering Co.; Orange Grove Gas Gathering Co.; The Altex Corp.; Valley Gas Transmission, Inc.; Banquete Gas Co.; Hydrocarbon Transmission Co.; J. C. Adair; Trans Pipeline Corporation, and Alfred Production Company.

[36] See Exhibit 7, Schedule 2-F, Sheets 3 and 4; Schedule 2-G, Sheet 2, Schedule 2-H, Sheet 1, Schedule 2-I, Sheet 2, Schedule 2-J, Sheet 1, and Schedule 2-L, Sheets 1 and 2

contends that on this record no finding can be made that sales to Valley Gas differ in any material way from sales to other pipeline companies.

The main producer witness testified that Valley Gas operates a number of small gathering systems, collecting gas produced in locations which in most instances are not accessible to the pipelines and usually reselling to the interstate pipeline companies at prices comparable to those in the typical producer pipeline sale (Tr. 438, 1213). She also stated that there might be situations where the sale to Valley Gas would be similar to regular pipeline sales (Tr. 1215). This testimony is supported by the fact that of the 35 sales shown on Exhibit 7 to Valley Gas, all were at 14 cents except one.

The Presiding Examiner finds that sales by producers to Valley Gas are not generally comparable to the normal producer-pipeline sales and should not be considered in establishing the in-line price in this proceeding.[37]

Sales to South Texas and Ben Bolt are not the same as sales to Valley Gas. Both of these companies engage in performing a transportation function as distinguished from a mere gathering function.[38]

Use of Estimated First Month's Delivery Volumes

In her exhibits the producer witness used actual annual delivery volumes (Mmcf) for contracts dated 1958 through 1961 as they were reported by the purchasers in their Form 2 reports. Where reported volumes were not available for the contracts during such period, estimated volumes for the first month were used, projected to an annual basis. For contracts dated 1962–64, the volumes used were estimated volumes for the first month of the contract as reported by the sellers with the rate schedule filing, or certificate applications, projected to an annual basis.

The Staff in-line witness used estimated first-month deliveries (Mcf) in his exhibits. Several applicants also used estimated first-month's volumes (Mcf) in appendices attached to their briefs.

The estimated first-month's delivery volume is required by the Commission's Regulations (Section 154.92(b)) to be set forth in a statement attached to the basic contract between the seller and the buyer which is filed with the Commission as the rate schedule pursuant to Section 154.93. This represents the best-judgment figure at the point in time closest to the parties' negotiations. If there were some indication that the estimated figure was unreasonably low or high, a case might be made for using the subsequently reported actual deliveries for the first month. This record does not support such a view. In fact, the producer witness testified that taken "in the aggregate by parts of a market and years, the price information is not significantly different, whether first month volumes or reported volumes are used." (Tr. 1205). The Presiding Examiner finds that for the purposes of determining an in-line price in this proceeding the use of estimated first month's delivery volumes provides a proper basis for decision.

In-Line Price for the Period January 1, 1958 Through September 27, 1960

The Staff witness concluded that the exhibits sponsored by him, which included sales under 14 cents per Mcf and sales to gatherers and to Valley Gas, clearly show that for this period the in-line price should be 15 cents per Mcf. With reference to this period the producer witness testified that "the distribution of certificated prices are dominated by the sales authorized [in the *Skelly* case], and I have not considered this time period further." (Tr. 445).

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[37] *Cf. Amerada Petroleum Corporation, supra*, 31 FPC at 635, fn. 33.

[38] *Cf., Skelly Oil Company, supra*, 28 FPC at 414.

Set forth hereinbelow is a tabulation of relevant data taken from the record in this case for this first time period: [39]

CONTRACTS DATED JAN. 1, 1958 THROUGH SEPT. 27, 1960

Number of sales	Permanent certificate price	Temporary certificate price	Estimated first month's volumes (Mcf)
1	10.0		30,000
2	10.5		60,000
1	12.1152		80,000
15	12.1227		2,377,403
2	12.1536		99,000
1	13.0		30,000
1	13.1250		281
2	13.1664		60,000
3	13.5		63,500
10	14.0		748,000
16	14.5		1,424,675
5	14.6		266,180
1	14.7		15,000
1	14.8		40,000
40	15.0		4,814,767
1	15.5		45,000
3	16.0		736,500
1	17.24		15,000
1	18.0		23,250
107		Total permanent	10,922,556
1		14.5	62,000
15		16.0	400,491
7		16.5	391,495
1		17.0	67,500
9		17.24	1,183,540
6		18.0	1,127,100
39		Total temporary	3,232,126
146		Total permanent and temporary	14,154,682

The table shows that for the period January 1, 1958 through September 27, 1960, there were 107 sales permanently certificated accounting for an estimated first month's volume of 10,922,556 Mcf. The volume at 15.0 cents per Mcf accounts for 44.08 percent of the total volume of gas flowing under permanent certificates issued during this period and 37.4 percent of the 107 sales.

The table also shows, for this same period, prices at which 39 temporary certificates were issued for sales of natural gas, accounting for an estimated first month's volume of 3,232,126 Mcf.

If permanent and temporary volumes of gas shown in the above table are added to the volumes of gas excluded from consideration herein, the total estimated first month's volume of *all* gas moving in interstate commerce during this period is found to be 17,000,535 Mcf.[40] The total volume of the 107 sales permanently certificated is 10,922,556 Mcf; or 64.25 percent of the total of *all* gas flowing in interstate commerce.

The numerically weighted average price for the 107 permanently certificated sales is 14.16 cents per Mcf. The volumetrically weighted average price for the same 107 sales is 14.20 cents per Mcf.

[39] This table, and all subsequent tables set out herein by the Presiding Examiner, includes sales under 14 cents per Mcf, and excludes sales to gatherers, sales of purchased gas and those under short term contracts, and sales to Valley Gas. Sales to South Texas and Ben Bolt are included. The volumes in all tables are estimated first month's volumes.

[40] See Exhibit 7, Schedules 1 and 3, and Exhibit 9, Chart 1, as revised during the hearing.

Long Island Lighting and Brooklyn Union contend that the in-line price should be no more than 14.5 cents per Mcf for the period now under consideration.

The Commission in the *Amerada* case, *supra*, stated that the beginning point in a determination of the in-line price "must be the contract price at which substantial volumes of gas were sold during the period."[41] During this first time period 39 contracts were entered into at prices from 14.5 to 20.045 cents per Mcf. Four of the 39 contracts were at 20.045 cents per Mcf. All except those four contracts were issued temporary certificates at their contract prices. The 20.045 cent sales were temporarily certificated at 18.0 cents per Mcf. (As shown subsequently, these sales involve certain premium benefits.) A more limited degree of consideration will be given to these temporary prices in determining the in-line price for this period than will be given to prices under permanent certificates.

Another aid which may be used in the determination of an in-line price was set forth by the Commission in the *Hassie Hunt Trust* case, *supra*. In that case, it was stated "* * * as brought out in CATCO and * * * in *Texaco Seaboard*, the price line does not accord with the highest price or prices permanently authorized but falls between the highest group of prices and the median price." (31 FPC at 1445). When this test is applied to the data in the table set forth hereinabove it shows a median price of 14.20 cents per Mcf (volumetrically weighted average) which, when averaged with the highest group of permanent prices weighted by volume (16.0, 17.24, and 18.0 cents per Mcf), would produce an in-line price of 15.14 cents per Mcf.

To recapitulate: The average of all the permanently certificated sales weighted by volume is 14.20 cents per Mcf; 38 of 39 temporary certificates were issued at prices between 16.0 cents per Mcf and 18.0 cents per Mcf; the largest number of contracts and the largest volumes were at 15.0 cents per Mcf; and the average between the median price and the highest group of prices is 15.14 cents. In the Presiding Examiner's judgment, based upon all the considerations expressed herein, the maximum initial price appropriate in the interest of the public convenience and necessity reflecting the current conditions in the industry is 15.0 cents per Mcf for this period.

The permanent sales at 15.0 cents per Mcf referred to above were the result of this Commission's past action in conditioning the initial prices of sales certificated in the *Skelly*, *Texaco Seaboard* and *Hassie Hunt Trust* cases, *supra*, Blanco Oil Co., Killam & Hurd, Austral Oil Company, Appell Petroleum Corporation, Clark Fuel Producing Company and K. D. Owen, d/b/a Owen and Moss, contend that if such 15.0 cent prices are used to establish an in-line price in this proceeding they will be denied a due process hearing because they were not parties to such cases. In the Presiding Examiner's judgment the *Catco* case, *supra*, and a balancing of all the factors pertaining to the public convenience and necessity, require that he consider prices which are the result of past Commission action along with all the other evidence of record. If the applicants' arguments were carried to their logical conclusion there would be no prices in the area which could be used to "hold the line" referred to in the *Catco* case unless each applicant had been a party to the prior Commission action issuing a permanent or temporary certificate.

[41] 31 FPC at 633.

In-Line Price for the Period September 28, 1960 Through August 29, 1962

The relevant producer prices for this period, except as stated below, are reflected in Chart 2 attached to the Staff's brief. It excludes sales to gathering companies and to Valley Gas, certain short term sales, and sales of purchased gas. It includes sales under temporary certificates. Staff's tabulation is shown hereinbelow in slightly revised form, and includes sales under 14.0 cents not otherwise excluded herein.

CONTRACTS DATED SEPT. 28, 1960 THROUGH AUG. 29, 1962

Number of sales	Permanent certificate price	Temporary certificate price	Estimated first month's volumes (Mcf)
0	Under 14.0		None
1	14.0		30,000
1	14.5		36,000
2	14.6		17,200
1	14.7		17,280
8	15.0		130,146
34	16.0		2,549,320
1	17.24		25,950
48		Total permanent	2,805,896
1	(CI62-274—Sch. 3)	11.00	30,000
1	(CI62-63—Sch. 3)	15.00	6,000
1	(In this case: CI63-334)	17.00	9,000
1	(In this case: CI63-304)	17.24	31,000
1	(CI62-1004—Sch. 3)	17.24	15,000
5		Total temporary	91,000
53	Total permanent and temporary		2,896,896
	All other sales, including those under 14.0 cents per Mcf and other excluded sales.		1,573,900
	Total volumes of gas flowing		4,470,796

The above table shows for the period September 28, 1960 through August 29, 1962 a total of 34 sales permanently certificated at a conditioned price of 16 cents per Mcf accounting for an estimated first month's volume of 2,549,320 Mcf. The numerically weighted average for the 48 permanently certificated sales is 15.70 cents per Mcf. The volumetrically weighted average for the same 48 sales is 15.91 cents per Mcf.

There are only two applications consolidated herein relating to contracts which were executed during this second period. One is at a contract price of 17.24 cents per Mcf (Docket No. CI63-304) and the other is at 17.0 cents per Mcf (Docket No. CI63-334). Their estimated first month's volumes are 31,000 Mcf and 9,000 Mcf, respectively. (The record does not show the volumes relating to the four contract supplements entered into during this period.)

The estimated first month's volume of gas involved in the 48 permanently certificated sales in the above tabulation accounts for 2,805,896 Mcf. The estimated first month's volume of gas flowing under all permanently and temporarily certificated sales, including those to Valley Gas and all other excluded sales, is 4,470,796 Mcf. Stated differently, 62.76 percent of all gas flowing in interstate commerce during this period is flowing pursuant to permanent certificates. Long Island Lighting, however, contends that the 34 permanently certificated contracts at 16.0 cents are suspect because they are presently involved in litigation.[42]

[42] These 34 contracts were all permanently certificated in the *Amerada* case, *supra*. In its Opinion and Order on Rehearing (31 FPC 1315) the Commission, among other things,

Staff contends that although the *Amerada* sales are subject to review by the Court of Appeals, the prices enunciated by the Commission are not "suspect" in the traditional meaning of the word because the Commission did exercise its proper discretion to condition the prices and because "the parties that contend that the prices are too high, contend that they are only 1¢ per Mcf too high." (Staff Br., p. 51).

The basic reason for excluding sales subject to review is stated in *United Gas Improvement Co.* v. *Federal Power Commission*, 283 F. 2d 817 (CA9), as follows at page 824:

> In the event the existing rate is later modified or conditioned as a result of the pending proceedings the foundation of the line derived therefrom would be undermined. Moreover, the acceptance of questioned existing prices as a guide in setting the line might itself have the anomalous effect of creating a standard by which the questioned rates would then be judged.

The Presiding Examiner finds that the 34 sales at 16.0 cents per Mcf shown in the above tabulation are "suspect." Nevertheless, the Presiding Examiner "should not entirely overlook the economic tendencies which they represent." In the *Texaco Seaboard* case, *supra*, the Commission held that

> * * * in such cases the [suspect] prices cannot be taken at face value as reflecting firm prices in the area at the time, and can only be given substantial weight where (as here is *not* the case), the parties wishing to rely upon them have made a record showing of their actual effect upon the price line for other sales. (Emphasis in the original.) (29 FPC at 599)

In this proceeding the parties have made a record showing that the Fifth Amendment to the Policy Statement had an actual effect upon the price line for their contract prices. Such prices were then conditioned to temporary levels of from 16.0 cents to 18.0 cents per Mcf. During this period other parties were negotiating contracts and relied upon the same prices. The Presiding Examiner finds (1) that those prices, which were subsequently conditioned to 16.0 cents per Mcf in the *Amerada* case, had an effect upon the price line for other sales during the period in question; and (2) that the 34 permanently certificated prices at 16.0 cents per Mcf should be considered in establishing a "line" for this period. Based upon a consideration of all the relevant facts, the Presiding Examiner finds 16.0 cents per Mcf to be the maximum initial price appropriate in the interest of the public convenience and necessity reflecting the current conditions in the industry for this period.

The Presiding Examiner's latter finding is independently supported by a consideration of the temporary prices at which natural gas is still being sold by most of the 34 producers pursuant to the temporary certificates which were considered in the *Amerada* case.[48] The temporary prices range from 16.0 cents to 18.0 cents per Mcf. As previously shown, the total estimated first month's volume of gas in the two contracts, and four supplements, for which the prices are to be set in this proceeding is 40,000 Mcf. The estimated first month's volume of gas supplied under all non-suspect permanently certificated sales during

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stayed for a period of 30 days after the conclusion of judicial review of its original order, that portion of its order which required the filing of supplemental rate schedules reflecting the conditioned price of 16.0 cents per Mcf. It permitted the continued collection of temporary prices, subject to refund of all amounts over 16.0 cents per Mcf. The judicial proceedings have not been terminated at this writing.

[48] The producer witness in her Exhibit 1, Schedule 1, shows only 30 of the 34 *Amerada* sales as now having gas flowing in interstate commerce.

the period in question is 256,576 Mcf. The estimated first month's volume of gas for temporarily certificated sales during this period over 14 cents is 61,000 Mcf. If the *Amerada* sales are included with the other temporarily certificated sales the total is 2,610,320 Mcf. The total estimated volume of all gas flowing in interstate commerce during this period, including all excluded sales, is 4,470,796 Mcf.

The Court of Appeals in *United Gas Improvement Co., supra*, stated in relevant part as follows:

> * * * the price line is intended to reflect current conditions in the industry. Therefore comparative prices on which it is based must be prices under which a substantial amount of natural gas presently moves in interstate commerce. The limitation urged by *UGI* could well defeat this objective by restricting the comparison to a small number of contracts under which little gas moves today could, in fact, require a rollback to prices having no current relevancy. (283 F. 2d at 824).

The 256,576 Mcf of gas flowing under all the non-suspect permanently certificated sales in this period is considerably in excess of the 40,000 Mcf for which prices are to be established in this proceeding. However, this 256,576 Mcf of permanent volumes is less than 10 percent of the gas which is moving in interstate commerce under the temporary certificates issued to the producers in the *Amerada* case. To completely exclude from consideration such volumes would be unrealistic and would not meet the test established by the Court.

The following statement by this Commission when faced with a very similar problem in the *Amerada* case is apropos of this proceeding and is adopted, *mutatis mutandis*, by the Presiding Examiner:

> We believe that the fact that the great bulk of the gas moving in interstate commerce in the area during this period was contracted for and temporarily authorized at initial rates between 16 and 18 cents per Mcf must be considered in fixing the "in-line" price for this period. Refusal to consider the temporarily authorized prices, in the circumstances of this proceeding, and reliance only on the few permanently certificated prices can only result in a complete stagnation of prices at the "in-line" level initially determined for this District, a level based on prices being paid for gas under contracts drawn up long before these contracts were executed.

In-Line Price for the Period August 30, 1962 Through March 25, 1964

The tabulation set out below shows the composite of total initial prices presented in this record, based upon estimated first month's volumes, for permanently and temporarily certificated sales for contracts dated August 31, 1962 through March 25, 1964, as shown on Exhibit 7.[4] Sales under 14.0 cents per Mcf are included.

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[4] Staff Exhibits 7 and 9 showed contracts executed June 7, 1954, through December 31, 1963, and permanently certificated as of "some time" after March 22, 1964 (Tr. 1782–83). The producer exhibit is for the period January 1, 1958 through June 30, 1964. Neither, however, contains any permanent certificated prices for contracts dated subsequent to December 31, 1963. Sixteen of the 26 temporarily certificated sales at 16.0 cents per Mcf were certificated in the last six months of 1964. There have been consolidated into this proceeding three dockets with contract, or supplement, dates subsequent to December 31, 1963; namely, Docket No. CI61–783, with supplement date January 15, 1964, Docket No. CI62–1074, with supplement date March 6, 1964, and Docket No. CI64–1244, contract date March 25, 1964. The volumes involved in the latter contract are quite substantial, being estimated first month's volumes of 2,100,000 Mcf. The Presiding Examiner finds that the three 1964 contract dates referred to are close enough in point of time to the December 31, 1963, date to be considered as reasonably contemporaneous with the contracts relied upon herein.

CONTRACTS DATED AUG. 30, 1962 THROUGH MAR. 25, 1964

Number of sales	Permanent certificate price	Temporary certificate price	Estimated first month's volumes (Mcf)
0	Under 14.0		None
2	14.6		175,000
1	15.0		60,000
7	16.0		675,691
10		Total permanent	910,691
1	(CI64-962: Sch. 3)	12.0	60,000
1		15.5	90,000
26		16.0	5,379,168
28		Total temporary	5,529,168
38		Total volume of gas flowing	6,439,859

The table shows that for the period August 30, 1962 through March 25, 1964 there were 10 sales permanently certificated during this period, for a total estimated first month's volume of 910,691 Mcf. Seven of the ten sales were at a conditioned price of 16 cents for a total of 675,691 Mcf. These sales constitute 74.20 percent of the total volume, 910,691 Mcf. The volumetrically weighted average price is 15.67 cents per Mcf. The numerically weighted average price is 15.62 cents per Mcf.

Staff's Exhibit 9, Chart 4, which includes sales to gatherers and certain other sales excluded from the above table, shows that the total volume of all certificated permanent sales for contracts dated August 30, 1962 through December 31, 1963 was 1,711,191 Mcf. The Staff witness testified that the sales at 16 cents constituted a substantial volume with respect to the total volume of 1,711,191 Mcf, and that the seven sales at 16 cents constituted a preponderance of sales as related to that particular chart. He did not rely upon any temporarily certificated prices. (As noted previously, Chart 3 of Attachment B to the Staff's brief includes temporary certificated prices.) He testified that the 16 month time period was not broad enough; that he did not consider ten sales to be an adequate basis upon which to base a determination; and that as a result he considered a time period from September 28, 1960 to December 31, 1963. He concluded that on such facts an in-line price of 16.0 cents per Mcf was proper.

The producer witness also considered the ten permanently certificated sales to be an insufficient number, and to involve an insufficient volume, to provide a basis for an in-line price determination. She then looked to the prices at which temporary certificates were issued during this period and concluded that the in-line price was at least 16.0 per Mcf.

The Presiding Examiner's above tabulation shows that the estimated first month's volume of all gas flowing during this period is 6,439,859 Mcf, of which the permanent sales accounted for only 910,691 Mcf. The 26 temporary sales at 16 cents per Mcf are all related to the contracts in issue herein. The Presiding Examiner finds that for this period the 910,691 Mcf of permanently certificated sales do not provide a sufficient number or volume upon which to base an in-line price determination. In accordance with the precedent established by the Commission in the *Amerada* case, *supra*, and previously discussed herein, some weight should be given to the temporarily certificated sales.[48]

Twenty-eight contracts were entered into by the parties herein during this latter period. No temporary certificate was issued in one case (Docket No. CI64-

[48] *Cf., Union Texas Petroleum, et al.*, Docket No. G-13221, *et al.*, Opinion No. 436, 32 FPC 254 at p. 262, decided July 23, 1964.

470). The remaining 27 contracts were at prices from 15.5 cents per Mcf to 17.24 cents per Mcf. One contract was at 15.5 cents per Mcf. The other 26 contracts were conditioned to 16 cents per Mcf and temporary certificates issued. The numerically weighted average for both temporary and permanent sales is 15.88 cents per Mcf. The volumetric weighted average is 15.95 cents per Mcf.

The large number of contracts entered into at 16 cents per Mcf reflects the effect of the Fifth Amendment to the Policy Statement. As previously shown, some weight should be given to this regulatory action by the Commission.

The Presiding Examiner finds, based upon a consideration of all the relevant facts, 16.0 cents per Mcf to be the maximum initial price appropriate in the interest of the public convenience and necessity reflecting the current conditions in the industry for this period.

Premium Features

In two cases the Commission has granted an increment above the in-line price for a premium feature.[46] In other cases the Commission has refused to grant such an increment.[47] However, the principle that under certain circumstances a premium price may be granted has not been repudiated. A study of all the applicable cases shows that an increment above the in-line price is warranted where the premium services are proved to be (1) unusual for the area; (2) performed for the benefit of the pipeline, and not merely to make the gas marketable; and (3) of objectively measurable value.

Austral Oil Company, Incorporated (Austral), Blanco Oil Co., and Killam & Hurd, in Docket Nos. CI61–427, CI61–618, and CI61–626, respectively, propose sales to Natural Gas Pipeline Company (Natural) from the Northeast Thompsonville Field, located in Webb and Jim Hogg Counties, Texas District No. 4.[48] They contend that their sales meet the above tests and that they should receive certificates allowing at least 2 cents per Mcf over the otherwise applicable in-line price because of "premium features" of their sales.[49]

The premium features are asserted to be (1) the contract provision which permits a 50 percent degree of "swing" (or the difference between the Daily Contract Quantity (DCQ) and the maximum which the pipeline may demand); (2) the total services performed beyond the wellhead, including delivery to a

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[46] *Panhandle Eastern Pipe Line Company*, Opinion No. 350, 27 FPC 35, 44–45, rehearing denied, 77 FPC 491 (1962); *Medina Gathering Corporation, et al.*, Opinion No. 397, 30 FPC 227.

[47] *Texaco Seaboard, Inc.*, Opinion No. 383, 29 FPC 593, 598; *Hassie Hunt Trust, et al.*, Opinion No. 412, 30 FPC 1438, 1445; *Skelly Oil Company*, Opinion No. 362–A, 28 FPC 1065, 1067; *Amerada Petroleum Corporation, et al.*, Opinion No. 422–A, 31 FPC 1315; *Standard Oil Company of California*, Opinion No. 395, 27 FPC 1153, 1158–60, affirmed *sub nom. California Oil Co.* v. *F.P.C.*, 315 F. 2d 652 (CA10); *Superior Oil Company*, Docket No. G–10078, *et al.*, Opinion No. 437, decided July 23, 1964, 32 FPC 241; and *Edwin L. Cox, et al.*, Docket No. CI61–153, *et al.*, Opinion No. 446, decided November 17, 1964, 32 FPC 1301.

[48] The order of May 28, 1964, instituting this proceeding included two other sales from this field to Natural, Katz Oil Company (Katz), Docket No. CI61–631 and The Atlantic Refining Company (Atlantic), Docket No. CI61–482. Katz did not appear in this proceeding, and the record indicates that its acreage is nonproductive. Its application will be dismissed. Atlantic settled its sale at an initial price of 15 cents per Mcf (see footnote 3, *supra*). It had previously introduced evidence through the witness Echols. The latter witness was also sponsored by Austral, Blanco Oil and Killam & Hurd. The latter two producers also introduced evidence through witness Kendall. The testimony of the two witnesses is substantially the same in regard to premium features.

[49] At pages 15 and 42 of its initial brief, Austral states that its sale should be "certified at a price of not less than 18 cents per Mcf." Blanco Oil and Killam & Hurd specifically urge certification at the contract price of 20.045 cents per Mcf (Blanco Oil Br. pp. 6, 60).

central point in the field; and (3) the contract provision which allows Natural to vary its takes, from day to day, from zero Mcf of gas to the maximum which the wells are capable of delivering under prudent operation and not in violation of law.

The Staff contends, and the Presiding Examiner finds, that the 50 percent "swing" provision is not so unusual as to be classified as a premium feature. According to this record, all the sales from the Northeast Thompsonville Field have it. Also, the two Northeast Thompsonville Field sales involved in the *Skelly* case had it.

The gathering facilities and other delivery features incident to the sales are jointly owned by the four producers, including Atlantic, and provide for delivery at a central point in the field. The plant referred to below is located nearly in the center of the field, which is roughly five or six miles in area. The furthermost well from the plant is about three to four miles. There are about 10 to 12 miles of pipe involved.

From the wellhead the gas goes in full well stream to a stage separator where a small amount of condensate is recovered. The gas from this separation process is passed through a dry-desiccant recovery unit for removal of water vapor down to contract specifications, as well as a certain amount of liquefiable hydrocarbons. It is then delivered to Natural at their meter.

The contract provision (subsequently set forth) which permits Natural to take, on any one day, from zero Mcf of gas to the maximum deliverability of the wells is in excess of the usual 50 percent "swing" provision. In order to handle the extra "swing" provided in the contract the four producers installed oversized tubing, gathering lines and separation equipment. For this oversized gathering system the four producers estimate the additional investment and operating cost to be in the neighborhood of $400,000 (Tr. 463). The amount of operating costs was not separately stated. The four producers contend that large costs will be incurred in the future for the drilling of additional wells and reworking existing wells in order to maintain high deliverability.

Prior to entering into the contract under which they were required to construct the above gathering facilities, the four producers discussed with Natural's representatives a price of 18.5 cents per Mcf for wellhead delivery, including tax reimbursement and the performance of all dehydration and separation at the expense of the buyer, as against 20.045 cents per Mcf for delivery at a central point in the field. The parties discussed this matter for some time. It was finally decided that the producers would provide delivery at a central point in the field "because Natural did not want to get into the business of gathering and dehydrating and treating gas, because to my knowledge Natural does not perform those services. Natural * * * insists, normally, on a central point, dehydrated, pipeline quality gas." (Tr. 888).

The Presiding Examiner finds that the cost assigned by the parties for construction of the facilities required to effectuate a central point delivery, including the extra costs related to the increased flexibility features, was and will be incurred by the four producers solely in order to sell the gas. As a result, no increment above the in-line price may be allowed for such present or future expenditures. *Amerada Petroleum Corporation, et al.*, 31 FPC 1315, 1318–1319.

The four producers' main argument in support of their contention that a 2 cents per Mcf addition to the in-line price is warranted was directed to the contract clause which allows Natural to vary its takes, from day to day, from zero Mcf of gas to the maximum which the wells are capable of delivering under prudent operation and not in violation of law. After establishing the DCQ as a quantity equal to 1000 Mcf of gas for each 8,000,000 Mcf of recoverable reserves.

and after providing that the DCQ shall never exceed 66⅔ percent of total deliverability for a period of 30 consecutive days, the contract states as follows:

> 3. To meet the exigencies of its operations, Pipeline may vary its receipts of gas hereunder and shall be entitled on each and every day to receive the maximum quantity of gas which Seller's wells, under prudent methods of operation and applicable rules and regulations of regulatory bodies having jurisdiction are capable of delivering, but shall receive each month not less than twenty-five percent (25%) of the daily contract quantity multiplied by the number of days in said month.

Staff contends that the record does not sustain the contention that the above provision is so unusual as to be classified as a premium feature. Staff's view appears to be based primarily upon the fact that no witness at the hearing made a comparison to see whether other relevant contracts in Exhibit 7 (the Staff's price-line exhibit) had this provision.

In their joint brief at pages 10 to 13, Blanco Oil and Killam & Hurd make this comparison. They analyzed 57 contracts. Twenty-six were chosen from the contracts in issue herein which were shown as having been executed during the period August 28, 1956 to September 28, 1960.[50] Thirty-one were chosen from Schedules 2–E, 2–F, and 2–G of Exhibit 7, which schedules show the contracts relating to permanently certificated sales for the same period in the same District.[51] In the case of each schedule, the contracts analyzed were selected so as to provide several examples of each pipeline-buyer's contracts.

Staff contends that the contracts relating to the permanent sales shown in Exhibit 7, Schedules 2–E, 2–F, and 2–G are not in the record and that the contract provisions relating to quantity cannot be used to make a comparison with the subject contracts in Schedule 1 of Exhibit 7, which are in evidence. The contracts relating to all the contracts referred to in Exhibit 7 are in the public files of this Commission. The Presiding Examiner takes official notice of these contracts pursuant to Section 7(d) of the Administrative Procedure Act (60 Stat. 241, 5 USCA Sec. 1006(d)).

Staff also contends that the comparison should not be made because all the contracts shown in Schedule 1 and Schedules 2–E, 2–F and 2–G were not used. As stated above, several examples of each pipeline-buyer's contracts were analyzed. The Presiding Examiner finds that the analysis is based on a representative selection and may be properly used herein.

An inspection of the contracts analyzed in the joint briefs of Blanco Oil and Killam & Hurd shows that out of the 57 contracts analyzed none contains a quantity provision similar to that quoted above from the contracts of the four producers. None permits the pipeline to take the total capacity of seller's wells on any day of the year, without limitation either by way of a percentage of daily contract quantity, maximum take, or other level-take provision.

Exhibit 3 describes the wide variation in takes by Natural from the Northeast Thompsonville Field as a whole. Among other things, it shows actual variations in takes ranging from approximately 12.5 million cubic feet per day in August,

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[50] Schedule 1 of Exhibit 7 for this period lists 37 contracts (Clark Fuel Producing Co., Docket No. G–19052, *et al.*, was severed by order of April 7, 1965. (See footnote 3, *supra*.) 11 contracts were not analyzed. Four of the 11 concerned the contracts which are asserted to have premium features. Two relate to Continental Oil Company's purchase of one-half interest of an existing contract (see footnote 3, *supra*). An inspection of the remaining contracts shows they all have level-take type provisions.

[51] The producers' analysis shows 35 contracts. The contracts of George H. Coates, Rate Schedule No. 2; Roy H. Bettis, *et al.*, Rate Schedule No. 4; Hunt Oil Company, Rate Schedule No. 2; and Sunray DX Oil Company No. 119, were not executed during the period under consideration. They all have level-take type provisions.

1961, to approximately 73 million cubic feet per day in December, 1961, and from 12.5 million cubic feet per day in August, 1962, to 79 million cubic feet per day in December, 1962. The said exhibit, and related testimony, shows that these wells are capable of going from a completely shut-in condition to producing substantial quantities of gas within a short period of time. This deliverability characteristic has permitted Natural to use the wells as a small "flywheel" and, to the extent of the "swing" provision, as a storage facility for its system.

The Presiding Examiner finds that the feature which permits Natural to vary its takes, from day to day, from zero Mcf of gas to the maximum which the wells are capable of delivering under prudent operation and not in violation of law is an unusual one in the Texas District No. 4 area and is for the benefit of the pipeline and has no connection with any operation required to make the gas marketable.

Staff and the interveners in opposition contend that the premium feature discussed above is not objectively measurable.

In determining an "objectively measurable value" the *Medina* case, *supra*, requires that there be ascertained the "additional market value [which the premium features] gives these contracts over and above the prevailing forms of contract in the area." [52]

The market value of the gas to Natural is objectively measurable. Witness Echols, for Atlantic, Blanco Oil, Killam & Hurd and Austral, testified that Natural considered the extra benefits of the contract "as being worth at least 2¢ per Mcf." (T. 460). Witness Kendall for Blanco Oil and Killam & Hurd stated that it was apparent that Natural "was very interested in obtaining the gas from this field because of the ability the field would have to give it a wide flexibility in takes." (T. 532). He stated further:

> We were advised at one point that Natural Gas Pipeline Company of America valued the flexibility of deliveries and the services which we now perform after the wellhead as being worth at least 2¢ more than other available gas in the vicinity. In fact they stated that the flexibility feature alone was worth the 2¢ to them. (T. 532–33).

Neither Staff nor the interveners contend that the above representations were not made to the witness. Nevertheless, they contend that this hearsay testimony should be given no weight because no witness for Natural was available for cross-examination. The Presiding Examiner will give substantial weight to that part of the testimony which has been corroborated by other evidence herein.[53]

In part, the corroborating evidence consists of a statement which was made as part of a public record several years before this proceeding was initiated. In Docket No. CP61–96, Natural's predecessor, Peoples Gulf Coast Natural Gas Pipeline Company (Gulf Coast), applied for a certificate of public convenience and necessity on September 30, 1960. In its "Supplement to Request for Temporary Authorization" filed on October 7, 1960, the pipeline stated in Section III thereof as follows:

> The gas purchase contracts of Gulf Coast with each of Producers* provide that (Article Sixth, paragraph 3) Gulf Coast, to meet the exigencies of its operations, may vary its takes of gas on each and every day. This per-

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[52] *Medina Gathering Corporation, et al.*, 30 FPC at 232. In that case the contract permitted the pipeline to completely eliminate summer takes of gas. This six-months peaking service was held to have an additional market value which would be amply compensated by permitting the producers to maintain three existing-fixed escalations of 1 cent per Mcf each which were to take place at early dates.

[53] The record does not support a finding that Natural considered the flexibility feature alone worth 2¢ per Mcf to it.

*The producers referred to are: The Atlantic Refining Company, Austral Oil Company, Blanco Oil Co., Katz Oil Company and Killam & Hurd.

missible variation in takes, as provided in Gulf Coast's contracts with Producers, permits immediate and efficient utilization of the reserves by Gulf Coast as here proposed. Gulf Coast cannot prudently make substantial additions to its gas supply under gas purchase contracts obligating it to take a constant, or nearly constant daily quantity. Permissible variations in takes is therefore of great value to Gulf Coast and to its customers, and such added value necessarily is reflected in the prices stipulated in its gas purchase contracts. (Item by reference VVV, p. 4)

The market value for this flexibility service is established primarily by the Texas District No. 4 contract prices in evidence herein. The highest total initial contract prices shown are prices of 20.05 cents per Mcf (the prices are actually 20.045). Of the seven such contracts listed, four are the subject contracts of Atlantic, Austral, Blanco and Killam & Hurd, and two are identical contracts for sales of gas from the Northeast Thompsonville Field to Natural by Katz Oil Company (Docket No. CI61–631 herein) and Texaco Inc.[54] Only one contract, between Standard Oil Co. of Texas and South Texas Natural Gas Gathering Company, dated March 14, 1961,[55] does not contain the special provisions discussed above. (This producer received an initial conditioned price of 16.00 cents per Mcf in the *Amerada* proceeding.) Comparison of the aforementioned six contracts, all of which contain identical special flexibility provisions, with the contracts covering the three sales from the Northeast Thompsonville Field which lack these special flexibility provisions, shows that the latter provided for a total initial price of 18 cents per Mcf, exactly 2.045 cents per Mcf lower than the subject contracts.[56]

As previously shown, Natural stated during the negotiations that a contract price of 18.5 cents was acceptable for wellhead delivery and that 20.045 cents was acceptable for field delivery. The difference between the 18.5 and 20.045 cents per Mcf was, therefore, solely assignable to the gathering and treating functions and, as such, may not be allowed as a premium feature. The difference between the 18.5 cents per Mcf wellhead offer, and the price of 18.0 cents in the contracts of Bright & Schiff and two others from this same field that do not have the flexibility feature, shows the "additional market value [which the premium feature] gives these contracts over and above the prevailing forms of contract in the area." *Medina Gathering Corporation, et al., supra*, 30 FPC at 732. The Presiding Examiner finds the public convenience and necessity requires that 0.5 cents per Mcf be added to the 15.0 cent per Mcf in-line price found herein for the sales by Austral, Blanco Oil, Killam & Hurd which are the subject of this proceeding. (Katz Oil Company's application is to be dismissed.)

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[54] Texaco Inc., Docket No. CI61–677, Rate Schedule No. 228 (Exhibit 1, Schedule 1, Sheet 3 of 9, Line 18.) This contract was dated September 1, 1960 and was approved on December 30, 1963. The initial price was conditioned to 15.0 cents per Mcf, including tax reimbursement, with a moratorium on increased filing until March 1, 1966.

[55] Standard Oil Co. of Texas, Docket No. CI61–1377, Rate Schedule No. 43.

[56] Jake L. Hamon, *et al.*, Docket No. CI61–1745, Rate Schedule No. 31, and George H. Coates, Docket No. CI62–355, Rate Schedule No. 8. The initial prices were conditioned to 16.0¢ per Mcf in Opinion No. 422. Bright & Schiff, Docket No. CI61–1514, Rate Schedule No. 7, a subject contract.

The three applicants also cite the *Medina* case, *supra*, as authority for considering the unusually wide variations in permissible daily swing as storage, or peaking service performed by the producer for the pipeline. There is evidence in this record that the nationwide-average cost of storing natural gas underground in 1962 and 1963 by interstate pipelines was 15.60 and 15.14 cents per Mcf, respectively. During the same periods Natural's average storage cost was 40.06 and 28.10 cents per Mcf, respectively. This evidence does not provide an adequate basis for measuring the value of the flexibility provision in question.

Other Premium Features

The following parties contend that an additional allowance over the in-line price should be allowed for gathering, compression and dehydration performed by them pursuant to their contracts: Jonnell Gas, Incorporated (Jonnell Gas), J. C. Trahan, Drilling Contractor, Inc. (J. C. Trahan), and Appell Petroleum Corporation (Appell). K. D. Owen, d/b/a Owen and Moss, and Appell transport, or pay for the transportation of, their gas from the wellhead to the buyers' pipeline and contend that this feature is a premium benefit. Jonnell Gas makes a similar contention in regard to its delivery to a central point in the field. Most of the contracts in Exhibit 7 have such provisions. The Presiding Examiner finds the costs assigned by the parties to the functions specified above were incurred by the named producers solely in order to sell the gas. Accordingly, no increment above the in-line price may be allowed. *Amerada Petroleum Corporation, et al.*, 31 FPC 1315, 1318–1319.

Special Situations

1. Bright & Schiff, Docket No. CP61–1541.

The contract between Bright & Schiff and South Texas Natural Gas Gathering Company (South Texas) in Docket No. CI61–1541 was executed by the parties on February 10, 1961, with the understanding between them, however, that it would constitute an effective contract "as of" September 15, 1960. Long Island Lighting contends that the September 15, 1960 date should be used as the contract date in applying the in-line prices found for the three time periods herein, thereby resulting in a conditioned price of 15.0 cents per Mcf, instead of 16.0 cents per Mcf.[57] It contends that to do otherwise would permit an applicant to impeach, to its advantage, the date contained in its verified application to the Commission, and would "make a mockery of the Commission's regulations." (Br. p. 18)

On April 20, 1961, Bright & Schiff filed its application for a certificate of public convenience and necessity for the sale of gas in the Northwest Thompsonville Field, Jim Hogg County, Texas, to South Texas at an initial price of 18.0 cents per Mcf. On the same date it filed as its Rate Schedule No. 7 a conformed copy of the contract with South Texas. It shows no date of "execution." It states, however, that it is to be an effective contract between the buyer and seller "as of" Sepember 15, 1960. In its Exhibit A attached to its abbreviated application filed on April 20, Bright & Schiff shows September 15, 1960, in the space provided for "date of contract."

Mr. H. G. Schiff appeared and testified that the contract was not signed by him or any of his three partners until February 10, 1961. He stated that the contract had not been finalized until then. Exhibits 13 and 14 received in evidence substantiate this testimony. Exhibit 13 is a copy of a letter from Coastal States Gas Producing Company (Coastal),[58] to Bright & Schiff, dated February 7, 1961. By this letter Coastal transmitted two original counterparts of the contract proposed between Bright & Schiff and South Texas, stating that they had been executed by South Texas and requesting that one of the copies be returned after execution by Bright & Schiff. Exhibit 14 is a letter from South Texas dated February 14, 1961, and signed by the same party who signed the Coastal letter, transmitting to Bright & Schiff one fully executed copy of the contract for the Bright & Schiff files.

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[57] Staff "has no reason to doubt that the contract was not physically signed on February 10, 1961. * * *" (Br. p. 28).

[58] South Texas is a subsidiary of Coastal.

The effect to be given to a contract dated on one date but executed on a different date was considered by the Commission in the *Skelly* case, *supra*, on rehearing.

In that case the Commission stated the matter as follows:

> In this connection Jake L. Hamon contends that his contract in Docket No. CI61-930, while dated September 25, 1960, before the Policy Statement, was really executed December 1, 1960, the same date as two letter amendments. While the course of regulation should not depend on such technicalities as the parol evidence rule, Hamon has done nothing, beyond an assertion in his application for rehearing, to show the alleged date of execution. The application for a certificate, filed December 19, 1960, repeats the September 25, 1960 date of contract; a paragraph in the contract permits termination if a certificate is not issued by December 31, 1960, an entirely unreasonable provision for a contract executed December 1, 1960, because of notice requirements. (28 FPC at 1066).[20]

In the *Hassie Hunt Trust* case, *supra*, the Commission held that the date on which a meeting of the minds for the sale of the gas took place is the controlling date. In that case one of the sellers in Docket No. G-19116 could no longer perform. A different producer then came forward and agreed on February 15, 1961, to furnish from different acreage that share of the production which the original co-seller was unable to supply. The parties chose to make the sale by adopting the provisions of the original contract, except for acreage, which was dated prior to the Policy Statement of September 28, 1960. The earlier contract was at a higher price. The Commission held that the parties "cannot make the agreement retroactive to the earlier contract date or erase events which occurred between May 15, 1959 and February 15, 1961, and which may have led to the decision to use the earlier, high priced contract." (30 FPC at 1444). The Commission then severed the four sales in question and consolidated them for further hearing with other dockets involving applications for certificates under contracts executed after the Policy Statement was issued.

The Presiding Examiner finds that a meeting of the minds between Bright & Schiff and South Texas did not occur until February 10, 1961, and that such date should be used for purposes of this Initial Decision.

Assuming that the Bright & Schiff contract was not executed until February 10, 1961, Staff and Long Island Lighting contend that Bright & Schiff is estopped by its conduct, detailed hereinbelow, from receiving the benefit of the February 10, 1961 date.

The reserves dedicated to the contract between Bright & Schiff and South Texas included Bright & Schiff's interest in all of the north one-half of 640 acres and an undivided one-half interest in the south one-half. The other undivided one-half was owned by Coastal, its co-tenant. Coastal entered into a contract "as of" September 15, 1960, with South Texas, its subsidiary, for the sale of its interest and also the acreage owned by Bright & Schiff. On September 26, 1960, Coastal filed with the Commission an application for a certificate of public convenience and necessity for authority to make the sale and on the same date filed the contract as its Rate Schedule No. 38.

The contract shows the "conformed" signature of the Vice President of South Texas and the conformed signatures of H. R. Bright, H. G. Schiff, John A. Myers and Ellis Chaney, Jr., all partners in Bright & Schiff. Temporary authority for the sale was issued on November 15, 1960, to "Coastal States Gas Producing Co. (Operator), *et al.*," in Docket No. CI61-472. The contract contained an

[20] The Bright & Schiff contract provides that the seller will proceed with due diligence in the prosecution of its application.

initial price of 16 cents per Mcf. In the *Skelly* case, *supra*, the initial price was conditioned to 15 cents per Mcf. Ordering paragraph G of that Opinion shows that the order was directed to "Coastal States Gas Producing Co., Docket Nos. CI61–471 and CI61–472." Coastal accepted the condition by letter dated November 5, 1963. Mr. H. G. Schiff testified that neither he nor any of his three partners signed the aforesaid contract,[60] and that the inclusion of their names in the contract was a mistake on Coastal's part. He further testified that in February or March of 1961 Coastal advised him that a mistake had been made in the contract filed as its Rate Schedule No. 38 and in its application for a certificate of public convenience and necessity. He was also advised by Coastal that they had advised the Commission of the mistake (Tr. 988). In addition, a Vice President of Coastal, on April 5, 1961, gave Mr. Schiff a copy of a letter dated April 5, 1961, from Coastal to its counsel in Washington, D.C. A copy of this letter is in evidence as Exhibit 15. In pertinent part it is as follows:

> In order to clarify the mixup that has heretofore existed, with reference to the Bright & Schiff, Northeast Thompsonville acreage, I will hereinafter set out in detail the facts as they transpired.
>
> You will recall that in September of 1960, Oscar brought to Washington, personally, the conformed copies which you used for filing purposes on behalf of Coastal States covering the acreage we own in Northeast Thompsonville. Through a mixup in the office, the contract purportedly had been signed by Bright & Schiff, when, in fact, it had not. Bright & Schiff actually signed a contract of their own, which was dated the same date as the conformed contract which you filed. Also, the conformed contract purportedly covered the entire 640 acres, when, in truth, the contract executed by Coastal States only covered its interest in the South 320 acres, which interest is an undivided 50 per cent. The balance of the acreage (that is, the entire North 320 and an undivided 50% interest in the South 320) is owned by Bright & Schiff, and is covered by the contract executed by them.
>
> All of this confusion resulted from the fact that we were in a hurry to get this contract on file, in order to take advantage of the reserves dedicated in our then pending hearing on the Transco phase of the South Texas System.

There is no evidence in this record, other than the fact that the order in the *Skelly* case, *supra*, did not refer to the *Coastal* docket as involving "*et al.*" parties, that the Commission was ever notified of the mistake. Mr. Schiff did not do so. He presumed that the correction had been made. The Presiding Examiner finds, contrary to the contentions of Staff and Long Island Lighting, that the failure of Bright & Schiff to take any action to correct the Commission's files was justified under the circumstances of record herein.

Mr. Schiff also testified that prior to September 15, 1960, Coastal discussed with Bright & Schiff the joint sale of the production from the well. (The well was not completed until October 22 or 23, 1960.) He stated that Coastal advised him that since it needed money in 1960 it was going to file its contract immediately in order to begin selling gas when the well was completed. Bright & Schiff told Coastal that Bright & Schiff wanted to continue their negotiations with South Texas. They felt that their negotiating position would be much better if they waited until it was known how many cubic feet of gas reserves were present. Bright & Schiff and Coastal orally agreed, however, that Coastal could take all the gas they wanted from the well until such time as Bright & Schiff obtained a contract and a certificate for public convenience and necessity. At that time, Bright & Schiff would then take out "gas equal to the amount of money that

[60] Based upon his observation of the witness' demeanor while testifying, the Presiding Examiner finds that neither Mr. Schiff nor any of his partners signed the Coastal contract.

[Coastal had] taken from the well insofar as [Bright & Schiff's] interest is concerned." (Tr. 992). In effect, Bright & Schiff and Coastal had entered into a loan agreement. The effect of such action from a dollar and cents standpoint for Bright & Schiff, of course, was exactly the same as though from the time of first delivery the sales had been made on a 50/50 basis by Bright & Schiff and by Coastal.

Staff contends that the above agreement between co-tenants requires the Presiding Examiner to ignore the date of execution and find that Bright & Schiff's agreement to sell gas to South Texas took place on September 15, 1960. The fact remains, however, that the meeting of the minds between Bright & Schiff and South Texas occurred on February 10, 1961, and no enforceable contract between them existed before that date. The Presiding Examiner finds that the controlling date herein is February 10, 1961.

2. Jonnell Gas, Incorporated (Operator), *et al.*, Docket No. CI60-323; J. C. Trahan, Drilling Contractor, Inc., Docket No. CI62-123.

The initial sale of gas under Docket No. CI60-323 was pursuant to a contract entered in as of February 5, 1960, between Jonnell Gas Co., a partnership, with Tennessee Gas Transmission Company. Under date of November 1, 1961, the partnership conveyed all its properties, subject to its liabilities, to Jonnell Gas, Incorporated (Jonnell).

The initial sale of gas under Docket No. CI62-123 was pursuant to a contract between Jones O'Brien, Incorporated (Jones O'Brien) and Tennessee Gas Transmission Company (Tennessee) entered into as of February 5, 1960. Jones O'Brien, in Docket No. CI61-71, filed an application for authority to make the sale. J. C. Trahan, Drilling Contractor, Inc. (J. C. Trahan), acquired the properties covered by the Jones O'Brien sale effective July 1, 1961. By an agreement dated August 21, 1961, executed by J. C. Trahan and Tennessee, the former expressly ratified the February 5, 1960 contract. By letter-order of September 18, 1961, the temporary authorization previously issued to Jones O'Brien in Docket No. CI61-71 was terminated and temporary authorization to continue the sale was issued to J. C. Trahan in Docket No. CI62-123. Docket No. CI61-71 was cancelled by the May 28, 1964 order which commenced the instant proceeding.

The contention is now made by Jonnell and J. C. Trahan that the applicable dates to use in applying in-line prices herein are November 1, 1961 and August 21, 1961, respectively. This record shows that the above transfers do not involve a material change of circumstances. They are, therefore, totally different from the situation presented in the *Hassie Hunt Trust* case, *supra*, discussed herein at page 1040.

The Presiding Examiner finds on the basis of the record herein that the above transfers involve a succession of interest pursuant to the principle established in the *Graridge* case,[61] and that the controlling dates are February 5, 1960, in both instances.

3. Shell Oil Company, Docket No. G-18439.

On April 28, 1959 in Docket No. G-18439, Shell Oil Company (Shell) applied for authority to make a sale to Coastal Transmission Corporation (Coastal) pursuant to a contract executed on March 20, 1959 at an initial price of 16.5 cents per Mcf. This proposed sale involves gas from the same field, to the same purchasers, and at the same price as the 1955 sale permanently certificated in Gulf Oil Corporation, Docket No. G-10127, pursuant to a settlement agreement dated April 25, 1963. Shell contends it is entitled to equal treatment.

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[61] *Graridge Corporation (Operator), et al.*, 30 FPC 1156, rehearing denied, 30 FPC 1524.

In addition, Shell shows that the reserves covered by its sale were among those used to support a major expansion of Coastal's system, which expansion was being contested. Accordingly, Shell argues that it was assuming the risk that the pipeline expansion might not be certificated, plus the further risk of substantial delays before deliveries could be commenced after the certificate was issued.

Shell also shows that sales by other producers to Coastal under 1955, 1956, and 1957 contracts were considered by the Commission to involve the same risks and as a result "may have resulted in higher prices than would have resulted from contracts with an established pipeline." [62]

Shell contends that since "the Commission has already found [the Coastal] sales to be different and [to] involve special circumstances, * * * that these same special circumstances and differences should entitle other sales to Coastal to the same treatment." (Initial Br. p. 21.) The Presiding Examiner finds that the risks assumed by Shell in its sale to Coastal were necessary in order to make the gas marketable and that no sum in excess of the in-line price is warranted for the sale by the facts in this record.

4. Shell Oil Company, Docket No. CI61–783.

Shell Oil Company's (Shell) application for a certificate of public convenience and necessity in Docket No. CI61–783 involves an assignment of certain acreage previously covered by the permanent certificate issued to Delhi Taylor Oil Corporation (Delhi Taylor) on December 28, 1956 in Docket No. G–10263.[63] To the extent that Shell is a successor in interest to Delhi Taylor, as shown hereinbelow, the principle of the *Graridge* case, *supra*, applies and Shell is entitled to receive the contract price of 16 cents per Mcf.

The facts concerning this matter are set forth in detail at pages 603–608 of the transcript of record herein and are not in dispute. In summary, they show that Delhi Taylor filed an application in Docket No. G–10263 for authority to sell natural gas to Coastal Gas Transmission Corporation (now Florida Gas Transmission Company) from the Yzaguirre Field, Starr County, Texas, together with gas from seven other fields. The contract was executed December 30, 1955. It was filed as Delhi Taylor's Rate Schedule No. 26. On December 28, 1956, this Commission issued a permanent certificate to Delhi Taylor and deliveries commenced and have continued since that date without interruption.

In 1959 Shell began negotiations with Delhi Taylor to purchase its leases in the Yzaguirre Field. In order to facilitate this sale, Shell, Delhi Taylor, and Coastal decided that allocations and other problems would be avoided if a separate contract containing the same terms and provisions were entered into covering only the Yzaguirre Field. As all of the negotiations had not been completed, and to facilitate the sale, Delhi Taylor and Coastal entered into a gas purchase contract on May 15, 1959, containing substantially the same terms and provisions, except for routine changes, as the December 30, 1955 contract. On September 11, 1959, Delhi Taylor filed an application to amend its certificate in Docket No. G–10263 to delete the Yzaguirre Field, and at the same time filed an application for a certificate covering separately the Yzaguirre Field. This application was designated at Docket No. G–19464 and consolidated with the

[62] *Skelly Oil Co., supra*, 28 FPC at 410, fn. 20. The Commission held that such sales were subject to the same infirmities as other sales found to be suspect.

[63] On February 28, 1964, Shell filed a Supplemental Certificate Application in Docket No. CI61–783 relating to a contract dated January 15, 1964. It added additional acreage and was designated as Supplement No. 6 to Shell's Rate Schedule No. 271. The contract price was 16 cents per Mcf. No price condition is required.

proceedings in what is now *Florida Gas Transmission Company, et al.*, Docket No. G–18338, *et al.*

On July 1, 1960, Delhi Taylor assigned its interests in the Yzaguirre Field to Shell. On November 15, 1960 Shell filed its application in Docket No. CI61–783. By letter-order of January 4, 1963, Shell, as successor in interest to Delhi Taylor, was issued a temporary certificate to continue the sale covered by Docket No. G–19464. In its May 28, 1964 order initiating the instant proceeding the Commission, after severing Docket No. G–19464 from the proceedings in Docket No. G–18338, *et al.*, ordered that the proceeding in Docket No. G–19464 be terminated and the docket number cancelled. The Presiding Examiner finds that Shell is a successor in interest to Delhi Taylor leases in the Yzaguirre Field and that a permanent certificate should be issued to Shell in Docket No. CI61–783, to the extent of this interest, at the contract price of 16 cents per Mcf.

5. Roy A. Lamb and A. G. Galt, d/b/a Pan American Engineering Company, Docket No. CI62–21.

The above applicants in Docket No. CI62–21 did not appear or file a brief. The date of their contract with Florida Gas Transmission Company is August 26, 1956. The public records of this Commission show that a permanent certificate of public convenience and necessity was issued to the Applicant's predecessors in interest authorizing this same sale in Docket No. G–11062 on December 28, 1956.[64] The principle of the *Graridge* case, *supra*, applies. The Presiding Examiner finds that a price condition is not required and that a permanent certificate should be issued to applicants at the contract price of 16.5 cents per Mcf. (As previously shown at page 1017, *supra*, applicants must comply with certain conditions necessitated by their failure to appear in this proceeding.)

Take or Pay Condition

In numerous cases this Commission has attached a condition to the certificates issued by it which requires the applicants to conform to the final order in the rule making proceeding in Docket No. R–199. Staff contends the certificates issued herein should be so conditioned. Sun Oil Company contends that the imposition of this uncertain condition would be invalid, citing *Sunray Mid-Continent Oil Co.* v. *Federal Power Commission*, 270 F. 2d 404, 409 (CA10). It also contends there is no evidence of record herein upon which the Presiding Examiner could base the imposition of such a condition.

Similar contentions were considered and rejected by this Commission in its Memorandum Opinion and Order on rehearing in the *Amerada* case, *supra*. The Presiding Examiner finds, for the reasons stated by the Commission therein, that the protection of the public interest represented by the condition is necessary.

Rate Increase Filings

In certain of its six rate schedules relating to dockets consolidated in this proceeding, Shell Oil Company (Shell) has filed for rate increases under Section 4(e) of the Act. These rate increases were suspended and permitted to go into effect subject to Shell refunding all amounts in excess of the just and reasonable rates, to be found in a separate proceeding. All participants stipulated that rate increases under Section 4 are not an issue in this case.

In its reply brief Shell states that Staff in Paragraph (B) of its proposed order advocates a condition which might be construed as preventing the collection

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[64] 16 FPC 1475. The lead docket in the order issuing this certificate was *The Superior Oil Company, et al.*, Docket No. G–10078, *et al.*

of the rate increases previously filed. Shell believes that such a result was not intended in view of the stipulation referred to above. It requests that the Presiding Examiner make clear that the previously filed rate increases are unaffected by any order in this proceeding. The Presiding Examiner finds the increased rates previously filed by Shell, and any other applicant herein, under Section 4 of the Act are not at issue in this proceeding.

ADDITIONAL FINDINGS AND CONCLUSIONS

Upon consideration of the whole record, and as supported by and in accordance with the reliable, probative and substantial evidence, it is further found and concluded that:

(1) Applicants herein listed in Appendix A, except for Docket No. CI61–631 are, or upon commencement of services proposed will be, engaged in the sale of natural gas in interstate commerce for ultimate public consumption and each is, or will be, therefore, a "natural-gas company" within the meaning of the Natural Gas Act.

(2) The sales of natural gas hereinbefore described, as more fully described in the applications, are made in or will be made in interstate commerce, subject to the jurisdiction of the Commission, and such sales, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Subject to the requirements of the order herein and the conditions attached to the certificates herein issued, the applicants, except the applicants in Docket No. CI61–631 and those listed in ordering paragraph (C) below, are able and willing properly to do the acts and to perform the services proposed, and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The sales of natural gas by the independent producers referred to in paragraph (1) above, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, and at the prices listed in Appendix A hereto under the column entitled "Price Certificated," are required by the public convenience and necessity, and certificates therefor should be issued as hereinafter ordered and conditioned.

(5) The conditions attached to the certificates herein issued are required by the public convenience and necessity.

ORDER

WHEREFORE, *It is ordered*, subject to review by the Commission on appeal, or upon its own motion as provided in the Commission's Rules of Practice and Procedure, that:

(A) Certificates of public convenience and necessity, and amendments to orders issuing certificates of public convenience and necessity, are hereby issued to the several applicants listed in Appendix A hereto, except for Docket No. CI61–631, for the sale of natural gas in interstate commerce for resale as proposed in the applications, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, upon the terms and conditions set forth below.

(B) Where the "Contract Total Price" shown in Appendix A hereto for each docket is greater than the price found to be required by the public convenience and necessity in paragraph (4) of the Additional Findings and Conclusions herein, each certificate issued, and amendment granted, as provided in paragraph

(A) above, is hereby conditioned to prohibit a total initial price, including all reimbursements and charges, greater than the price listed in Appendix A hereto under the column entitled "Price Certificated," from the date of issuance of this order until such prices may be lawfully changed in the manner provided by the Natural Gas Act.

(C) In addition to other applicable conditions imposed below, the certificates issued above in Docket Nos. G–20458, CI60–506, CI62–21, and CI64–908, are subject to the following additional conditions:

(1) Each applicant shall notify the Commission, in writing within 10 days whether or not service has ever commenced, and if so, when.

(2) If service has never commenced, then the certificate herein issued is void and the application is dismissed.

(3) If service has ever commenced, then the certificate issued herein is fully effective and subject to all conditions imposed herein.

(D) Within 30 days from the date of issuance of this order each of the applicants receiving certificates or grants of amendments in paragraph (A) hereof, whose proposed total initial price exceeds the applicable price listed in Appendix A hereto under the column entitled "Price Certificate," shall file a supplement to its presently filed rate schedule, related to its respective application, reflecting the conditioned price as the total initial price in lieu of the higher initial price provided in the contract or amendment; provided that with respect to the reduction in rates hereby ordered, applicants need not comply with the notice provisions of Section 154.94(b) and the detailed submittal provisions of Section 154.94(f) of the Regulations under the Natural Gas Act.

(E) Within 60 days from the date of issuance of this order the applicants in Docket Nos. CI63–334 and CI63–304 shall make refunds to their respective pipeline purchasers with interest at 7 percent per annum in accordance with the conditions in the temporary certificates heretofore issued to each.

(F) Within 10 days of the date of refunds provided for in paragraph (E) hereof, each of the applicants shall file with the Commission its statement showing the amount of refund, its manner of computation, and the interest payments related thereto, and a statement from the purchaser acknowledging receipt thereof.

(G) The certificates herein issued, and the amendments herein granted, are upon the express condition that the allowance of the take-or-pay provisions in the applicant's contract or amendment is subject to the Commission's ultimate disposition with respect to such provisions in the rulemaking proceeding in Docket No. R–199. Upon the establishment, by regulation or policy statement, of a general policy governing such provisions in producer contracts, each applicant shall, within 30 days, file its amended rate schedule in conformity therewith, acceptable to the Commission, provided that the applicant shall not be required to file a take-or-pay provision for less than 80 percent of the annual contract quantity and, provided further, that any rate schedule changes or modifications to be made in accordance with this paragraph shall be prospective only.

(H) The certificates issued by paragraph (A) hereof are not transferable and shall be effective only so long as each respective applicant continues the acts and operations hereby authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations, and orders of the Commission.

(I) The grant of the certificates and amendments shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act, or of Part 154 of the Regulations thereunder. Such grant is without prejudice to any findings or order which have been or may hereafter be made by the Commission

in any proceeding now pending or hereafter instituted by or against the applicants or any one of them. Further, the action in this proceeding shall not foreclose or prejudice any further proceedings or objections by the Commission relating to the operation of any price or related provision in the gas purchase contracts or amendments here involved.

(J) The certificate herein issued to Sun Oil Company in Docket No. CI64–470 is conditioned upon its being accepted in writing by the applicant within 30 days of the issuance of this order.

(K) The application in Docket No. CI61–631 is hereby dismissed.

DYER JUSTICE TAYLOR,
Presiding Examiner.

APPENDIX

TURNBULL & ZOCH DRILLING CO., ET AL.,

Certificate docket No.	Seller	Buyer	Rate schedule No.	Contract or supplement date	Field
					AUG. 28, 1956 THROUGH
CI62-21	Roy A. Lamb & A. G. Galt, d/b/a Pan American Engineering Co.	Florida Gas Transmission Co.	4	Aug. 28, 1956	So. Clara Driscoll
G-18678	G. H. Vaughn, Jr., et al.	do	3	May 24, 1957	S. W. Luby
					JAN. 1, 1958 THROUGH
G-17960	Turnbull & Zoch Drilling Co. (Operator), et al.	do	1	Oct. 25, 1956	Monte Christo
CI60-134	American Petrofina Co. of Texas.	So. Texas Natural Gas Gathering Co.	28	Nov. 1, 1958	Shepherd
G-18378	Getty Oil Co	Florida Gas Transmission Co.	7	do	Half Moon Reef
G-18223	Tenneco Oil Co	So. Texas Natural Gas Gathering Co.	150	Dec. 1, 1958	Shepherd
CI61-1661	Mayfair Minerals, Inc.	do	4	do	do
CI64-1307	Continental Oil Co	do	265	do	do
G-18590	Investors Syndicate of the Southwest, Inc.	Florida Gas Transmission Co.	1	Dec. 5, 1958	N. Monte Christo
G-18212	Susanoil, Inc	do	1	Dec. 15, 1958	Sharyland
G-18479	Herman Brown, et al.	do	6	Mar. 12, 1959	North Monte Christo.
G-18439	Shell Oil Co	do	201	Mar. 20, 1959	East Mustang Island.
G-18434	McCurdy & McCurdy	do	1	Mar. 30, 1959	Luby
G-18522	M. W. Crockett, et al.	do	1	Apr. 8, 1959	Yzaguierre
G-18706	George K. Taggert, Jr. (Operator), et al.	do	2	May 15, 1959	Webb
CI61-783	Shell Oil Co. (Operator), et al.	Florida Gas Transmission Co. Supplement No.	271	May 15, 1959	Yzaguierre
G-18861	V. F. Neuhaus	Florida Gas Transmission Co.	6	Jan. 15, 1964	do
G-18987	Zimet Brothers, Inc., Agent.	do	6	June 15, 1959	Cortez
G-19498	Phillips Petroleum Co.	do	1	do	San Eduardo
G-20458	Diversa, Inc	do	352	July 15, 1959	East Corpus Christie Bay.
CI60-323	Jonnell Gas, Inc., (Operator), et al.	Tennessee Gas Transmission Co.	8	Aug. 1, 1959	Half Moon Reef
		Supplement No.	1	Feb. 5, 1960	Lopeno
		Supplement No.	4	Feb. 1, 1961	do
		Supplement No.	5	May 1, 1961	do
		Supplement No.	7	Dec. 1, 1961	do
		Supplement No.	8	Mar. 15, 1962	do
		Supplement No.	9	Aug. 31, 1962	do
		Supplement No.	10	Apr. 20, 1963	do
CI60-325	Tenneco Oil Co	Tennessee Gas Transmission Co.	154	Feb. 5, 1960	do
CI60-506	Jos. E. Seagram & Sons, Inc., d.b.a. Frankfort Oil Co.	Tennessee Gas Transmission Co.	5	do	N. E. Lopeno
		Supplement No.	8	Oct. 7, 1963	do
CI60-508	Livingston Oil Co	do	5	Feb. 5, 1960	do
CI64-1310	Continental Oil Co	do	269	do	Lopeno
CI62-123	J. C. Trahan, Drilling Contractor, Inc.	do	17	do	do
CI60-591	George H. Coates	So. Texas Natural Gas Gathering Co.	5	Feb. 15, 1960	Shepherd
CI60-383	James A. Wood, Trustee (Operator), et al.	Tennessee Gas Transmission Co.	3	Feb. 18, 1960	South La Reforma.
CI60-581	Breuer & Curran Oil Co.	Florida Gas Transmission Co.	2	Mar. 30, 1960	South Boyle

See footnotes at end of table.

A
DOCKET NO. G-17960, ET AL.

County	Price adjustment clauses [b]	Contract base price [c]	Contract total price [c]	Total temporary price [c]	Date temporary certificate issued	Estimated first month's volumes (Mcf) [c]	Express refund conditions	Price certificated [c]
DEC. 31, 1957								
Nueces	FN, R	16.5	16.5	16.5	(e)	15,000	No	e 16.5
do	FN, R	16.5	16.5	16.5	June 29, 1961	15,000	No	15.0
SEPT. 27, 1960								
Hidalgo	FN, R	16.0	16.0	16.0	(e)	30,000	No	15.0
do	FN	16.0	16.0	16.0	Nov. 1, 1960	8,000	No	15.0
Aransas	FN, R	17.0	17.0	17.0	May 28, 1962	67,500	No	15.0
Hidalgo	None	16.0	16.0	16.0	June 19, 1959	57,000	No	15.0
do	None	16.0	16.0	16.0	June 28, 1961	1,800	No	15.0
do	None	16.0	16.0	16.0	June 19, 1959	57,000	No	15.0
do	FN, R	16.0	16.0	16.0	(d)	45,000	No	15.0
do	FN, R	16.0	16.0	16.0	(d f)	15,000	No	15.0
do	FN, R	16.0	16.0	16.0	(d)	54,000	No	15.0
Nueces	FN, R	16.5	16.5	16.5	(d)	69,750	No	15.0
do	FN, R	16.5	16.5	16.5	(d)	19,995	No	15.0
Starr	FN, R	16.0	16.0	16.0	(d)	6,284	No	15.0
San Patricio	None	14.5	14.5	14.5	(d)	62,000	No	14.5
Starr	FN, R	16.0	16.0	16.0	(d)	58,129	No	e 16.0
do	FN, R	16.0	16.0	16.0	Apr. 2, 1964	23,653	No	16.0
do	FN, R	16.0	16.0	16.0	(d)	11,625	No	15.0
Jim Hogg, Starr	None	16.0	16.0	16.0	(d)	7,500	No	15.0
Nueces	FN, R	16.5	16.5	16.5	(d)	78,750	No	15.0
Aransas	None	16.5	16.5	16.5	(d)	15,000	No	15.0
Zapata	None	17.24	17.24	17.24	Aug. 31, 1960	769,560	No	15.0
do	None	17.24	17.24	17.24	July 10, 1961	Not stated	No	16.0
do	None	16.50	16.50	16.5	do		No	16.0
do	None	17.24	17.24	17.24	Jan. 2, 1962	for supplements	No	16.0
do	None	16.5	16.5	16.5	May 10, 1962		No	16.0
do	None	17.24	17.24	16.0	Nov. 29, 1962		No	16.0
do	None	17.24	17.24	16.0	July 24, 1963		No	16.0
do	None	17.24	17.24	17.24	July 15, 1960	61,950	No	15.0
do	None	16.5	16.5	16.5	do	43,000	No	15.0
do	None	16.5	16.5	16.0	Dec. 13, 1963	15,000	No	16.0
do	None	16.5	16.5	16.5	July 15, 1960	150,000	No	15.0
do	None	17.24	17.24	17.24	do	61,950	No	15.0
do	None	17.24	17.24	17.24	Sept. 18, 1961	55,140	No	15.0
Hidalgo	None	16.0	16.0	16.0	May 26, 1960	45,000	No	15.0
Starr	FN, R	17.24	17.24	17.24	Apr. 6, 1960	40,000	No	15.0
do	None	16.0	16.0	16.0	May 24, 1960	30,000	No	15.0

APPENDIX

TURNBULL & ZOCH DRILLING CO., ET AL.,

Certificate docket No.	Seller	Buyer	Rate schedule No.	Contract or supplement date	Field
					JAN. 1, 1958 THROUGH
CI61-427	Austral Oil Co., Inc.	Natural Gas Pipeline Co. of America.	14	Sept. 1, 1960	Northeast Thompsonville.
CI61-618	Blanco Oil Co., (Operator), et al.	do	9	do	do
CI61-631	Katz Oil Co	do	7	do	do
CI61-626	Killam & Hurd	do	1	do	do
CI61-694	H. J. Mosser	Tennessee Gas Transmission Co.	5	Sept. 8, 1960	Mosser
CI61-1579	K. D. Owens, et al., d.b.a. Owens & Moss.	do	7	Sept. 12, 1960	El Puerto
CI61-1591	Appell Petroleum Corp., (Operator), et al.	do	5	do	do
CI61-1541	Bright & Schiff	So. Texas Natural Gas Gathering Co.	7	Sept. 15, 1960	Northeast Thompsonville.
					SEPT. 28, 1960 THROUGH
CI63-304	Ramada Oil & Gas Co., (Operator)., et al.	Tennessee Gas Transmission Co.	2	May 18, 1962	Northeast Loma Nova.
CI63-334	Tenneco Oil Co	So. Texas Natural Gas Gathering Co.	18	Aug. 1, 1962	Yearly
					AUG. 30, 1962 THROUGH
CI63-925	Jonnell Gas, Inc	Tennessee Gas Transmission Co.	2	Nov. 15, 1962	South Escobas
CI63-1495	Clark Fuel Producing Co. (Op.).	So. Texas Natural Gas Gathering Co.	10	Dec. 1, 1962	Sam Fordyce
CI63-751	McWood Corporation. [4]	Tennessee Gas Transmission Co.: Supp. No. 4 to R. S. No. 2.		Dec. 11, 1962	Potrero Lopena
		Supp. No. 5 to R. S. No. 2.		Dec. 14, 1962	do
		Supp. No. 6 to R. S. No. 2.		June 19, 1963	do
CI63-989	Sun Oil Co	Tennessee Gas Transmission Co.	154	Dec. 31, 1962	Fitzsimmons
CI63-1263	Pan American Petroleum Corp.	Valley Gas Transmission, Inc.	362	Mar. 8, 1963	Luby Petronilla
CI64-211	Cities Service Oil Co (Operator), et al.	So. Texas Natural Gas Gathering Co.	173	Apr. 1, 1963	W. Yeary
CI63-1509	Shell Oil Co	do	297	May 8, 1963	McAllen Ranch
CI63-1513	Tenneco Oil Co	do	166	do	do
CI64-1311	Continental Oil Co	do	282	do	do
CI64-375	Texaco Inc	Natural Gas Pipeline Co. of America.	319	June 1, 1963	Eubanks Hostetter
CI64-439	R. C. Turner, (Operator, et al.	do	1	do	Escobas
CI64-299	Humble Oil & Refining Co.	do	350	July 15, 1963	Sal Del Ray W. Sal Del Ray LaComa, Cerda
CI64-310	Shell Oil Co	So. Texas Natural Gas Gathering Co.	292	do	Monte Christo
CI64-377	Pan American Petroleum Corp.	Natural Gas Pipeline Co. of America.	391	do	Willamar
CI64-703	Shell Oil Co	do	301	do	do
CI64-297	Humble Oil & Refining Co.	do	349	do	do

See footnotes at end of table.

A—Continued
DOCKET NO. G-17960, ET AL.—Continued

County	Price adjustment clauses [b]	Contract base price [c]	Contract total price [c]	Total temporary price [c]	Date temporary certificate issued	Estimated first month's volumes (Mcf) [c]	Express refund conditions	Price certificated [c]
SEPT. 27, 1960—Continued								
Webb, Jim Hogg	R	18.5	[f]20.045	18.0	Nov. 25, 1960	300,000	No	15.5
Webb, Jim Hogg	R	18.5	[f]20.045	18.0	do	85,000	No	15.5
Webb, Jim Hogg	R	18.5	[f]20.045	18.0	do	150,000	No	([h])
Webb, Jim Hogg	R	18.5	[f]20.045	18.0	do	107,100	No	15.5
Starr	None	17.24	17.24	17.24	Nov. 21, 1960	90,000	No	15.0
do	None	17.24	17.24	17.24	May 25, 1961	10,890	No	15.0
do	None	17.24	17.24	17.24	June 1, 1961	90,000	No	15.0
Webb, Jim Hogg	None	18.0	18.0	18.0	May 26, 1961	185,000	No	16.0
AUG. 29, 1962								
Duval	None	17.24	17.24	17.24	Nov. 2, 1962	31,000	Yes, amounts in excess of 15 cents.	16.0
Kleberg	None	17.0	17.0	17.0	do	9,000	do	16.0
MAR. 25, 1964								
Zapata	None	16.0	16.0	16.0	Feb. 28, 1963	210,000	None	16.0
Hidalgo, Starr	None	16.0	16.0	16.0	June 19, 1963	30,000	No	16.0
Kenedy	R	17.24	17.24	16.0	Jan. 4, 1963	15,000	No	16.0
do	R	17.24	17.24	16.0	do	Not stated	No	16.0
do	R	17.24	17.24	16.0	Aug. 16, 1963	Not stated	No	16.0
Duvall	None	16.0	16.0	16.0	Mar. 6, 1963	45,000	No	16.0
Nueces	None	15.5	15.5	15.5	Dec. 20, 1963	90,000	No	15.5
Kleberg	None	16.0	16.0	16.0	Sept. 26, 1963	64,110	No	16.0
Hidalgo	None	16.0	16.0	16.0	Jan. 9, 1964	731,000	No	16.0
do	None	16.0	16.0	16.0	do	16,400	No	16.0
do	None	16.0	16.0	16.0	do	16,400	No	16.0
Duvall, McMullen	None	16.0	16.0	[f]16.0	Nov. 26, 1963	28,140	No	16.0
Zapata	None	16.0	16.0	16.0	do	33,000	No	16.0
Hidalgo	None	16.0	16.0	16.0	Apr. 17, 1964	630,000	No	16.0
do	None	16.0	16.0	16.0	June 10, 1964	62,000	No	16.0
Willacy	None	16.0	16.0	16.0	Apr. 17, 1964	269,948	No	16.0
do	None	16.0	16.0	16.0	May 14, 1964	130,572	No	16.0
do	None	16.0	16.0	16.0	Apr. 17, 1964	330,000	No	16.0

APPENDIX

TURNBULL & ZOCH DRILLING CO., ET AL.,

Certificate docket No.	Seller	Buyer	Rate schedule No.	Contract or supplement date	Field
					AUG. 30, 1962 THROUGH
CI64-470	Sun Oil Co	Natural Gas Pipeline Co. of America.	164	July 19, 1963	Willamar
CI64-908	L. B. Horn, et al	Tennessee Gas Transmission Co.	[1] 5	Aug. 8, 1963	Seven Sisters
CI64-298	Humble Oil & Refining Co.	do	341	do	NeKohle, Viggo, E. Labbe, Yegua and Government Wells.
CI64-655	Shell Oil Co	So. Texas Natural Gas Gathering Co.	298	Oct. 1, 1963	Schmidt
CI64-916	Ginther, Warren & Co.	Natural Gas Pipeline Co. of America.	12	Oct. 15, 1963	Ann-Mag
CI64-933	Russell Maguire, et al	do	12	do	do
CI64-883	Gulf Oil Corp. et al	do	268	do	do
CI64-810	Lundells, Inc., (Operator), et al.	do	1	Nov. 1, 1963	Lundell Area
CI64-837	The Atlantic Refining Co.	So. Texas Natural Gas Gathering Co.	283	Dec. 2, 1963	Schmidt
CI62-826	Sohio Petroleum Co	Tennessee Gas Transmission Co., Supp. No. 8 to R.S. No. 2.		Apr. 20, 1963	Lopeno
CI62-1074	W. H. Hudson, et al. [m]	Tennessee Gas Transmission Co., Supps. Nos. 2, 3 & 5 to R.S. No. 3.		Mar. 6, 1964	Northeast Lopeno (Wilcox).
CI64-1244	Humble Oil & Refining Co.	Natural Gas Pipeline Co. of America.	352	Mar. 25, 1964	Barretta, et al

[a] Cents per Mcf at 14.65 p.s.i.a.

[b] "FN" refers to a favored-nation clause which is operative throughout the life of the contract; "O" refers to any other type of adjustment clause which is operative throughout the life of the contract; and "R" refers to a clause which provides for redetermination of the price only after a specified period of years. One contract may contain clauses of more than one type.

[c] The "Estimated first month's volumes" are the estimated volumes for the first month as reported by the sellers with the rate schedule filing or certificate applications.

[d] Permanent certificates of public convenience and necessity were issued to these applicants by order issued Sept. 19, 1960, in The Ohio Oil Co., et al., docket No. G-17896, et al. This order contained no conditions as to initial prices proposed. Order issued Aug. 9, 1961, in Coastal Transmission Corp., docket No. G-18338, et al., reconsolidated previously severed contracts, and new permanent certificates were issued. Order issued Nov. 2, 1961, in Coastal Transmission Corp., docket No. G-18338, et al., modified the order of Aug. 9, 1961 by withdrawing permanent certificates previously issued, and issued temporary certificates to make sales pending determination of proper initial prices before permanent certificates are granted.

[e] Successor to holder of permanent certificate. Price not to be conditioned.

[f] An application to abandon service was filed on June 15, 1964.

[g] Includes payment of 0.25 cents per Mcf for dehydration, in addition to tax and other reimbursements.

[h] Application will be dismissed by Presiding Examiner.

A
DOCKET NO. G-17960, ET AL.—Continued

County	Price adjustment clauses [b]	Contract base price [c]	Contract total price [c]	Total temporary price [c]	Date temporary certificate issued	Estimated first month's volumes (Mcf) [c]	Express refund conditions	Price certificated [c]
MAR. 25, 1964—Continued								
Willacy	None	16.0	16.0	[k]	[k]	9,000		16.0
Duvall	None	17.24	17.24	16.0	Mar. 12, 1964	15,500	No	16.0
do	None	17.24	17.24	16.0	Jan. 2, 1964	180,000	No	16.0
Hidalgo	None	16.0	16.0	16.0	Jan. 9, 1964	46,500	No	16.0
Brooks	None	16.0	16.0	16.0	Mar. 20, 1964	105,000	No	16.0
do	None	16.0	16.0	16.0	Apr. 2, 1964	93,000	No	16.0
do	None	16.0	16.0	16.0	Mar. 20, 1964	105,000	No	16.0
Duval	None	16.0	16.0	16.0	Mar. 12, 1964	60,000	No	16.0
Hidalgo	None	16.0	16.0	16.0	May 4, 1964	15,500	No	16.0
Zapata	R	17.24	17.24	16.0	Dec. 13, 1963	30,000	No	16.0
do	None	16.5	16.5	16.0	June 3, 1964	8,098	No	16.0
Kenedy	None	16.0	16.0	16.0	Sept. 11, 1964	2,100,000	No	16.0

[a] Application herein relates to acreage dedicated under supplements 4, 5 and 6 to rate schedule No. 2. Applicant's pending certificate applications in docket Nos. CI61-839 and CI62-703 covering sales under the basic contract, as supplemented, are consolidated in Amerada Pertroleum Corp., et al., docket No. CI62-1544, et al.

[b] With respect to gas produced in Texas District No. 4 only. Rate schedule covers gas produced in Texas districts Nos. 1 and 4.

[k] No temporary certificate issued.

[l] On Aug. 27, 1964 Applicant submitted to the Commission an Oil and Gas Lease Agreement dated Sept. 3, 1963, a Partial Assignment dated Sept. 5, 1963 and a revised billing statement. The Sept. 3 Agreement and the Sept. 5 Assignment have been designated as Supplement Nos. 2 and 3, respectively, to the Applicant's FPC gas rate schedule No. 5.

[m] On Jan. 7, 1965 an Application for Abandonment of Service was filed relating to rate schedule No. 3 and all supplements thereto. It was assigned docket No. CI65-648. By order issued and effective on Apr. 22, 1965 in docket No. G-6352, et al., the Commission granted the application for abandonment of service but stated as follows: "the application filed in docket No. CI62-1074 on Apr. 13, 1964 for authorization to sell gas from additional acreage will remain consolidated with the pending certificate proceeding in docket No. G-17960, et al., for determination for the refund question only."

APPENDIX B

TURNBULL & ZOCH DRILLING CO., ET AL.,

DOCKET NO. G-17960, ET AL.

Part I

All participants stipulated that each of the following applicants is "ready, willing and able to perform under its respective [contract or] contracts and to comply with the Natural Gas Act and all valid Commission rules and regulations promulgated thereunder."

Applicants	*Docket No.*
1. Appell Petroleum Corporation (Operator), *et al.*	CI61-1591.
2. The Atlantic Refining Company	CI64-837.
3. Austral Oil Company Incorporated	CI61-427.
4. Cities Service Oil Company (Operator), *et al.*	CI64-211.
5. Clark Fuel Producing Company (Operator), *et al.*	CI63-1495.
6. Continental Oil Company	CI64-1307; CI64-1310; CI64-1311.
7. Gulf Oil Corporation	CI64-883.
8. Humble Oil & Refining Company	CI64-1244; CI64-297; CI64-298; CI64-299.
9. Investors Syndicate of the Southwest, Inc.	G-18590.
10. H. J. Mosser	CI64-694.
11. K. D. Owen, *et al.*, d/b/a Owen and Moss	CI61-1579.
12. Pan American Petroleum Corporation	CI63-1263; CI64-377.
13. Phillips Petroleum Company	G-19498.
14. Shell Oil Company	CI64-655; CI64-703; CI64-310; CI63-1509; G-18439; CI61-783.
15. Sohio Petroleum Company (Operator), *et al.*	CI62-826.
16. Sun Oil Company	CI63-989; CI64-470.
17. Tenneco Oil Company (Operator), *et al.*	CI63-334; G-18223, CI60-325; CI63-1513.

Part II

The following applicants made no appearance at any stage of the hearing in this proceeding and, except as shown herein, have not filed briefs or any other statements pertaining to the issues herein, except their applications and related rate schedules, which were received in evidence by stipulation as items by reference. All except those preceded by an "asterisk" have commenced service under their temporary certificates.

Applicants	*Docket No.*
1. American Petrofina Company of Texas	CI60-134.
2. Breuer & Curran Oil Co	CI60-581.
3. Herman Brown Estate	G-18479.
4. George H. Coates	CI60-591.
5. M. W. Crocket, *et al.*[a]	G-18522.
6. *Diversa, Inc., *et al*	G-20458.
7. Getty Oil Company (Operator), *et al*	G-18378.

[a] Applicant adopted the testimony of the main producer witness (see footnote 23 to the Initial Decision herein).

	Applicants	*Docket No.*
8.	Ginther, Warren & Company	CI64-916.
9.	*L. B. Horn (Operator), *et al*	CI64-908.
10.	W. H. Hudson (Operator), *et al*	CI62-1074.
11.	Katz Oil Company	CI61-631.
12.	*Roy A. Lamb & A. G. Gault, d/b/a Pan American Engineering Company.	CI62-21.
13.	Livingston Oil Company	CI60-508.
14.	Lundells, Inc. (Operator), *et al*	CI64-810.
15.	Russell Maguire, *et al*	CI64-933.
16.	Mayfair Minerals, Inc	CI61-1661.
17.	McWood Corporation	CI63-751.
18.	V. F. Neuhaus	G-18861.
19.	Ramada Oil & Gas Company	CI63-304.
20.	*Joseph E. Seagram & Sons, Inc., d/b/a Frankfort Oil Co.	CI60-506.
21.	Susanoil, Inc	G-18212.
22.	Texaco Inc.[b]	CI64-375.
23.	George K. Taggert, Jr., Operator	G-18796.
24.	Turnbull & Zoch Drilling Co. (Operator), *et al*	G-17960.
25.	R. C. Turner (Operator), *et al*	CI64-439.
26.	G. H. Vaughn, Jr., *et al*	G-18678.
27.	James A. Wood Trustee (Operator), *et al*	CI60-383.
28.	Zimet Brothers, Inc., Agent (Operator), *et al*	G-18987.

[b] Applicant adopted the testimony of the main producer witness. It also adopted, *mutatis mutandis*, the briefs filed by Continental Oil Company.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

NEW LONDON GAS COMPANY AND MICHIGAN WISCONSIN PIPE LINE COMPANY, DOCKET NO. CP63-20

ORDER AMENDING OPINION NO. 386 AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued October 1, 1965)

On August 12, 1965, Morning Sun Gas Company (Petitioner) filed in Docket No. CP63-20 a petition on behalf of the Town of Morning Sun, Iowa (Morning Sun) to amend the Commission's order issued on April 17, 1963, in Docket Nos. CP62-303, CP63-20 and CP63-21 (Opinion No. 386, 29 FPC 754), as more fully set forth in the petition to amend.

By said Opinion No. 386 and the accompanying order, Michigan Wisconsin Pipe Line Company (Respondent) was directed, among other things, to establish physical connection of its natural gas transportation facilities with the facilities proposed to be constructed by New London Gas Company (Applicant), and to sell and deliver up to 468 Mcf per day of natural gas to Applicant for resale and distribution in Morning Sun. On March 30, 1964, 31 FPC 730, the Commission granted Applicant's petition to amend the original order and opinion by substituting Petitioner in Applicant's place as the recipient of the natural gas from Respondent.

The citizens of Morning Sun approved the purchase by Morning Sun of Petitioner's established property and gas distribution facilities, for a sum not to exceed $205,000, by a special election held on July 17, 1965. Petitioner therefore requests that Morning Sun be substituted for it as the recipient of natural gas from Respondent.

Due notice of the filing of the petition to amend was published in the Federal Register on August 28, 1965 (30 F.R. 11155). No protest, petition to intervene, or notice of intervention has been filed.

At a hearing held on September 29, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the petition to amend and exhibits submitted in support of the substitution of parties sought herein, and upon consideration of the record,

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued April 17, 1963, and amended on March 30, 1964, in Docket No. CP63-20 (Opinion No. 386, 29 FPC 754) be further amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order issued April 17, 1963, and amended on March 30, 1964 (Opinion No. 386, 29 FPC 754) is further amended by substituting the name of the Town of Morning Sun, Iowa, for that of Morning Sun Gas Company as purchaser in Docket No. CP63-20, all as more fully set forth in the petition to amend.

(B) In all other respects said opinion and order shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

TENNESSEE GAS TRANSMISSION COMPANY AND UNITED GAS PIPE LINE COMPANY, DOCKET NO. CP64-92

ORDER AMENDING ORDER ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

(Issued October 1, 1965)

On June 22, 1965, as amended on August 2, 1965, Tennessee Gas Transmission Company and United Gas Pipe Line Company (Applicants) filed in Docket No. CP64-92, a joint application to amend the order of the Commission issued in said docket on December 19, 1963, 30 FPC 1557, authorizing the construction and operation of certain facilities and the transportation and delivery of natural gas by Tennessee for United. Applicants propose by the amendment to establish an additional point of delivery of gas by United to Tennessee for the authorized transportation service currently being rendered under Tennessee's existing transportation Rate Schedule T-6, all as more fully set forth in the joint application to amend.

In the Commission order of December 19, 1963, Applicants received authorization for the transportation of gas by Tennessee for United, a distance of 92 miles, and the facilities required to effectuate such service. The agreement, designated as Tennessee's Rate Schedule T-6, under which the service is performed, provides for the delivery of gas by United to Tennessee in Iberia and Plaquemines Parishes, Louisiana, for transportation and redelivery of the same at the interconnection of the two systems near Iowa, in Jefferson Davis Parish, Louisiana. This service enables United to augment its supply of firm gas in the Lake Charles area of Louisiana with maximum daily deliveries increasing over the four year term of the agreement, that commenced with the 1963-64 winter season, as follows: first year—73,146 Mcf; second year—93,032 Mcf; third year—106,384 Mcf; and fourth year—122,983 Mcf. United pays Tennessee a charge of 45¢ per month multiplied by the daily quantity applicable during the month.

The facilities proposed to be constructed and operated are described as follows:

United Gas Pipe Line Company

Construct approximately 0.15 mile of 8-inch pipeline, orifice meter station and appurtenant facilities, beginning at a point on the North Leroy Field Gathering System (installed under FPC Docket No. G-12270) and extending in a generally southerly direction to the Tennessee Gas Transmission Company's existing 24-inch Muskrat Line in Section 2, Township 11 South, Range 2 East, Vermilion Parish, Louisiana.

Tennessee Gas Transmission Company

Install tap valve and 6" side valve on its Muskrat Line near Valve No. 511, located in Section 2, Township 11 South, Range 2 East, Vermilion Parish, Louisiana.

The total cost of the facilities proposed by United is estimated to be $60,218. The total cost of the facilities proposed by Tennessee is estimated to be $5,700. Financing of the proposed facilities will be from Applicant's general funds.

The subject delivery point will allow United to deliver gas to Tennessee from another of United's sources of supply and thereby permit greater flexibility in the operation of the transportation agreement. Tennessee will make the necessary filing to include the requested interconnection as an additional delivery point

under its T–6 Rate Schedule. No other changes in Rate Schedule T–6 are proposed.

Due notice of the filing of the application to amend and opportunity for hearing thereon has been given by publication in the Federal Register on July 7, 1965 (30 F.R. 8598). No protest or petition to intervene or notice of intervention has been filed in the proceeding concerning this amendment.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the order of the Commission issued in said docket on December 19, 1963 be amended so as to authorize the Applicants to construct and operate their respective proposed facilities described hereinabove and to operate the same for the purpose of transporting natural gas through the proposed additional delivery point on Tennessee's existing "24" inch Muskrat Line in Vermilion Parish, Louisiana, near the North Leroy and Ridge Fields.

The Commission orders:

(A) The order of the Commission issued on December 19, 1963, in Docket No. CP64–92 be amended so as to authorize Tennessee Gas Transmission Company and United Gas Pipe Line Company to construct and operate their respective proposed facilities described herein, and to transport natural gas as proposed by means of the proposed additional delivery point on Tennessee's existing 24-inch Muskrat Line in Vermilion Parish, Louisiana, near the North Leroy and Ridge Fields.

(B) In all other respects said order shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

TENNESSEE GAS TRANSMISSION COMPANY, DOCKET NO. CP66–20

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued October 1, 1965)

On July 19, 1965, Tennessee Gas Transmission Company (Applicant) filed in Docket No. CP66–20 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale of natural gas to two of its existing General Service Customers and one of its existing Contracted Demand Customers, as more fully set forth in the application.

Applicant proposes to serve the estimated additional natural gas requirements of three existing customers as follows:

Type of service	Volumes (Mcf at 14.73 psia)		
	Proposed additional maximum daily volumes	Present authorization	Total
General Service Customers—			
Hartford Electric Light Co. (Stamford)	216	12,288	12,504
Tennessee Natural Gas Lines, Inc. (Nashville)	6,671	128,821	135,492
Contracted Demand Customer—			
T. W. Phillips Gas & Oil Co.	510	2,040	2,550
Total	7,397	143,149	150,546

These increased requirements arise from recent market studies made by the customers subsequent to the issuance of the Commission's order of March 30, 1965, 33 FPC 657, issued in Docket No. CP65–120, which order authorized Applicant to serve additional natural gas requirements of its existing customers commencing with the 1965–1966 winter heating season and to construct and operate the additional pipeline facilities necessary to render such service. The market studies indicated a need for minor volumes of additional gas, other than the incremental volumes authorized in Docket No. CP65–120. The proposal appears to be economically feasible.

The ability to render the proposed service will be provided from facilities to be constructed pursuant to authorization in Docket No. CP66–54, for which a temporary certificate was issued August 25, 1965, and a permanent certificate is being issued concurrently with the authorization hereinafter issued, *infra*, p. 1060.

Due notice of the filing of the application was published in the Federal Register on July 30, 1965 (30 F.R. 9560). No protest, petition to intervene, or notice of intervention has been filed in this proceeding.

At a hearing held on September 29, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Tennessee Gas Transmission Company, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of July 15, 1947, in Docket No. G–910 (6 FPC 777).

(2) The proposed sales hereinbefore described, as more fully described in the application in this proceeding, are sales for resale in interstate commerce subject to the jurisdiction of the Commission and are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The sales of natural gas, as proposed in the application, are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3) and (e) of Section 157.20 of said Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Applicant, Tennessee Gas Transmission Company, authorizing the sales of natural gas, as hereinbefore described and as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3) and (e) of Section 157.20 of such Regulations.

(C) The sales of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within one year from the date of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

TENNESSEE GAS TRANSMISSION COMPANY, DOCKET NO. CP66-54

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued October 1, 1965)

On August 18, 1965, Tennessee Gas Transmission Company (Applicant) filed in Docket No. CP66-54 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of 17.07 miles of 36-inch O.D. pipeline loop on the Delta-Portland portion of its mainline system from MLV No. 555 to MLV No. 556, as more fully set forth in the application.

Following the pipeline failure which occurred on March 4, 1965, Applicant reduced the maximum operating pressure on its Natchitoches-Portland portion of its mainline system. The reduction in pressure caused a decrease of approximately 23,000 Mcf per day in the daily volume which could be transported to Station No. 87 through that portion of its system during the 1965–1966 winter heating season. The proposed facilities will enable Applicant to deliver 20,000 Mcf per day through the Delta-Portland portion of its system and will thus more than compensate for the daily volumes lost as a result of the reduction in pressure.

Applicant states that in addition to the pipeline rupture, delays in construction, excessive outages of compressor units and pipeline flow restriction (Lake Borgne Crossing) have reduced the effective capacity of its authorized pipeline facilities during the current period of injection of gas into underground storage. The resulting decrease of capacity, combined with the fact that deliveries to Applicant's customers have exceeded previously estimated delivery requirements, will prevent Applicant from filling its gas storage facilities to a level Applicant deems prudent and will result in an estimated negative top storage inventory upon completion of the 1965–1966 winter heating season. Applicant further states that without the capacity of the pipeline facilities sought by the filing of the instant application, its ability to render adequate service to its customers during the 1965–1966 heating season will be jeopardized.

The estimated cost of construction is $3,139,000, which will be financed from Applicant's existing $50,000,000 revolving credit and later permanently financed through the issuance of first mortgage pipeline bonds or debentures, or both. The proposal appears to be economically feasible.

A temporary certificate of public convenience and necessity for the construction and operation of the proposed facilities was issued by the Commission on August 25, 1965.

Due notice of the filing of the application was published in the Federal Register on September 1, 1965 (30 F.R. 11263). No protest, petition to intervene, or notice of intervention has been filed in this proceeding.

At a hearing held on September 29, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including

the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Tennessee Gas Transmission Company, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of July 15, 1947, in Docket No. G–910 (6 FPC 777).

(2) The facilities hereinbefore described and as more fully described in the application in this proceeding are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (b), (c)(1), (c)(3), (c)(4) and (e) of Section 157.20 of said Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Applicant, Tennessee Gas Transmission Company, authorizing the construction and operation of the facilities as hereinbefore described and as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are hereby conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (b), (c)(1), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities hereby authorized shall be completed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within one year from the date of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

TENNESSEE NATURAL GAS LINES, INC., DOCKET NO. CP66–4

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued October 1, 1965)

On July 6, 1965, Tennessee Natural Gas Lines, Inc. (Applicant), filed in Docket No. CP66–4 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportion of natural gas (an increase in volumes of natural gas to be transported under Applicant's presently authorized firm service to the Nashville Glass

Plant of Ford Motor Company (Ford) from 8,300 Mcf per day to 14,300 Mcf per day), all as more fully set forth in the application.

Applicant was authorized to deliver up to a maximum of 20,800 Mcf of interruptible gas to Ford in Docket No. CP61–197. Firm service to Ford was authorized in Docket Nos. G–19302 and CP61–27. The subject application proposes to shift 6,000 Mcfd from interruptible to firm service.

The Nashville Glass Plant uses firm gas in sheet glass furnaces, bending lehrs and related equipment. Interruptible volumes have been used in plate glass furnaces, for heating and for steam generation. According to the application, the additional firm volume of natural gas will be used to fuel the plate glass furnaces in order to maintain quality and quantity of plate glass production. The additional firm volume will eliminate the requirement for switchovers between interruptible natural gas and propane.

Applicant states that it will not require additional facilities to render the proposed service.

Applicant obtains its entire supply of natural gas from Tennesseee Gas Transmission Company (TGT). It sells and delivers natural gas to its subsidiary, Nashville Gas Company, for resale in the Nashville area and to three direct sale nonjurisdictional customers for their own use.

Applicant's contract demand with TGT is 128,821 Mcf per day. Its 1965–1966 peak day requirements are estimated at 135,492 Mcf. Consequently, Tennessee Natural requires an additional 6,671 Mcf on the peak day. Included in this amount is the 6,000 Mcf of firm gas to Ford proposed herein. TGT has requested authorization to deliver an additional 6,671 Mcf per day to Tennessee Natural in Docket No. CP66–20.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on September 29, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorization, and upon consideration of the record,

The Commission finds:

(1) Applicant, Tennessee Natural Gas Lines, Inc., a Tennessee corporation having its principal place of business in Nashville, Tennessee, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of April 6, 1943, in Docket No. G–575 (4 FPC 1127).

(2) The proposed operation of existing facilities and transportation and delivery of up to 14,300 Mcf daily of natural gas on a firm basis by Applicant to Ford as hereinbefore described, and as more fully described in the application and exhibits in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed operation of existing facilities and transportation and delivery of natural gas are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to the Applicant in this proceeding, authorizing the proposed operation of existing facilities and transportation and delivery of up to 14,300 Mcf of natural gas on a firm basis to Ford as more fully described in the application and exhibits in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

(C) The certificate issued shall not entitle the industrial customer to whom firm deliveries are authorized herein to any priorities or rights to additional gas for meeting any future increases in its requirements at the expense of firm resale customers desiring to acquire additional gas to meet any future increases in their requirements.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

UNITED GAS PIPE LINE COMPANY, DOCKET NO. CP65-405

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued October 1, 1965)

On June 17, 1965, United Gas Pipe Line Company (Applicant) filed in Docket No. CP65-405 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain facilities for the delivery of natural gas to an industrial customer, all as more fully set forth in the application.

Applicant proposes to construct and operate approximately 2.9 miles of 20-inch pipeline, an orifice meter station and appurtenant facilities in Warren County, Mississippi, for the purpose of delivering natural gas to Mississippi Power & Light Company (Mississippi) for use as boiler fuel in Mississippi's electric generating plant currently under construction near Vicksburg, Mississippi.

Estimated annual and peak day requirements for each of the first three years of service are 32,120,000 Mcf and 110,000 Mcf respectively. Total estimated cost of Applicant's proposed construction is $435,912, and will be financed with current working funds.

Applicant, an existing pipeline, has in recent years lost several substantial non-jurisdictional customers to intrastate sellers of natural gas. Thus, the effect has been to tend to increase costs which are allocated to jurisdictional customers. This sale, although being made for boiler fuel purposes, would serve to recover to some degree the lost sales of a similar nature. By its resultant contribution to fixed costs and by its use of existing excess capacity, this sale will substantially benefit Applicant's jurisdictional customers. In addition, it appears that Mississippi's large summer air conditioning load will result in greater takes by Mississippi in the summer than in the winter, thus tending to give Applicant better seasonal balance in the utilization of its system.

We note further that in recent years, natural gas has been the predominant source of energy used for steam generation of electricity by Mississippi and other companies in the State of Mississippi, averaging for the past several years

well over 90% usage. It would appear, therefore, that were applicant not to make this sale to Mississippi, alternative local sources may be employed. Therefore, the effect would be that the same fuel, natural gas, would be used whether or not we certificate this sale. Finally, we are aware that United has made prepayments for gas in excess of $21,000,000 as of the end of 1964. The instant sale will help to some degree in the relief of this otherwise undesirable condition. For all of these reasons it would appear that the instant proposed sale will be in the public interest.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on September 29, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits thereto, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, United Gas Pipe Line Company, a Delaware corporation having its principal place of business in Shreveport, Louisiana, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission.

(2) The proposed construction and operation of facilities by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed construction and operation of facilities are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements of the Commission's Rules and Regulations thereunder.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Applicant, United Gas Pipe Line Company, authorizing construction and operation of the facilities hereinbefore described, as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities authorized shall be constructed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the aforesaid Regulations, within one year from the date on which this order issues.

(D) Deliveries of natural gas by Applicant to Mississippi are limited to 110,000 Mcf per day and 32,120,000 Mcf annually.

(E) The certificate issued above shall not entitle Mississippi to any priorities to additional gas for meeting any future increases in its requirements at the expense of firm resale customers desiring to acquire additional gas to meet any future increase in their requirements.

(F) Should Applicant fail to receive an adequate return or to recover out-of-pocket costs incurred in providing the direct sale of natural gas authorized by this order, it shall not recover any part of the deficiency from jurisdictional sales customers.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

UNITED GAS PIPE LINE COMPANY, DOCKET NO. CP66-52

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued October 1, 1965)

On August 13, 1965, United Gas Pipe Line Company (Applicant) filed in Docket No. CP66-52 an application pursuant to Section 7(c) of the Natural Gas Act, as implemented by Section 157.7(c) of the Regulations under the Act, for a certificate of public convenience and necessity authorizing the construction during a 12-month period commencing November 1, 1965, and the operation of natural gas facilities for the sale of natural gas to existing distributors for resale and to direct consumers, all as more fully set forth in the application on file with the Commission.

For the sale to direct customers, Applicant proposes to construct a maximum of 40 facilities with each facility consisting of a tap, meter, regulators, station site, rights of way and such length of 1-inch to 4-inch pipe as may be necessary. For the sale to distributors, Applicant proposes to construct a maximum of 40 facilities with each facility consisting of the necessary tap and regulating equipment.

The proposed facilities will be utilized for the transportation and sale of volumes of natural gas previously authorized under certificates for transportation or sale to existing distributors at rates on file with the Commission, for resale in existing market areas, and for direct sales of natural gas to consumers located in areas outside the franchise area of any local distributor. Such proposals are in conformity with Sections 157.7(c)(1)(i) and 157.7(c)(1)(ii) of the Commission's Regulations under the Natural Gas Act.

The total cost of the facilities proposed under this application will not exceed a maximum of $300,000 and the total deliveries to any customer will not exceed a maximum of 100,000 Mcf of natural gas per year. No gas will be used as boiler fuel.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on September 29, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, United Gas Pipe Line Company, a Delaware corporation having its principal place of business in Shreveport, Louisiana, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of January 20, 1942, in Docket No. G-216 (3 FPC 3).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation and/or sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(6) The authorization hereinafter granted should be limited to construction during the 12-month period commencing on November 1, 1965, and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $300,000, with the total deliveries to any one customer not to exceed a maximum of 100,000 Mcf of natural gas per year.

(7) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit within 60 days after the expiration of the authorization granted hereinafter, a statement in compliance with Section 157.7(c)(8) of the Commission's Regulations under the Natural Gas Act.

(8) The certificate issued hereinafter should be conditioned upon Applicant's compliance with the provisions of Section 157.7(c)(7) of the aforesaid Regulations.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity is issued authorizing Applicant, United Gas Pipe Line Company, to construct during the 12-month period commencing November 1, 1965, the proposed facilities hereinbefore described, as more fully described in the application in this proceeding, and to operate such facilities to sell natural gas to direct customers and to distributors for resale as hereinafter provided.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(C) The authorization granted in paragraph (A) above is limited to construction during the 12-month period commencing on November 1, 1965, and the total expenditures for facilities to be constructed thereunder are limited to a maximum of $300,000, with the total deliveries to any one customer limited to a maximum of 100,000 Mcf of natural gas per year.

(D) Applicant shall submit within 60 days after the expiration of the authorization granted by paragraph (A) above a statement in compliance with Section 157.7(c)(8) of the Commission's Regulations under the Natural Gas Act.

(E) The certificate issued by paragraph (A) above is expressly conditioned upon Applicant's compliance with the provisions of Section 157.7(c)(7) of the aforesaid Regulations and, further, shall not entitle any industrial customer to whom firm deliveries are authorized herein to any priorities or rights to additional gas for meeting any future increases in their requirements at the expense of firm resale customers desiring to acquire additional gas to meet any future increases in their requirements.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

WISCONSIN POWER & LIGHT COMPANY AND MICHIGAN WISCONSIN PIPE LINE COMPANY, DOCKET NO. CP66-2

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued October 1, 1965)

On July 2, 1965, Wisconsin Power & Light Company (Applicant) filed in Docket No. CP66-2 an application, as supplemented on July 29, 1965, pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Michigan Wisconsin Pipe Line Company (Respondent) to extend its gas transportation facilities near the City of Marion, Wisconsin, to establish physical connection of such extended facilities with the proposed facilities of Applicant and to sell natural gas to Applicant for resale and distribution in Marion, and the adjacent Towns of Dupont, Larrabee and Grant, Wisconsin, all as more fully set forth in the application, as supplemented.

Applicant requests that Respondent construct and operate approximately four miles of 4-inch lateral and a gate station for the delivery of gas to Applicant near Marion. The lateral would extend from Respondent's Weyauwega-Marinette transmission line. Applicant proposes to construct and operate a regulator station, 4.4 miles of 4-inch lateral extending from the requested gate station to Marion and the necessary distribution facilities. Applicant proposes to distribute natural gas in Marion and to serve customers in the Towns of Grant, Dupont and Larrabee which are adjacent to the city limits of Marion and the line running from the gate station to Marion.

The application shows the estimated third year annual and peak day natural gas requirements for the proposed project to be 118,677 Mcf and 625 Mcf, respectively.

The total estimated cost of Applicant's proposed facilities is $263,710, which cost will be financed from funds on hand or funds made available from the sale of securities as may be necessary as part of Applicant's overall construction program. Exhibit N of the application indicates that in the third year of service a 6.5 per cent return will be realized on the project.

The application indicates that Applicant has received the necessary state and local authorizations for the proposed project.

On August 16, 1965, Respondent filed an answer to the subject application, as supplemented, stating that it does not object to the granting of the requested order.

Due notice of the filing of the application and opportunity for hearing thereon has been given by publication in the Federal Register on July 20, 1965 (30 F.R. 9077). No protest or petition to intervene has been filed in this proceeding.

The Commission finds:

(1) Respondent, Michigan Wisconsin Pipe Line Company, a Delaware corporation having its principal place of business in Detroit, Michigan, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of July 14, 1950, in Docket No. G-1302 (9 FPC 167).

(2) Applicant, Wisconsin Power & Light Company, is a corporation duly organized and existing under the laws of the State of Wisconsin and is authorized to engage in the business of distributing and selling natural gas within said State.

(3) It is necessary and desirable in the public interest that Respondent be directed to extend its gas transportation facilities, to establish physical connection of such extended facilities with the proposed facilities of Applicant and to sell and deliver up to 625 Mcf of natural gas per day to Applicant, as set forth in the application, as supplemented, and as hereinafter ordered and conditioned.

(4) Applicant should be prepared to receive natural gas from Respondent within one year from the date of issuance of this order.

(5) The requirement that Respondent serve Applicant, as proposed, will not place any undue burden upon Respondent nor impair its ability to render adequate service to its existing customers.

The Commission orders:

(A) Michigan Wisconsin Pipe Line Company is directed to extend its gas transportation facilities, to establish physical connection of such extended facilities with the proposed facilities of Applicant and to sell and deliver up to 625 Mcf of natural gas per day to Applicant, all as hereinbefore described and as more fully set forth in the application, as supplemented.

(B) Applicant shall be prepared to receive natural gas from Respondent within one year from the date of issuance of this order.

(C) Respondent shall report to the Commission in writing the date of commencement of service to Applicant within ten days thereof.

OPINION NO. 468–A

AREA RATE PROCEEDING, DOCKET NO. AR61–1; CLAUDE E. AIKMAN, ET AL., DOCKET NO. G–18466, ET AL.; NORTH CENTRAL OIL CORPORATION (OPERATOR), ET AL., DOCKET NO. CI60–435, ET AL.

OPINION AND ORDER DENYING APPLICATIONS FOR REHEARING

(Issued October 4, 1965)*

Syllabus

1. Attempted disqualification of two Commissioners on grounds of bias and prejudgment is rejected. P. 1069.
2. Pressure standard for pipeline quality gas is changed from 800 psi to 500 psi as more nearly reflecting pressure at which gas is delivered in area. P. 1070.
3. Producer's delivery pressure for purposes of quality adjustments shall be that at which producer-seller is ready and able to deliver gas into pipeline's facilities without further compression. P. 1070.
4. Btu quality adjustment standards prescribed in prior opinion for new gas-well gas, should apply equally to flowing gas. P. 1070.
5. Btu adjustment will apply to area base rate before price adjustments for quality. P. 1070.
6. Where gas-well gas contract provides that purchaser pay for extracted liquids, Btu content should be measured after such extraction. P. 1070.
7. Commission spells out procedures with respect to carbon dioxide adjustments. P. 1071.

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*Modified by order issued November 12, 1965, 34 FPC 1286; See orders granting partial stay issued November 12, 1965 and February 11, 1966, 34 FPC 1288 and 35 FPC 211.

8. Commission will approve agreements between producers and pipelines on quality price differentials which reflect good faith efforts to approximate processing costs and will accept, for pipeline rate purposes, adjustments computed thereunder. P. 1071.
9. Issue of whether new gas-well gas ceiling is needed for gas from committed acreage is discussed. P. 1072.
10. Argument that overall revenues do not match costs is rejected. PP. 1072–1074.
11. Record does not support argument that residue gas derived from casinghead gas should be priced above 14.5 cents per Mcf. P. 1074.
12. Differing base rates in Texas and New Mexico explained. P. 1074.
13. Contract date, rather than date gas was committed to interstate commerce, controls classification as new or flowing gas. P. 1075.
14. Proper rate to be charged by producer is his contract price or applicable area rate, whichever is lower. P. 1075.
15. Producers have made no showing of irreparable injury required to warrant stay of ordered rate reductions and moratorium—even that showing would not normally be sufficient when outweighed by detriment to public. P. 1076.
16. Producers' contentions based on individual circumstances state no grounds for revision of area rate order. P. 1077.
17. Commission *modifies* and *clarifies* prior opinion and *denies* applications for rehearing and stay.

Commissioner O'Connor *concurring.*

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

SWIDLER, *Chairman:*

On August 5, 1965, the Commission issued its Opinion No. 468, 34 FPC 159, in the above-entitled proceeding. Applications for rehearing have been filed by various parties. The applications in part consist of a repetition of contentions which were fully considered in the course of reaching the determinations embodied in Opinion No. 468. However, the applications have persuaded us that certain modifications are required in the quality standards prescribed in Opinion No. 468. In addition we wish to clarify certain findings in the opinion with respect to which questions have been raised and to respond to certain contentions not previously advanced.

Initially we note and reject the contention by the respondent Phillips Petroleum Company and by Independent Petroleum Association of America that the participation of Commissioner Black and the Chairman in the Opinion and Order herein was improper because they had demonstrated bias and prejudgment on the issue whether competition among producers can be relied upon to justify their contract prices as just and reasonable under the standards of the Natural Gas Act. Nothing which has transpired since the release of Opinion No. 447, 33 FPC 43, in which we rejected an earlier motion to disqualify Commissioner Black, leads us to doubt the correctness of our conclusion there. The views expressed therein are equally applicable to the attempt, belatedly and retroactively, to disqualify the Chairman on the basis of his speech of September 22, 1964, to the Independent Natural Gas Association of America of which we take notice.[1]

[1] Speaking personally, I am unaware of any bias or prejudgment on the issue of competition or any other issue in this proceeding. It would have been impossible for me to have worked four years as a member and Chairman of the Commission without acquiring some knowledge of the economic forces which affect natural gas pricing and forming opinions on how they operate. I have formed and expressed some opinions on the questions raised

Footnote continued on following page.

Quality Standards

We shall now discuss three changes and clarifications which we are making in the quality standards:

PRESSURE

Several producer-applicants argue that the standard of 800 pounds pressure for pipeline quality gas is not realistic, pointing out that most of the gas delivered in the Permian Basin in 1960 was delivered below that pressure. We agree. While the record supports our conclusion that 800 pounds is the pressure generally employed in the principal mainline segment of the pipelines in the Permian Basin, our conclusion did not give sufficient weight to the pipeline systems operated in the Permian Basin at much lower pressure and to the actual delivery standards in the area. Upon further consideration we believe that a pressure standard of 500 pounds would more nearly reflect the pressure at which gas is delivered to the pipeline systems in the Permian Basin.

Shell Oil Company (Shell) posed the problem of the unfairness of a quality deduction for sales of gas which the producer is ready and able to deliver at pressures higher than those at which the buyer can accept gas. We think that this point is also well taken. The delivery pressure for purposes of quality adjustments shall be the pressure at which the seller is ready and able to deliver gas into the buyers' facilities without further compression, even if such pressure must be reduced so that it can be conveniently accepted by the buyers' established facilities at the point of delivery. Our previous order will be modified in this respect.

BTU ADJUSTMENT FOR FLOWING GAS

In Opinion No. 468 we specified a Btu adjustment for new gas-well gas but did not do so for flowing gas. Upon reconsideration we are persuaded by the producers' argument that there is no adequate justification for this difference in treatment, and we agree that the price for both new gas-well gas and flowing gas should be related to its energy content. The producers correctly point out that otherwise the quality adjustments on flowing gas would operate in only one direction. There would be no upward adjustment for gas rich in energy, but which would nevertheless be subject to a downward adjustment because of excessive sulphur or low pressure. We believe the reasons stated for applying the Btu content standard to new gas-well gas apply equally to flowing gas and our previous order will be modified accordingly.

The Btu adjustment will be applied to the area base rate before price adjustments for quality. In view of the fact that a majority of contracts for gas-well gas provide for a payment for liquids removed by the purchaser, Btu content should be measured after the removal of such liquids where such payment is made.[2] To measure Btu's prior to extraction of the liquids and then pay a bonus for high Btu content in the form of liquids would be a double payment.

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by proposed legislation to repeal FPC regulation over sales by gas producers in interstate commerce. My speech to INGAA expressed my belief that the Natural Gas Act as interpreted by the Supreme Court to apply to gas producers is necessary to protect the interests of the consuming public and made clear that on this legislative question I had not been persuaded by the arguments that competition between producers was an adequate substitute for regulation. These views on the need for producer regulation, however, did not prevent me from fairly evaluating the evidence in this proceeding bearing on the weight to be given to competition in determining the standards for fixing just and reasonable area rates.—JCS

[2] The same principle would also apply in the case of similar contracts for residue or casinghead gas.

CARBON DIOXIDE ADJUSTMENTS

Under Opinion No. 468 a producer with gas containing excessive amounts of carbon dioxide is paid on the basis of the volume of gas remaining after deduction of the above standard volumes of carbon dioxide. The application of the Btu adjustment provision to flowing gas makes possible a somewhat simpler handling of rates in contracts containing a high percentage of carbon dioxide. In addition to the method described above, we can now provide the producers with the alternative of pricing their gas on the basis of the volume actually delivered to the pipeline which still contains the carbon dioxide provided that the Btu content of the gas is also measured at that time. In these circumstances gas consumers will not be paying for carbon dioxide because the Btu content will be considerably below the minimum 1,000 Btu content established as an area standard in this proceeding and the price will be reduced accordingly.

Under either alternative the pipelines' cost of processing actually incurred to remove the carbon dioxide should be deducted from the area base rate to determine the applicable ceiling price. If the producer prefers to price his gas on the basis of the volume remaining after the carbon dioxide is removed, the Btu content for purposes of the adjustment provided herein shall be measured on the basis of the volume of gas after such removal and the total amount to be paid for gas should also be computed on the volume of gas remaining after the carbon dioxide has been removed.

Recovery of Processing Costs by the Pipelines

In setting forth the procedures in Opinion No. 468 for determining the amount of the reductions from the base price to reflect processing costs to bring the gas up to our quality standards, we provided that we would accept agreements between the producer and the pipeline as to the extent of the processing costs involved. It has been suggested that the likelihood of reaching agreement in most cases has been impaired by an indication in the opinion that if a pipeline agreed with producers upon the amounts of processing costs it could not thereafter claim more as part of its cost of service. We did not intend such an arbitrary rule. We recognize, of course, that no negotiated cost can be expected to be absolutely accurate, that costs may vary over the years, that legitimate processing costs may be incurred to bring the gas up to a quality standard higher than we are prescribing for rate adjustment purposes, that some processing facilities must incorporate reserve capacity for use in pipeline operations, and that there are other legitimate processing costs that may be incurred by a pipeline not accounted for in the negotiated price.

We emphasize our desire to encourage agreement between the parties as to the proper amounts to be paid or deducted for quality adjustments. While we do not intend to permit the agreements between producers and pipelines to be used for the purpose of establishing artificially low processing costs, with the pipeline and ultimately the consumer making up the difference, we will approve all such agreements which reflect a good faith effort to approximate the processing costs involved, and accept for the pipelines' rate purposes the adjustments computed thereunder. In reaching such agreements the parties may utilize average processing costs where cost data for individual contracts are not readily available. No pipeline need fear that any such agreement will prejudice its claims to its legitimate costs not covered by the agreement.

New Gas-Well Gas From Committed Acreage

The producers contend that frequently there may prove to be extensive gas deposits at horizons below those already tapped by oil or gas wells. They strongly argue that the development of acreage now committed under old gas

contracts may be inhibited if future discoveries of gas-well gas from such acreage do not command the higher ceiling for new gas-well gas. We believe this point deserves further consideration.

There is merit to the contention that the basis for classifying additional discoveries of gas-well gas from deeper reservoirs should not depend solely on whether there has been prior dedication but rather on whether such classification will encourage the directional search for gas. The issue is thus whether the new gas-well gas ceiling is needed in the public interest for gas from committed acreage. One factor to be considered is that lease acquisition costs have already been incurred in connection with committed acreage. Another relevant question is how much information as to the existence of gas at lower levels is provided by wells that have already been drilled.

On a full record, the producers may well be able to demonstrate that gas discovered in new reservoirs separate from existing reservoirs and at lower depths should command the new gas ceiling irrespective of prior dedications. On this record, however, the issue was not developed by the parties sufficiently to serve as a basis for departing from our past policy of applying the new gas price only to gas that has not yet been committed to the interstate market.

We believe the issue should be fully developed in the *Hugoton-Anadarko* case, Docket No. AR64–1, and any change in policy will be applied prospectively to the Permian Basin.

Revenues v. *Costs*

A major argument presented in the several producer applications for rehearing is that, because of the quality adjustments (presumably even as we are modifying them herein), the Commission has not fixed area rates at a level high enough to produce overall revenues which would in the aggregate match producer "costs." The argument fails to take account of the fact that the cost of gas-well gas that served as a yardstick for establishing the area rate includes a twelve percent rate of return (amounting to about 5 cents per Mcf) which the Commission expressly indicated was set at this figure in part (and in the case of flowing gas, where the problem of low-quality gas is more pronounced, in large part) in order to compensate for the risk of finding gas of less than pipeline quality.

The producer's "revenue deficiency" argument is also in error in assuming that the flowing gas costs 14.5 cents per Mcf, or that the Commission so found. The Commission used the cost of flowing gas-well gas as the basic yardstick for fixing the price of all flowing gas (for the reasons stated in Opinion No. 468, pp. 208–212). While the cost of residue gas cannot be found with the precision requisite to serve as a basis for fixing ceiling prices, the evidence in the record makes clear that with respect to casinghead gas and residue gas derived therefrom (which together make up by far the largest share of the Permian gas subject to quality adjustments) the costs are substantially below the 14.5 cents per Mcf ceiling price. For one thing the price includes a 4.08 cents allowance for exploration and development expense even though such gas was largely found as a by-product of the search for oil. For another, there would be no reason to allow producers a 12 percent rate of return on their investment for processing residue gas since the investment in processing plants and equipment is subject to few of the special risks incurred by those who explore for and develop reserves of gas.

We do not mean to suggest that the E&D allowance and the profit which we have provided for flowing gas is not fully justified, but we believe it is relevant to point out that these two items, which account for 9.0 cents of the 14.5 cents

price for flowing gas, are based in part on justifications other than cost, and provide ample allowance for the risk that low-quality gas in the area may not command the full area price.

It is relevant also in any comparison of revenues and costs in the Permian Basin to consider the additional producer revenues under the *Spraberry* contracts which govern the sale of approximately 20 percent of the gas sold in the Permian Basin. Under these contracts the producers will receive, in addition to the ceiling price for residue gas, substantial payments for the liquids which the pipelines extract from the unprocessed gas. The record does not reveal the precise amount of such revenue but the contracts and billing statements on file with the Commission confirm that they are substantial.

The producers' comparison of revenues and costs also fails to reflect a substantial amount of revenue which we did not take into account in any way in computing the cost of old gas-well gas, and which we may have underestimated in determining the new gas-well gas price. We refer to the payments received by the sellers of gas-well gas for liquid hydrocarbons extracted from the gas by the pipelines. El Paso points out in its application for clarification that these liquid credits approximate on the average 0.6 cents to 0.8 cents per Mcf in the Permian Basin. This may be contrasted with the plant liquid credit of 0.2 cents based on nationwide statistics used in computing the cost of new gas-well gas and the absence of any such credit against costs in the flowing gas computation.

The precise amount of the plant liquid credit which El Paso states it pays to the producers is not verified by evidence in the record although the contracts for the sale of gas-well gas in the area reveal that such payments are generally made. In these circumstances we do not believe it appropriate to adjust the cost to reflect this undetermined amount of additional producer revenue. However, it is clear that this revenue, which is separate and apart from payments for excess Btu's in the gas after removal of liquids, tends to offset any reduction in aggregate revenues due to downward quality adjustments.

The application by the Major Producers refers to "the Commission's finding that jurisdictional revenues will equate to jurisdictional costs." The Commission made no such finding. Obviously the Commission cannot allow higher rates to offset "revenue deficiencies" resulting from producer contract prices below the area ceiling. The Major Producers' own petition states that the "revenue deficiencies" resulting from these contractual limitations amounts to 0.76 cents per Mcf. It would be contrary to all regulatory principles to permit prices in excess of an otherwise just and reasonable rate for certain purchases merely because other sales had been voluntarily made at below full cost as herein determined.

It is argued that because it is impossible to quantify exactly the extent of quality discounts there can be no basis for determining the validity of the Commission's rate of return determination either as a whole or to the extent that it purports to reflect the risk of quality deficiency. The record does not leave us as much in the dark in this matter as the producers would have us believe. As Commissioner O'Connor stated in his concurring opinion, the record indicates that for gas-well gas under Opinion No. 468 "the reasonable amount of the average adjustment will be in a range of from 1.0 cents to 1.7 cents." With the changes we have here made with respect to quality standards, the average adjustments for gas-well gas will range from 0.7 cent to 1.5 cents, reduced by the additional revenue for plant liquids and the effect of the Btu adjustment.

As to the flowing gas, the additional upward adjustment for gas with a Btu content of more than 1,050 Btu, coupled with the change in pressure standards

substantially reduces the amount of downward adjustments. We have already noted the offsetting revenues to the producers from liquid credits and the fact that the cost of residue and casinghead (the bulk of the gas in the area) is substantially lower than the 14.5 cents price.

While it is true that neither the amount of the downward quality adjustments or the offsetting sources of additional revenue can be determined precisely, we are convinced that the record fully justifies the Commission's judgment that the ceiling prices we have fixed "provide a fair relationship between the aggregate price the consumer pays and the aggregate costs that the producers incur" in the Permian Basin.

Flowing Residue Gas-Cost and Price

It has been stated in the applications of several producer-respondents that the price of residue gas derived from casinghead gas should be fixed at a higher price because the record contains evidence which would establish this cost at a level above the 14.5 cents per Mcf based on gas-well gas costs. The record does not support this argument. On the contrary, while a precise cost computation of residue gas cannot be made with sufficient assurance of accuracy to serve as a basis for fixing prices, the evidence demonstrates that the cost of residue gas is lower than the cost of flowing gas-well gas. The defects in the evidence which the producers cite were pointed out by the examiner. (Initial Decision, pp. 344–347.) The staff in its exceptions agreed with the examiner's downward adjustment of its figures. Without passing on the merits of the evidence it certainly does not support a higher price for residue gas.

The Differing Base Rates in Texas and New Mexico

Some of the applicants appear to have misunderstood the nature of our determination in fixing base rates for Texas production inclusive of production taxes, while fixing base rates for New Mexico to which present New Mexico taxes may be added. At the present time taxes in New Mexico are not uniform, and different sales of natural gas within that state may be subject to quite different taxes. In the State of Texas, on the other hand, a production tax of 7 percent applies uniformly to all sales. It is possible, therefore, to compute base rates including taxes which would be applicable to all Permian Basin production within the State of Texas. Since this is not possible with respect to New Mexico production, a different formula is used. The net result, however, is precisely the same for the two states—in each case the present taxes are included in computing the total prices which may be charged. This is not a determination that any and all taxes which the State of New Mexico may choose to impose in the future may be added to New Mexico base prices.

In its petition for rehearing El Paso requests the Commission to clarify whether in computing the applicable state and local production taxes for New Mexico there should be included the New Mexico Oil and Gas Ad Valorem Production Tax. The records of this proceeding show that such a tax is a property tax, not a production tax, and as such was included in our computation of the cost of finding and producing gas. Accordingly such tax shall not be included in computing the applicable New Mexico production taxes.

Refund Below the Last Clean Rate

First raised by Skelly, and repeated in other applications, is the contention that "the Commission's refund order exceeds its refund authority under Section 4(e) which is limited to the increased increment in the rate between the time the suspended increased rate is made effective and the date of the Commission's final order in the suspension proceeding." With this contention we need not deal at this time, since no such situation has been presented as resulting

from our order herein. It will be time enough to deal with this issue when and if it is established that any refunds below the last clean rate are required.

Classification of Gas on Basis of Contract Date

It has also been contended that contracts should not be classified as contracts for new or old gas by reason of the date of the contract, but rather on the basis of the date the gas was first committed to interstate commerce, assuming commitment occurred at a later date. We have chosen the date set forth in the contract because that date is precise, definite and certain, whereas the date of commitment of gas to interstate commerce is less easy of ascertainment. We therefore do not believe any change in our decision on this issue is warranted.

Refunds—Pipeline Verification

We agree with El Paso that a condition should be attached to the refund requirement that it should be required that the purchaser verify the refund calculations, and the order accompanying this opinion will so provide.

Method of Rate Determination

Some confusion apparently exists with respect to the method of determining the proper price under a given contract. If a producer has a contract calling for a stated price with specified increases for additional Btu content or specified deductions for certain quality deficiencies, the contract price is to be computed as though no price regulation existed. As a second step it will be necessary to compute the applicable area rate for the gas sold under the contract, without regard to the contract price provisions. The area rate will be the applicable base rate plus or minus the quality adjustments allowed or required by our decision and order. The proper rate to be charged and collected under the contract will be the contract price if it does not exceed the applicable area rate. If it exceeds the applicable area rate the latter will apply.[3]

Rates Involved in Application of Order to Unconsolidated Section 4(e) Proceedings

In the Addendum to its Supplemental Application for Rehearing Shell inquires whether ordering paragraph (E) of Opinion No. 468 applies to pending Section 4(e) proceedings not consolidated herein but which are subject to the Order to Show Cause, 34 FPC 424, issued in conjunction with Opinion No. 468. Paragraph (E) as previously modified requires that a supplement be filed by November 15, 1965, to each filed rate schedule in excess of the area base rate reflecting reductions to conform the filed rate to the area base rate. Pursuant to Section 5(a) of the Act we have ordered all rate schedules of respondents which are in excess of area base rates to be reduced in conformity with paragraph (E). The fact that a respondent's rate schedule may be subject to an unconsolidated Section 4(e) proceeding for a past period does not relieve respondent of filing a supplement in conformity with paragraph (E). The only remaining function of the unconsolidated Section 4(e) proceeding is with respect to refunds for past periods to which the Section 5(a) proceedings do not apply.

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[3] For example, if a contract for new gas-well gas provides for a price of 16.0 cents with a proportionate upward Btu adjustment for Btu's in excess of 1,000 per Mcf, and the gas contains 1,030 Btu's per Mcf, the contract price would be 16.48 cents, assuming there are no other adjustments called for under the contract. The applicable area rate in Texas would be 16.5 cents per Mcf—the area base price with no upward or downward Btu adjustment, since 1,030 Btu's is in the range between 1,000 and 1,050. The proper rate chargeable under the contract would be 16.48 cents. If the same contract were for old gas-well gas produced in Texas the proper rate would be 14.5 cents since the applicable area rate would be lower than the contract rate.

Requests for Stay of Order

A number of the producers have requested a stay of all or some of the ordering paragraphs of Opinion No. 468, until after completion of contemplated judicial review proceedings, Section 19(c) of the Natural Gas Act makes it clear a stay is not warranted for the sole reason that judicial review is to be sought. At a minimum, parties seeking a stay should demonstrate that any injuries they suffer, absent a stay, would be irreparable and would outweigh the irreparable injury to the public from granting the stay. See, *e.g., Virginia Petroleum Jobbers Association* v. *F.P.C.*, 259 F. 2d 921 (CADC); *Associated Securities Corp.* v. *S.E.C.*, 283 F. 2d 773 (CA10); *Tennessee Gas Transmission Co.* v. *F.P.C.*, 283 F. 2d 729 (CA5).

The producers failed to make such a showing. If the order were set aside, the producers would not be precluded from recovering the difference between the rates collected and the rate which the producers should have been permitted to collect.[4] The Commission, in the event of judicial reversal, would have adequate authority, including power to fix future rates, to take any necessary corrective action to protect not only the producers but also the pipeline purchasers.

In any event, even a showing of irreparable injury would normally not be sufficient in itself to warrant a stay of a rate reduction or moratorium order when it is outweighed by the detriment to the public. As the courts have held (*e.g., Virginia Petroleum Jobbers Association* v. *F.P.C.*, 259 F. 2d 921 (CADC), the effect of a stay on other interested parties and the public interest are of at least equal significance to the impact on private parties of its denial. In this case, grant of stay would mean the continued collection of rates which we have found, after careful consideration, to be excessive. Even if all such amounts were subject to refund requirements, it is well recognized that the protection afforded through the refund procedure will not give full protection to the ultimate consumers. *F.P.C.* v. *Tennessee Gas Transmission Co.*, 371 U.S. 145, 154–155; *F.P.C.* v. *Hunt*, 376 U.S. 515, 524–525. We need not repeat the discussion set forth in Opinion No. 468 of why the moratorium of rate increases above the ceiling prices is essential. A stay of the moratorium would mean its elimination. As we observed "Without a moratorium, the conclusion of one area proceeding would only signal the beginning of the next, and just and reasonable rates for consumers would always be one area proceeding away." [Opinion No. 468, p. 228]

Delay in giving effect to the ordered rate reduction in this case will be doubly injurious to the California consumer to whom most of the Permian gas is delivered, because it is our understanding that the Southern California distributing companies which purchase gas from El Paso and Transwestern also purchase substantial quantities of gas from California producers under long-term contracts in which the price is geared to the weighted average California border price for wholesale gas and is adjusted to reflect the border price in effect January 1 of each year. See *Re Pacific Lighting Gas Supply Co.*, 44 PUR 3d 177, 184 (Calif. P.U.C., 1962). Thus, a stay of the ordered rate reductions and the consequent delay in pipeline rate reductions would result in unrecoverable losses to the California distributing companies and presumably their customers. The Court of Appeals for the Fifth Circuit expressly took this factor into account in denying

[4] *Hunt Oil Company, et al.*, in their motion for stay, recognize this in their alternative suggestion that some of the ordering paragraphs, including paragraph (H), imposing the rate increase moratorium, be made effective "upon the express condition that to the extent that they are not judicially affirmed, if judicial review is sought thereon, they will be null and void *ab initio* and appropriate redress procedures would be adopted by the Commission to rectify any detriment which the Movants might suffer as a result of compliance with the Ordering Paragraphs which are subsequently reversed or modified."

El Paso's request to stay the rate reductions ordered by us in October 1962. *El Paso Natural Gas Co.* v. *F.P.C.*, CA5, No. 20180, December 21, 1962 (unreported).

Several producers also base their request in part on the assertion that, absent a stay, complex problems relating to royalty payments and state tax payments will have been created. It is not shown that such problems would cause irreparable harm. Moreover, as applicants recognize, any stay that might be issued should be on condition that all rates required to be reduced under Opinion No. 468 be collected subject to refund obligations at least for the period starting September 1, 1965, the effective date of Opinion No. 468. In view of this, it would not appear that an immediate rate reduction, with the opportunity for recoupment of undercharges in the event of judicial modification or reversal of our order, would create more complex problems with respect to royalty and tax payments than would exist with respect to the collection of rates subject to refund, pursuant to either a stay condition or existing requirements.

In these circumstances, the requested stay of the ordered rate reductions and the moratorium on increased rates would be totally unwarranted.

Even though the Opinion No. 468 does not require refunds to be made for rates collected prior to September 1, 1965, until further Commission action is taken, it is appropriate to indicate now that we will not take such further action until at least after the decision by the Court of Appeals which reviews Opinion No. 468. We recognize that with respect to rates collected subject to refund for as much as 8 years prior to Opinion No. 468, the various inadequacies of the refund procedure as they relate to this case cannot be avoided even by immediate refunds. The prompt effectuation of just and reasonable rates for the future is of primary importance and the deferral of refunds due will provide additional insurance that our order in this respect cannot result in irreparable injury to the producers. Postponement of further Commission action requiring refunds is therefore deemed appropriate.

Other Matters

Certain producers presented contentions which related to their individual circumstances. Without suggesting that these contentions stated adequate grounds for special relief under Opinion No. 468 it is clear that they do not state any basis for modification of our area rate order which is of general application.

Numerous other arguments were advanced by producers in their application for rehearing but they have all been adequately disposed of by the full discussions supporting our findings and order in Opinion No. 468. The applications, therefore, should be denied except insofar as we have modified our order as provided herein.

The Commission further finds:

(1) The quality standards and adjustments to the base area rates set forth in Opinion No. 468 and accompanying order should be modified as provided in the ordering provisions hereinafter set forth.

(2) The applications for rehearing and accompanying motions set forth no new facts or principles of law which either were not fully considered by the Commission when it adopted Opinion No. 468 and its accompanying order, or which now being considered warrant any change in, vacation or modification of such order, except as set forth herein.

(3) Good cause has not been shown for reopening this proceeding for receipt of additional evidence.

The Commission orders:

(A) Each and every reference in Opinion No. 468 or its accompanying order, or in Opinion No. 468–A or this accompanying order, to Texas Railroad District No. 8 shall be considered to include both the present Texas Railroad Districts 8 and 8–A.

(B) Paragraph (B) of the order issued together with Opinion No. 468 shall be amended to read as follows:

(B) *Quality Standards and Adjustments to the Base Area Rates*

(1) The base area rates fixed in ordering paragraph (A) herein shall be adjusted for any deviations from the standards for pipeline quality gas in Texas Railroad District Nos. 7–c and 8, and in the New Mexico counties of Lea, Eddy and Chaves, which are hereby established as follows:

a. *Carbon Dioxide:* Pipeline quality gas shall contain not more than 3 percent carbon dioxide by volume.

b. *Hydrogen Sulphide:* Pipeline quality gas shall contain not more than 10 grains of hydrogen sulphide per Mcf of natural gas at 14.73 psia and 60° F.

c. *Total Sulphur:* Pipeline quality gas shall contain not more than 200 grains of total sulphur per Mcf of natural gas at 14.73 psia and 60° F.

d. H_2O: Pipeline quality gas shall contain not more than .009 pound of H_2O per Mcf of natural gas at 14.73 psia.

e. *Other Impurities:* Pipeline quality gas shall contain no oxygen, dirt, dust, gum, or other impurity in sufficient amounts to require the buyer to incur processing costs to eliminate such impurities in order for the gas to meet either customary commercial standards or the customary requirements of any of the interstate pipelines in the area.

f. *Pressure:* Pipeline quality gas shall be delivered at a pressure of not less than 500 pounds per square inch gauge.

g. *Btu Adjustment:* The maximum standard will be 1,050 btu's per cubic foot at 14.73 psia and 60° F. and the minimum standard will be 1,000 Btu's per cubic foot at 14.73 psia and 60° F. Upward and downward adjustments of the base area rates will be on a proportional basis as specified at pp. 223, 224 of Opinion No. 468 if the Btu content exceeds the maximum standard or is below the minimum standard.

(2) When a purchaser buys gas which deviates from the quality standards established in subparagraph (1) above, the base area rate fixed in ordering paragraph (A) shall be adjusted for any deviations from such standards as follows:

a. The applicable base area rate shall be adjusted downward by the net cost, actually incurred prior to ultimate consumption, of processing the gas to bring it up to standard.

(i) If the processing is performed by the purchaser, a reasonable return upon the net investment should be included as part of the processing cost incurred in bringing the gas up to pipeline quality.

(ii) If such processing reduces the volume of the gas, the purchaser shall pay for only the volume remaining after processing.

(iii) If the seller is ready and able to deliver natural gas into buyers' facilities without further compression, at pressures higher than the pressure at which the buyers' facilities available at the point of delivery can accept such gas, any downward adjustment for the cost of compression shall be limited to the cost of such compression as is incurred to raise the pressure of the gas from the pressure at which the seller is ready and able to deliver it up to the pressure standard of 500 psig.

b. The applicable base area rate shall be adjusted downward or upward by the amount of any applicable Btu adjustment.

c. In the case of delivery by seller of gas containing carbon dioxide in excess of the standards herein permitted, notwithstanding anything to the contrary in subparagraph (2) (ii) of this paragraph, the producers shall have the alternative of receiving payment for the total volume of gas delivered, including the carbon dioxide, provided that the Btu content of the gas is measured before removal of the carbon dioxide for the purposes of the Btu adjustments specified in this order, or receiving payment for the volumes exclusive of the carbon dioxide with the Btu content measured by the volumes of gas only.

(C) Ordering paragraph (F) (1) of the order accompanying Opinion No. 468 is hereby amended by deleting "for new gas-well gas" from lines 12, 13 of said ordering paragraph.

(D) Ordering paragraph (I) of the order accompanying Opinion No. 468, designated "Refund Reports", is hereby amended by inserting after the first sentence of said ordering paragraph, the following:

Within 10 days from the filing of the refund report the buyer shall file its written concurrence or disagreement with such report.

(E) Ordering paragraph (J) of the order accompanying Opinion No. 468 is hereby amended by changing "(E)" to "(I)" in line 2 thereof.

(F) Appendix A, Part III to Opinion No. 468 and its accompanying order is hereby amended as follows:

(a) Page 286, with reference to "Robertson, French, M. & J. P. Bryan (formerly G. Stratton, Jr. (Operator), *et al.*,)" insert a "**" after Docket No. G–16535.

(b) Page 288, delete "Sun Oil Company" and the related Docket No. "RI60–123."

(c) Page 288, delete "Sun Oil Company (Operator), *et al.*" and related Docket No. "RI60–124."

(d) Page 282, with reference to "Aikman, Claude E.", delete Docket No. "G–18466."

(e) Page 288, with reference to "Superior Oil Company, The" delete Docket Nos. "G–18771" and "G–20075."

(G) Appendix D to Opinion No. 468 and its accompanying order is amended to conform to the form of Appendix D to Opinion No. 468–A and this accompanying order.

(H) The applications for rehearing of Opinion No. 468 and accompanying order, and the motion of Hunt Oil Company, *et al.*, to reopen this proceeding for receipt of additional evidence, are hereby denied.

(I) The motions for stay of Opinion No. 468 and accompanying order, except to the extent granted by the Order Granting Time Extension issued September 28, 1965, in this proceeding, are hereby denied.

Commissioner O'Connor *concurring*.

APPENDIX D

Docket No. AR61-1, *et al.* (As amended by Opinion No. 468-A)

RATE SCHEDULE-QUALITY STATEMENT	1. Applicable section 4(e) Docket No (s). (If any) (Use space below if needed)
2. Producer name	3. Rate schedule No.

4. Type of gas (check one)
A. ☐ New gas-well gas
B. ☐ Residue gas derived from new gas-well gas
C. ☐ Residue gas not derived from new gas-well gas
D. ☐ Old gas-well gas
E. ☐ Casinghead gas
F. ☐ Mixed gas (give proportion of types A and B)

5. Place of production (give State, county, field, and municipality)

6. Quality of gas	Producer's statement of quality and treating costs		Buyer's statement of quality and treating costs (If same as producer, indicate by check mark)	
	Content or pressure	Cost per MCF of treating gas to pipeline standards	Content or pressure	Cost per MCF of treating gas to pipeline standards
A. Hydrogen sulphide content (in grains per Mcf)				
B. Total sulphur content (in grains per Mcf)				
C. CO_2 content (percentage of volume sold)				
D. H_2O content (in pounds per Mcf)				
E. Content of other impurities (indicate whether above or below customary commercial and pipeline standards)				
F. Actual delivery pressure (pounds per square inch)				
G. Total				
H. Btu content per MCF				

7. Applicable area ceiling rate	8. Btu price adjustment (state whether plus or minus)
cents per Mcf	cents per Mcf
9. Applicable rate (ceiling rate less treating costs, with Btu adjustments if any)	10. Rate here established (not above applicable ceiling rate as adjusted)
cents per Mcf	cents per Mcf

SAMPLE COPY

Nothing herein shall prevent the seller from filing for any increased rate permitted both by the contract (in the absence of this statement) and by applicable order of the Federal Power Commission.

	12. Signature of seller, agent or operator
11. Date of statement	13. Signature of buyer

NOTE:
The terms herein are those used in the opinion of the Federal Power Commission in Permian Basin area rate proceeding, AR61-1. New gas-well gas is natural gas derived from gas wells moving under contracts dated on or after January 1, 1961. The burden is upon a producer to establish that particular gas is new gas-well gas or residue gas derived therefrom, and also to establish the percentage of such gas present in a sale of mixed gas.

O'CONNOR, *Commissioner, concurring:*

Though concurring in the result reached by the majority, I do not rely upon their reasons, and I specifically re-emphasize my position in regards to the 50-Btu gap. It is apparent from the petitions for rehearing of our Opinion No. 468 that a strong possibility exists producers will not be in a position to realize aggregate revenues which reasonably approximate their aggregate costs. Since the specific problem is that of rate design for quality deviations, the impact of which cannot be determined on the record before us, rehearing is properly denied; nevertheless, once the impact is made clear by the quality adjustment determinations, it is entirely likely that rate revisions will be required.

It must be emphasized that, while the specific problem is that of proper quality adjustments, the impact of the overall adjustments can be burdensome to the extent the entire regulatory method is vulnerable. Clearly the impact of a regulatory rate must be considered *F.P.C.* v. *Hope Natural Gas Co.*, 320 U.S. 591, 602 (1944), and, in the event the order does not permit the regulated enterprise an opportunity to recover its costs, then it must fall, *Natural Gas Pipeline Co.* v. *F.P.C.*, 315 U.S. 575, 590 (1942). This rule is applicable as well to group cost regulation. *Cf.*, *Bowles* v. *Willingham*, 321 U.S. 503, 517–519 (1943). Inherent in the majority opinion is an acknowledgement of this state of the law, and presumably a clear showing of an adverse impact will command revision. It is my position that further revisions will commend themselves to us once the quality impact is clarified.

The record does not permit a meaningful determination of the impact. As discussed in my separate opinion, the probable range will be 1.0 to 1.7 cents. This range is based upon various allegations of a general nature at the hearing and upon the ascertainable costs of processing out the deficiencies. The modified standard for pressure, and the general application of the upward Btu adjustment further alleviates the downward impact. In my opinion the upward adjustment from 1000 Btu's would represent a proper accommodation of costs to quality, and it should be adopted as a proper measure of quality standards. This is all the more compelling in light of the comprehensive study by Shell Oil Company in their Supplemental Petition for Rehearing. According to their figures the maximum downward impact could be in a range from 1.86 to 2.27 cents. Adjusted for the revised quality standards adopted today, this range could be 1.6 to 2.0 cents. If the quality impact is of these proportions modification may be required.

I reject the broad generalities relied upon by the majority for rejecting the cost-revenue argument. Their broad conclusion that producers realize sufficient revenues in any event must be rejected. Federal regulation extends only to natural gas, and producers cannot be compelled to offset a deficit from the commodity with revenues from non-jurisdictional petroleum sales. *Cf.*, *Baltimore & Ohio R.R.* v. *U.S.*, 345 U.S. 143 (1953). It is my position that where the public demands the creation of fettered enclaves of business enterprise, fundamental fairness requires that this same public shoulder the financial requirements of that enterprise. Further contradicting the majority position, it is far from clear that residue costs are less than gas-well costs. At the hearing and in argument before the Examiner, Staff initially took the position that residue costs were probably higher. To bury the quality impact in our rate of return determination is to overlook the basis for the 12 per cent allowance: comparable return on equity of 10–12 per cent by the far less risky operations of transmission companies. Finally, as regards self-imposed revenue deficiencies, many of the lower contracts apparently reflect quality deductions so that revenues realized under those contracts may remain below cost even under the quality standards we have prescribed.

The only proper basis for rejecting the quality impact argument is that the impact cannot be established. The actual conditions of delivery cannot be accurately determined from the record. Furthermore, the quality standards we prescribe may result in less onerous adjustments than the contracts require. We are thus left in the position of being unable to determine the impact. It is my position that with the elimination of the Btu gap, any present doubts would disappear, and it is probable that no further adjustments would be required.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

AREA RATE PROCEEDING, AR61–1, ET AL.; NORTH CENTRAL OIL CORPORATION (OPERATOR), ET AL., CI60–435; SOCONY MOBIL OIL COMPANY, INC., CI61–34; ROBERT T. BROWN (OPERATOR), ET AL., CI61–733; TEXACO INC., CI61–879

ORDER DENYING REHEARING AND MODIFYING ORDER WITH RESPECT TO ISSUING CERTIFICATES

(Issued October 4, 1965)

On August 5, 1965, 34 FPC 418, this Commission issued its order in this proceeding granting certificates of public convenience and necessity to four producers upon stated conditions, among which were included price conditions to the applicable area rates as established by Opinion No. 468, 34 FPC 159, and accompanying order issued the same day. Applications for rehearing of Opinion No. 468 and the Order Issuing Certificates were filed by *North Central Oil Corporation, (Operator), et al.*, (North Central) and *Texaco Inc.*, two of the producers to whom certificates were issued, and the applications of others for rehearing of Opinion No. 468 were also addressed to the Order Issuing Certificates. By Opinion No. 468–A and accompanying order issued this day, *supra*, p. 1068, we have denied the applications for rehearing of Opinion No. 468 and its accompanying order while modifying that opinion and order in certain respects.

North Central, in its application for rehearing states that its original contract was dated in 1960 but that the Supplemental Gas Purchase Agreement which was the subject of the same filing was dated March 9, 1961. It is North Central's contention that the gas dedicated under the supplemental agreement of March 9, 1961, is entitled to the new gas-well gas price of 16.5 cents per Mcf, since the supplemental agreement was dated after January 1, 1961, the dividing date between old and new gas-well gas. North Central argues that it would be pure formalism to require a new and separate contract instead of a supplemental agreement in order to allow a producer to charge and collect the applicable area rate for new gas-well gas. We agree. Accordingly, our Order Issuing Certificates of August 5, 1965, will be modified to provide that the price condition in the certificate to be issued to North Central allow a price of 16.5 cents per Mcf for natural gas moving under the supplemental agreement of March 9, 1961.

One further matter requires clarification. The applications of *Socony Mobil Oil Company, Inc.*, (Docket No. CI61–34) and *Texaco Inc.* (Docket No. CI61–879) involve Spraberry contracts discussed in detail in Opinion No. 468. Consistent with that discussion and the arguments advanced in the applications for rehearing we believe the applicable area rate should be applied to the residue volumes, with no deductions therefrom if the residue volumes meet the pipeline quality standards set forth in Opinion No. 468, as modified by Opinion No. 468–A.

The consumers will thus pay no more for gas under the Spraberry contracts than any other gas of similar quality. As we indicated in Opinion No. 468, if the pipelines' processing costs exceed the liquid revenues the pipeline can petition for relief in the form of "an appropriate reduction in the price the pipeline pays for such residue gas." Our previous discussion in the Order Issuing Certificates herein is so modified. Any deductions required by contract must, of course, be utilized in determining the contract rate.

The applications for rehearing of the Order Issuing Certificates set forth no other facts or arguments which differ from those which were advanced and fully considered prior to our determinations of the issues in Opinion No. 468 and accompanying order and our determinations of the issues in the original Order Issuing Certificates. Accordingly, the applications for rehearing will be denied and the Order Issuing Certificates will be modified as previously stated.

The Commission finds:

(1) The natural gas to be sold by *North Central Oil Corporation (Operator), et al.*, under the Supplemental Gas Purchase Agreement of March 9, 1961, is new gas-well gas as defined in Opinion No. 468 issued August 5, 1965.

(2) Except as stated herein, the arguments and assignments of error presented by the applications for rehearing warrant no change or modification in the Order Issuing Certificates issued August 5, 1965.

The Commission orders:

(A) Paragraph E of the prior Order Issuing Certificates issued August 5, 1965, is amended to read as follows: "The certificate granted to *North Central Oil Corporation (Operator), et al.*, is conditioned upon a total initial price including tax reimbursement of 14.5 cents per Mcf at 14.65 psia for all gas other than that sold pursuant to the Supplemental Gas Purchase Agreement dated March 9, 1961, and upon a total initial price including tax reimbursement of 16.5 cents per Mcf at 14.65 psia for all gas sold pursuant to the Supplemental Gas Purchase Agreement. On or before November 1, 1965, *North Central Oil Corporation (Operator), et al.*, shall file a supplemental or supplements to its presently filed rate schedule reflecting the conditioned prices as the initial prices in lieu of the initial price provided in the rate schedule.

(B) The applications for rehearing of the Order Issuing Certificates of August 5, 1965, are hereby denied.

OPINION NO. 452-B

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., PROJECT NO. 2338

OPINION AND ORDER ON REMANDED ISSUES REGARDING LOCATION OF PRIMARY LINES AND DESIGN OF FISH PROTECTIVE FACILITIES AND AMENDING LICENSE

(Issued October 4, 1965)

Syllabus

1. Evidence shows that licensee can utilize existing Pleasant Valley corridor for both present and future transmission needs, including complete capability of Cornwall plant. P. 1090.
2. Meeting expanding needs of consumers for electric energy does not necessarily require setting aside land already intensively developed with home sites where long range need for land is doubtful and present inconvenience to land owners would be serious. P. 1092.

3. In circumstances here, it would not be in public interest to permit widening of Pleasant Valley corridor. P. 1092.
4. Further evidence on underground transmission was properly excluded since proceeding on remand, insofar as transmission issue is concerned, involves solely the determination of which route for overhead lines best accords with public interest. P. 1093.
5. Commission *finds* proposed route 3 most in accord with public interest and standard set in Section 10(a) of the Federal Power Act. P. 1093.
6. While record supports finding that fish resources will not be adversely affected provided adequate protective devices are installed, Commission *requires* licensee to undertake further studies. P. 1095.
7. In a proceeding on remanded issues, Commission *amends* prior license with respect to location of primary lines and design of fish facilities.

Commissioner Ross *concurring* subject to his dissent to Opinion No. 452.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and David S. Black.

SWIDLER, *Chairman:*

INTRODUCTION

This proceeding, which is before the Commission for a second time, has been returned to us on Presiding Examiner Ewing G. Simpson's certification of the record for decision on the best route for the overhead transmission lines and the design of the fish protective facilities to be included in the license heretofore issued to Consolidated Edison Company of New York, Inc. (Con Edison) for construction and operation of the Cornwall Pumped Storage Project, Project No. 2338.[1]

By Opinion No. 452 and order issued March 9, 1965, a license was granted to Con Edison for Project No. 2338 authorizing certain works of the Cornwall project including the reservoir, tunnel, power plant and submarine and underground transmission facilities from the powerhouse to and including the Cornwall East Switching Station at Nelsonville in the Town of Philipstown. A finding was also made that the remainder of the transmission line between Nelsonville and the point of interconnection with Con Edison's existing transmission grid should be by overhead lines and not, as sought by some parties, by additional underground cable installation. Decision was reserved, however, on the location and width of the right-of-way for the overhead portion of the line. The reasons for not deciding the right-of-way question at the time of the initial decision were stated as follows:

> In our opinion the evidence which is presently in the record now before us does not permit the Commission to make the informed determination called for under Section 10(a) in regard to the specification of the route and amount of required right-of-way for the primary transmission lines. Of significant importance, in our opinion, is the absence in the record, or the inadequacy, of information in regard to Con Edison's future interconnection plans; its plans, if any, for upgrading existing transmission lines to higher voltages; and of its existing transmission line grid in this general area and its future plans. Without a thorough knowledge of this material and a more complete development of the various alternative routes for trans-

[1] "Opinion and Order Issuing License and Reopening and Remanding Proceeding For Additional Evidence on the Location of the Primary Lines and Design of Fish Protective Facilities," 33 FPC 428; rehearing, reopening and stay denied, Opinion No. 452–A, issued May 6, 1965, 33 FPC 965.

mitting the Cornwall power, we cannot be certain that any of the present proposals provide the best solution for the transmission problem. Each of the present proposals contain important deficiencies which further study may well alleviate.

A further finding was made in the initial decision that the Cornwall project will not adversely affect the fish resources of the Hudson River provided adequate protective facilities are installed. In furtherance of our continuing authority under the license to require the applicant to take all necessary measures for the protection of fish and in view of the opportunity made available by the limited reopening of the record on the transmission phase of the project, we included within the scope of the remanded hearing the reception of evidence concerning the design of the fish protection devices.

By ordering paragraph (G) of Opinion No. 452 we directed that the further hearing be convened and permitted intervention therein by persons desiring to participate but not theretofore parties to the proceeding. An order establishing the procedure was issued and public notice was given of four potential transmission line routes. (30 Fed. Reg. 4265, April 1, 1965). Hearings were held from May 4 through May 21, 1965. Those actively participating in the transmission line route issue, in addition to Con Edison and our staff, were the Philipstown Citizens Association, Town of Putnam Valley, Town of Cortlandt, Town of Yorktown, Taconic State Park Commission, Town of Carmel, Cortlandt Citizens for the Hudson River, Rock Industries, Inc., and Mr. and Mrs. William A. Perry.[2] Evidence regarding the design of the fish protective facilities, as well as on the general subject of the Hudson River fishery resource, was introduced by the Department of the Interior, Scenic Hudson Preservation Conference and Con Edison. Briefs have been filed by all parties desiring to do so.[3] In compliance with the further direction of the Commission contained in ordering paragraph (G) of the opinion, the examiner did not render an intermediate or recommended decision in the reopened proceeding but, instead, has submitted the record directly to us for the supplemental determinations called for in our licensing decision. The sole issues which are before us for decision at this time are: (1) specification of the route and amount of right-of-way required for the primary transmission lines, and (2) the design of the fish protective devices.

OVERHEAD TRANSMISSION LINES

Description of Routes

As noted above, four potential routes were set out in the March 26, 1965, notice for the double circuit, 345 kilovolt overhead transmission line to be constructed to carry the Cornwall power from the switching station on the east side of the river to a point on Con Edison's existing transmission right-of-way at its Millwood substation in the Town of New Castle.[4] A number of variations on these routes, as well as two more possible routes, were suggested during the hearings.

[2] The last five listed interveners had not participated previously in the case.

[3] Initial briefs were filed by Con Edison, Rock Industries, Inc., Mr. and Mrs. Perry, Philipstown Citizens Association, Putnam Valley, Cortlandt, Yorktown, Scenic Hudson, the Secretary of the Interior and the Commission's staff. The Taconic State Park Commission filed a statement of its position. Reply briefs were submitted by Rock Industries, Inc., Scenic Hudson, Yorktown, Philipstown Citizens Association, Con Edison and staff. A petition by Con Edison filed July 9, 1965, for permission to file a further reply to staff's brief, opposing its recommendation in regard to the transmission line issue, was denied by a letter-order of the Commission dated July 20, 1965, and the tendered brief rejected.

[4] From Millwood south to Con Edison's Sprain Brook substation the project transmission lines would replace a power line on an existing right-of-way without necessity of widening the corridor.

Where new corridor is required, the right-of-way would be 125 feet in width, with somewhat greater width, as needed, at corners, transposition points, access points or points of unusual character. The added width sought by Con Edison to the existing transmission line right-of-way along the Putnam Valley-Carmel town boundary and through the Town of Yorktown (the Pleasant Valley-Millwood corridor),[5] if a route utilizing the corridor is ordered, is 75 feet.[6]

The routes may be described briefly as follows:

Route 1[7] is the route originally proposed by Con Edison running first northeast and then southeast around the southern edge of Clarence Fahnestock Memorial State Park (Fahnestock Park), south through Putnam Valley and Cortlandt to a point of intersection near Woodybrook with the existing Indian Point to Millwood right-of-way, which it would follow without widening the remaining distance of the Millwood substation. A variation of this route, designated route 1A,[8] is favored by Con Edison. Route 1A differs from route 1 in that it utilizes the Catskill Aqueduct, a part of New York City's water supply system, for the entire distance from a point in Philipstown to the Millwood substation, whereas route 1 departs from the Catskill Aqueduct at Crompond Road in Cortlandt.[9] Still another variation, route 1B,[10] was introduced by a witness for Yorktown. This route is the same as route 1 until it departs therefrom at a point in the vicinity of Dickerson Mountain in Cortlandt, thereafter proceeding east of Dickerson Pond and southerly to an intersection with the Indian Point to Millwood corridor a short distance east of the point at which proposed route 1 intersects the same corridor.

Route 2,[11] the northernmost of the various routes, was planned to pass north of the boundary of Fahnestock Park to an intersection with the Pleasant Valley to Millwood corridor and thence south along the corridor to the Millwood substation. A question whether the Cornwall transmission lines should be built within the confines of the existing right-of-way or whether the corridor should be widened to accommodate these lines is an issue which is common to all routes (2, 3 and 4) which would utilize the corridor. Route 2 was not affirmatively recommended by any of the parties to the remanded proceeding.

Route 3[12] bends south and east from the switching station to pass below the southern edge of Fahnestock Park and then proceeds diagonally through Putnam Valley to the Pleasant Valley-Millwood corridor, the point of intersection being near the Carmel substation of New York State Electric and Gas Corporation and some nine miles below that in route 2. The lines would then follow this corridor, with or without widening, to the Millwood substation.

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[5] A description of this corridor, which is now 200 feet in width, is contained at p. 445 of Opinion No. 452.

[6] In the previous hearings Con Edison estimated that construction of the project facilities adjacent to this corridor from the point of intersection to Millwood would require a widening of 250 feet. At the oral argument counsel stated that the width required could be reduced to approximately 125 feet for new right-of-way parallel to and adjacent to the existing one. At the rehearing, Con Edison's vice president stated that it would be possible to establish the new line by widening this section of the existing corridor by only 75 feet.

[7] The numerical designations herein employed conform to those contained in the March 1965 notice and used as references throughout the rehearing. Route 1 is shown on Exhibit Nos. 99–101. A detailed description also is contained at 33 FPC at 444–445 of Opinion No. 452.

[8] Exhibit Nos. 102–103.

[9] Exhibit Nos. 84; 101, photo 25.

[10] Exhibit No. 168.

[11] Exhibit Nos. 104–106.

[12] Exhibit Nos. 106–108.

Cortlandt, Yorktown, Staff and, to a lesser extent, Philipstown recommend this route without widening of the existing corridor.

Route 4 is the route originally proposed by Staff and is the same as route 3 except for its northern section where it passes diagonally through Fahnestock Park.[13] This is what routes 2 and 3 have been designed to avoid. Route 4 is favored by no one and is strongly opposed by the Taconic State Park Commission, which administers Fahnestock Park.

During the remanded hearings Putnam Valley proposed two routes not in the hearing notice. One of these proposals would place the transmission lines over the New York Central Railroad right-of-way, along the east bank of the river, the entire distance to Indian Point, and there pick up the Indian Point to Millwood corridor; the other would run the lines atop the entire length of the Catskill Aqueduct through Philipstown, Cortlandt and Yorktown to the Millwood substation. Both of these routes would place the lines in full view of traffic along the Hudson River and of visitors to the West Point Military Academy. It appears that the only objective of these proposals is to place the transmission line route completely outside the boundaries of Putnam Valley.

Modifications to one or another of the proposed routes or of the transmission facilities previously licensed were proposed by counsel for Mr. and Mrs. Perry and by Rock Industries, Inc. Their positions are discussed below.

The table on the next page[14] summarizes the costs, route miles, number of towers required and residences directly affected by the major proposed transmission routes between Cornwall East Switching Station and Millwood.

Position of Parties

The positions of the parties may be briefly summarized. Philipstown remains opposed to all suggestions for overhead transmission lines through its area, but otherwise reluctantly agrees with Staff that route 3 should be adopted, including a crossing of the western tip of Fahnestock Park which somewhat shortens the route, avoids certain developed areas and results in less impingement on scenic values in the town. The Taconic State Park Commission opposes the park crossing involved in route 4, but would not oppose the grant of a permanent right-of-way for route 3 through the western tip of the park, provided Con Edison donates comparable land in exchange for the park land taken. Putnam Valley favors either of the two new routes it proposed at the remanded proceeding. Mr. and Mrs. Perry and Rock Industries, Inc. suggest a rerouting of a portion of routes 1 through 4 to avoid a crossing near their properties in Philipstown. Cortlandt favors route 3. Staff advocates route 3 and introduced a study to support its contention that use of this route would be feasible even without widening. Yorktown agrees with Staff that route 3, without widening the Pleasant Valley-Millwood corridor, is the best route (even though this would place the lines within its jurisdiction), but would object if added width is required. In the latter event it favors route 1B. Con Edison prefers its recommended route 1A over the other routes. Its second choice is route 1B. It is strongly opposed to the use of route 3 without the widening.

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[13] At the time staff's recommendation was made the Park Commission had not yet acquired this land.

[14] The table is a reproduction of Exhibit No. 111–A.

Project No. 2338

CORNWALL TRANSMISSION

CORNWALL EAST SWITCHING STATION TO MILLWOOD

Route No.	Estimated cost $1000	Route miles [15]				Estimated number of towers	Number of residences taken	Number other structures taken	Number residential back-yards encroachments
		Total	New R.O.W.	Widened R.O.W.	Existing R.O.W.				
1	9,684	23.5	13.0	0.9	9.6	155	2	0	0
1A	8,980	22.1	8.7	3.1	10.3	145	0	0	0
2	12,053	30.0	8.2	20.1	1.7	205	11	5	39
3	10,281	24.9	12.4	10.8	1.7	170	9	4	39
4	9,583	23.2	10.7	10.8	1.7	160	9	4	39

[15] It should be noted that the mileage figures for widened right-of-way for routes 2, 3 and 4 include the 75 feet additional width sought by Con Edison along the Pleasant Valley to Millwood corridor. Without the added width these figures are reduced to zero (those for utilization of existing right-of-way being correspondingly increased), as are the figures shown for the number of residences and other structures taken and residential backyard encroachments.

Future Transmission Requirements

In aid of a determination of the best possible route for transmission of the Cornwall power, we required Con Edison in Opinion No. 452 to submit evidence in the remanded proceeding with respect to its complete future transmission plans for this area, including its planned interconnections. At the hearing a witness for Con Edison stated that if Canadian hydroelectric power becomes available on an economical basis, it is Con Edison's intention to use the existing right-of-way of the Harlem Division of the New York Central Railroad for high voltage, direct current transmission lines. This would be some distance to the east of Yorktown and the Pleasant Valley corridor and substantially outside the immediate geographical area here concerned. Because of the still uncertain availability of Canadian power, Con Edison has not yet begun negotiations with the railroad. Since this power will in no event be transmitted through this area and is not an alternate to Cornwall, it would seem that no further attention need be given thereto for the purpose of this decision.

We are advised by Con Edison that the Pennsylvania-New Jersey-Maryland Interconnection group (PJM)[16] presently plans to terminate a single tower, single circuit 500 kilovolt line in the vicinity of Hillburn, New York, near the New Jersey-New York border. Con Edison plans to extend this line 15 miles on a new right-of-way to a point on the west bank of the Hudson opposite its Indian Point nuclear plant. The line would be designed as a single tower, double circuit structure, but only one circuit will be installed initially. A single circuit, 500 kilovolt aerial river crossing will be installed adjacent to an existing 138 kilovolt crossing. Initially, the 500 kilovolt circuit will be stepped down at Indian Point to 345 kilovolts. One 345 kilovolt circuit will be added to the existing towers on the Indian Point-Millwood corridor and terminated at Millwood. In the future, this 345 kilovolt circuit will be used as transmission capacity for future generating units to be installed at Indian Point and the PJM interconnection will be extended to Millwood by placing a new single tower, double circuit 500 kilovolt line on the existing right-of-way.

With regard to the New England interconnection Con Edison reported that the existing right-of-way between Pleasant Valley and the Connecticut line is wide enough to permit the installation of a second tower line.

[16] This is a power pool of 13 independent utility companies (and a large manufacturer) operating in the northeastern United States who have associated themselves for coordinated generation and transmission of electric power.

Con Edison also submitted its long-range (about 1975 and thereafter) plans for transmission capacity in the area north of Millwood. These claimed needs consist of the following: For south transmission capacity on circuits extending north of Millwood—(1) 2,000 megawatts for emergency power transfers with other systems to meet outages; (2) 2,000 megawatts for exchange of firm generating capacity among the systems of southeastern and upstate New York and New England to meet seasonal load diversities; and (3) 3,000 megawatts for Cornwall. The total for southern transmission is 7,000 megawatts. Con Edison does not propose to send any Cornwall power north but in place thereof proposes to wheel an estimated 2,000 megawatts of PJM power. Thus, including the 2,000 megawatts for emergency outages and the 2,000 megawatts for seasonal diversity, the total capacity needed for transmission to the north is 6,000 megawatts. As Con Edison's present plans would provide only 5,200 megawatts of transmission capacity (2,200 megawatts from the present double circuit 345 kilovolt lines on the Pleasant Valley-Millwood corridor and 3,000 megawatts of capacity from the double circuit 345 kilovolt lines it proposes to install to carry the Cornwall power) it foresees an eventual need for about 1,800 to 2,000 megawatts of additional capacity to meet its maximum transmission requirements, north and south. According to Con Edison this would be accomplished by replacing the 138 kilovolt lines now on the right-of-way with 345 kilovolt lines having a capacity of 3,000 to possibly 4,000 megawatts. Under its proposed mode of operation Con Edison would, at certain times of the year, be sending the Cornwall power south while at the same time, and on the same corridor, sending the PJM power north.

Comparison of Alternative Routes

In granting Con Edison a license to construct and operate the Cornwall project, the Commission carefully weighed the aesthetic considerations involved and concluded, on balance, the project would not seriously affect the natural beauty of the area. Recognizing that the general vicinity of the powerhouse was the area of maximum scenic and historic interest, we approved Con Edison's proposal to install submarine transmission cable for the river crossing and underground line as far inland as Nelsonville, thus eliminating any adverse impact of the project's transmission lines on the scenic values in that area. Our opinion also recognized that the problems connected with the remainder of the transmission lines do not involve the same scenic and historical values as were at stake in the vicinity of Storm King Mountain. Therefore, finding that the present state of the art of underground transmission made the cost of additional underground lines prohibitive, we provided that the remainder of the lines would be overhead. We recognized that in this phase of the case our task is to minimize the adverse impact of the lines on the affected communities without destroying the economy of the project.

We have carefully analyzed the evidence submitted by the various parties on the best route for the proposed transmission lines. The routes suggested by Putnam Valley, over the Aqueduct in Philipstown and along the railroad right-of-way on the river bank, we find are particularly unsuitable. As pointed out above, the underwater crossing and underground transmission to the Cornwall East Switching Station was required solely so that these facilities would not be visible from the shoreline and adjacent points. Either of these routes would place the overhead portion of the line directly in sight of the river and West Point and, therefore, defeat a primary scenic consideration which has already added more than $12 million to the cost of the project. Accordingly, these routes must be rejected.

Route 4 would cross diagonally through Fahnestock Park and is strongly opposed by the Park Commission. In Opinion No. 452 we stated that the routes proposed at the remanded hearing should be planned so as to avoid crossing state park lands. While this directive was not absolute, as explained in Opinion No. 452–A, nonetheless, the evidence shows that the remaining alternative routes are at least equally satisfactory and are in the greater public interest from a viewpoint of preserving and promoting public recreational areas. Therefore, route 4 must also be rejected.

Route 1, including its variants 1A and 1B, would pass through Cortlandt and would overlie a part of the Catskill Aqueduct. The evidence shows that any route going through Cortlandt would require conspicious placement of the transmission lines and towers. In fact, Cortlandt's witness testified that the area is one of the most densely populated in the entire town. The Catskill Aqueduct now has the appearance of a well-preserved, scenic woodland path and its use, in whole or in part, for transmission lines is objectionable from a scenic standpoint. Moreover, in many sections the Aqueduct right-of-way is only 50 feet wide and the procurement of additional width, to a minimum of 125 feet, would be necessary to permit its use. There are sections where the Aqueduct has been tunneled to go through hillsides. The Cornwall transmission facilities, however, would pass over the hills on the Aqueduct route and render impossible Con Edison's expressed intent to run the transmission lines at the base of hills in order to minimize scenic impairment. Thus, whatever its status as an existing public utility right-of-way, it is apparent that the presently highly scenic character of the Catskill Aqueduct would be significantly altered by its use as a transmission line corridor. For these reasons route 1 and its variants must be rejected.

Routes 2 and 3 remain to be considered. Both of these routes would utilize the existing Pleasant Valley to Millwood corridor for a portion of the right-of-way. In Opinion No. 452 we expressed our concern with the effect which the allowance of an additional width to the existing right-of-way would have on the inhabitants of Yorktown and upon its plan for future development. If the evidence in the remanded proceeding had established that the corridor could not be used without widening we might have been inclined to favor one of the other routes. In our opinion, the evidence does not establish this to be the fact. Rather, it shows that Con Edison can utilize the existing Pleasant Valley corridor for both its present and future transmission needs, including the complete capability of the Cornwall plant. This may require Con Edison to reconsider its future transmission plans and require it to incur certain expenses earlier than might otherwise have been the case; however, the price is not excessive when compared to the injury which would be inflicted upon the citizens of the area if additional width were allowed.

At the remanded hearing Staff presented a study to show a method of operation which, utilizing the Pleasant Valley-Millwood right-of-way, would both provide transmission capacity for the 2 million kilowatts of power to be initially generated at Cornwall and allow sufficient capacity to take care of Con Edison's asserted needs in 1975 without going outside the confines of the existing corridor. Under Staff's proposal a portion of the existing 138 kilovolt transmission line would be replaced with a new section of 345 kilovolt double circuit transmission line, but one circuit of this new line would be temporarily operated at 138 kilovolts to serve the Carmel and Mohansic substations. The new line circuit operated at 345 kilovolts could be designed to carry 1800 megawatts, and with the excess capacity available in the existing 345 kilovolt double-circuit line, could easily transmit the initial 2000 megawatt output of the Cornwall project. Subsequently, about 1975, in accordance with Con Edison's own plans, the remainder of the 138 kilovolt transmission line between Pleasant Valley and Millwood

would be replaced and operated entirely at 345 kilovolts. If the existing and new lines were to utilize the large conductors presently available the Pleasant Valley-Millwood corridor would be capable of transmitting 7200 megawatts, or 1800 megawatts per circuit. This capacity would even meet the requirements set forth by the Licensee, and each circuit would not exceed the capacity of the 2000 megawatt steam unit which the Licensee anticipates it might construct in the future. A loss of one transmission line circuit would, therefore, not interfere with the reserve capacity requirements of 2000 megawatts suggested by Con Edison.

Con Edison's contention that Staff's mode of operation would create a bottleneck in the Pleasant Valley-Millwood corridor is without merit. Assuming that it would be necessary during certain times of the year to send power north and south in the corridor at the same time, as Con Edison suggests, its contention might have some validity. However, such an operation would not be economic, and hence is not likely. It is only natural that power generated closer to the area where it is needed will be used to displace higher or equal cost power which must be transported longer distances. Staff's method of operation would not result in any less power being available and we believe Con Edison would make the most efficient use of its available resources. This may at times decree sending Cornwall power north for seasonal diversity purposes, thus eliminating the need for large blocks of power transmitted in opposite directions on the same corridor. In any event, we are confident that Con Edison will be able to plan for its loads in such a manner that sufficient power will be available to meet its obligations in both New York City and to the north without overtaxing the capacity of the facilities within the corridor.

Staff's study illustrates how the Cornwall project could supply peak loads in the south during the summer months and in the north during the winter. While the study merely presents a suggested mode of operation and is not intended to dictate Con Edison's future manner of operation it does establish that a practical method exists whereby full utilization can be made of the Cornwall project power and that Con Edison's interconnection plans could go forward without the grant of the additional right-of-way.

Con Edison contends that Staff's proposal to use Cornwall power to meet seasonal peaking needs in the north would contribute to the air pollution problem within New York City, or cause Cornwall to fail to make the contribution to amelioration of the city's air pollution problem which would otherwise result, by requiring it to maintain old and low efficiency units in spinning reserve to meet emergencies. This contention is not supported by the record. First, the Staff showed that Cornwall power would be sent north only a few months of the year, rather than throughout the entire year, and that only during one month, December, would there be substantial amounts of power moving north. In all other months ample spinning reserve would be available at Cornwall to take care of the entire needs of Con Edison. Second, since the PJM group has itself a summer peak, ample spinning reserve would be available during the winter from the interconnected companies in New Jersey and Pennsylvania, including the "mine-mouth" plants. Thus, even at times of the greatest diversion of Cornwall power, Con Edison would have other power sources immediately available to it for its peak requirements. Using Cornwall power to meet the peaking needs in the north would, moreover, help smooth out the peaking operation of the New York City steam plants, thereby further lessening the overall level of pollution within the city.

Aside from the fact that we have found that the existing corridor, without widening, is sufficient to transmit Cornwall power and meet Con Edison's other

present and future transmission needs, there are other persuasive reasons for not granting a widening of the corridor. Without the added width Con Edison is assured of ample transmission capacity until at least 1975. What it asks for here is that right-of-way be set aside now to meet its needs in the long-range future. As stated in the Commission's recently published National Power Survey, the need for long-range planning is growing increasingly important in the electric power industry, and Con Edison's position is understandable when consideration is given to its heavy responsibility to insure continuity of power supply at ever increasing levels in the years ahead. Meeting the expanding needs of the consumers for electric energy does not necessarily require, however, setting aside land which is already intensively developed with home sites where the long-range need for the land is doubtful and the present inconvenience to land owners would be serious.

Transmission technology has made tremendous progress in recent years. The Power Survey recognizes that the industry needs to devote more manpower and money to projects for transmission research and development, but we have every reason to believe that the trend already established will continue and even accelerate in the years to come. Thus, it is possible that advances made in the next decade may reveal practical alternatives, such as long distance underground EHV transmission, further increases in the capacity of overhead EHV transmission lines and nuclear power generation near metropolitan centers, to mention only a few of the possibilities. In the circumstances of this case and considering the effect which widening the corridor would have on Yorktown's development, both proposed and under construction, as well as on a number of present residences, it would not be in the public interest to permit widening of the Pleasant Valley corridor.

In order to utilize the Pleasant Valley corridor it is necessary, of course, to determine the route to the point where the lines from the Cornwall East Switching station meet the corridor. With a choice between route 2 or route 3, we favor the latter. The evidence regarding this route was extensively developed at the remanded proceeding and shows that no existing residences will be taken. The area is rugged, wooded, mountainous and largely undeveloped. While this route as originally proposed included a crossing of the Fahnestock Park which was objectionable to the state authorities, it has now been modified to limit the crossing to the western tip of the Park. The land which would be lost due to the modified crossing is not particularly well suited to park purposes and Con Edison has agreed to donate to the Park other and more suitable lands. The Park Commission will gain from the crossing and has agreed to the granting of the necessary right-of-way. Philipstown endorses the Park crossing since it somewhat shortens the route, avoids certain developed areas and results in less impingement upon scenic values in the town. Route 3 is the preferred route in the considered judgment of four of the parties, whereas no party has expressly favored route 2. While the new right-of-way would be somewhat longer for route 3 than for route 2, the costs are reasonably comparable and some savings would occur due to the lesser amount of initial conversion of the 138 kilovolt lines necessary once the Pleasant Valley corridor is reached.

The modifications sought by the Perry interveners and Rock Industries, Inc. insofar as they relate to route 3 must be rejected. Even with the detailed information regarding the various routes which has already been compiled and which is included in the record in this proceeding, the final placement of the towers is a matter which must await a detailed ground survey over the route finally selected herein. The company has assured the parties and this Commission that, when the survey is completed and as far as practical and economic, the

towers will be so located as to cause the least inconvenience to adjacent homes and property and with the greatest regard for scenic considerations. The Perry interveners, in particular, would lose neither their home nor any part of their land no matter what route is decided upon. Moreover, the costs of making the modifications involved would be far in excess of the estimated value of the entire property. In our opinion, the modifications sought by these parties are not required by the public interest.

During the remanded proceeding both Philipstown and Rock Industries, Inc., attempted to introduce further evidence on the subject of underground transmission. These attempts were halted by the examiner who ruled this material inadmissible under the Commission's Opinion No. 452 and order. In the earlier proceeding we determined that the public interest would not be served by requiring Con Edison to install additional underground transmission facilities. The proceeding, on remand, insofar as the transmission issue is concerned, involves solely the determination of which route for the overhead lines best accords with the public interest. Consequently the examiner's ruling was proper.

Conclusion on Transmission Route Issue

For the reasons herein given it is our conclusion, and we so find, that proposed route 3 is the route most in accord with the public interest and most in accord with the standard set in Section 10(a) of the Federal Power Act. Except where necessary at corners or critical points, the public interest does not require the allowance of additional right-of-way, beyond that presently existing on the Pleasant Valley to Millwood transmission corridor, for the placement of the transmission facilities of the Cornwall Pumped Storage Project. We shall require that the transmission towers exteriors be treated to blend insofar as practical into the landscape and that the right-of-way be replanted after construction with native materials at road crossings and other points of major public view.

DESIGN OF FISH PROTECTIVE DEVICES

During the hearing testimony was received from fish biologists and other fish experts as to the foreseeable effects of the plant operations on the Hudson River's fish resources. Witnesses for Con Edison testified in general that the probability of serious impairment of these resources was remote provided suitable protective devices were installed. Witnesses for the Scenic Hudson Preservation Conference (Scenic Hudson) testified that available evidence indicates striped bass spawn in the general vicinity of the planned powerhouse and that the survival rate of fish, larvae and eggs pulled into the plant can be expected to be small. A witness appearing on behalf of the Department of Interior testified that screening devices presently planned for inclusion in the project would not be adequate for the protection of fish in all their life stages and recommended that screening and fish sampling studies be conducted in the project area.

After the issuance of Opinion No. 452 the State of New York Conservation Department recommended the undertaking of a three-year study of the fish resources of the Hudson River and any possible impact thereon of the Cornwall project. This recommendation was concurred in by the regional office of the Fish & Wildlife Service Bureau of Sport Fisheries and Wildlife, U.S. Department of Interior. Con Edison has agreed to participate in and finance this study at a cost of $150,000. The study as agreed to will be conducted by an outside consulting firm under the specific supervision and direction of the New York Conservation Department acting under the general direction of a policy committee composed of representatives of the Conservation Department, the Fish

and Wildlife Service and Con Edison.[17] If, as a result of the study, a determination is made that fish protection devices beyond those presently planned are desirable, Con Edison has stated on the record that it is prepared to construct an independent structure in front of the project intakes on which any known type of fish protective device could be installed at any time. The incremental cost of such a structure was estimated at $1.5 million.[18] Since this cost would be greatly increased if work on the structure is commenced more than 18 months after the powerhouse construction is begun (apparently this would be the time when the coffer dams erected to allow the riverfront construction will be removed), Con Edison prefers to build the new fish facility within that time if there appeared to be any reasonable chance that it might eventually be found necessary. However, the consulting firm hired to perform the study will also provide interim reports as bases for possible modifications in the design of the fish protective facility during the entire period of the project's construction. Ultimately, a complete report will be submitted and its results utilized in a comprehensive post-construction evaluation of the effects of the plant operations on the fishery resource.

In addition to the study suggested by the New York Conservation Department, the Department of Interior recommends that hydraulic tests be undertaken using a model of the Hudson River estuary which is in existence at the Vicksburg, Mississippi Experimental Station of the U.S. Army Corps of Engineers. A witness for the Department noted that this model is available for this type of testing and stated that it was his belief that such a model study was necessary in order to develop an adequate screening device. The cost of this model study was not ascertained during the hearing.

The positions of the parties participating in the fish protection issue are well stated in their briefs. Briefly, Con Edison maintains that the protective devices currently proposed are adequate but agrees to any modifications necessary as a result of the additional study in which it is participating. It sees no need for the model study suggested by Interior. Scenic Hudson argues that no fish protective device can avoid the threatened loss to the fish resources, and that the Commission should revoke its grant of license and reopen the proceeding to allow reconsideration of possible alternative projects. The brief submitted by the Department of the Interior concludes that the present screen design is inadequate and that the planned study, while good, is too restricted and should be expanded to include the model studies supported by biological research and testing. It recommends that Con Edison be directed to expand its proposed research program to include tagging and model studies. The precise extent of these studies, if they cannot be decided upon by agreement between Con Edison, Interior, the New York Conservation Department and Staff, would under the Department's recommendation be submitted to the Commission for determination. Finally, the Staff agrees with Interior that model studies should be undertaken on the ground that they would both aid the biological studies and be useful in arriving at a final fish screening design. The model could also be used to determine whether the plant tailrace required redesigning to conform with the hydraulic requirements of the screening device ultimately decided upon.

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[17] The Chairman of the Committee is Dr. Elliott Cheatum, Assistant Commissioner of the New York State Conservation Department, Division of Fish and Game. Early concurrence in the proposed study was requested and given by the three parties in the hope that a start could be made in the spring of the current year. The evidence does not establish whether the study was in fact begun at that time.

[18] Preliminary sketches are included as Exhibit Nos. 75, 77 and 78.

The record supports our finding that the fish resources will not be adversely affected provided adequate protective devices are installed. The additional studies proposed by the New York Conservation Department as supplemented by the studies proposed by the Department of Interior will contribute significantly to the general knowledge of fish problems in the river, and will assure that the Cornwall project will be equipped with appropriate devices necessary to protect these valuable resources. Accordingly, Article 37 of the license will be amended to require undertaking both studies, while reserving to the Commission continuing jurisdiction to require any further changes in the protective devices the studies may demonstrate to be necessary. The decision whether to order the independent fish protection structure will be deferred to await the recommendation of the study committee. A requirement will be included for interim progress reports to the Commission as well as of a definitive report in sufficient time to permit the Commission to make an informed determination whether to require the new fish structure.

The Commission further finds:

(1) Finding paragraphs (1) through (21) and (25) through (31) of Opinion No. 452, *Consolidated Edison Company of New York, Inc.*, Project No. 2338, issued March 9, 1965, 33 FPC 495–6, 497, are applicable to the proceeding on remand.

(2) To transmit the power which will be generated at the Cornwall project. the Licensee shall construct and operate as parts of the project within the meaning of Section 3(11) of the Federal Power Act a 345 kilovolt double circuit overhead transmission line on a right-of-way, the location and width of which is to be as provided in the accompanying Order, which transmission line shall extend from the Cornwall East Switching Station at Nelsonville, New York, to a point of interconnection with applicant's transmission system at or near its Sprain Brook substation in the Town of Yonkers, New York.

(3) The route for the overhead transmission line specified in the accompanying Order is the single route most in accord with the public interest and satisfies the standard embodied in Section 10(a) of the Federal Power Act.

(4) The Cornwall project will not adversely affect the fish resources of the Hudson River provided adequate protective facilities are installed.

(5) Plans of the Licensee for a screen with clear mesh openings of three-quarters inch by one and three-quarter inches may not be adequate to provide the protection required.

(6) The objectives of the Licensee's proposed research project are not sufficiently broad to obtain the information desirable to adequately accomplish the protection of the Hudson River fish resource.

(7) Model studies shall be undertaken to determine the hydraulic conditions and effects created by the project within the estuary and in the tailrace area during both the pumping and generating cycles of the powerhouse's operation.

(8) The following terms and conditions, and amendments to the license issued for Project No. 2338, are desirable and necessary in the public interest; except as otherwise determined, all motions and all objections by parties to the proceeding to the examiner's rulings should be denied.

The Commission orders:

(A) Articles 35 and 37 of the license issued for Project No. 2338 are amended to read as follows:

Article 35.(*A*). The Licensee—

(1) Shall design the overhead transmission facilities to accommodate the initial transmission of 2,000 megawatts of power and the future transmission of at least 3,000 megawatts of power;

(2) Shall locate the overhead transmission facilities between Cornwall East Switching Station and a point on its existing Pleasant Valley-Millwood transmission line right-of-way on a new right-of-way not to exceed 125 feet in width, except at corners, transposition points, access points, or points of unusual character, along the following route:

(a) From Cornwall East Switching Station, at Nelsonville, northeasterly, paralleling New York State Route 301 to a point a short distance west of McKeel Corners in the Town of Philipstown;

(b) Thence southeasterly, crossing Indian Brook Road in the vicinity of Reeves Pond and skirting the northeasterly slopes of Moneyhold Mountain, and thence proceeding in a south-southeasterly direction to a point where the southern boundary of the Fahnestock State Park crosses the Philipstown-Putnam Valley town line and to a point near Gilbert Corners in the Town of Putnam Valley;

(c) Thence northeasterly to a point north of North Shore Road, around the southern border of Fahnestock State Park, around a hill north of this road;

(d) Thence southeasterly, east of Christian Corners and between Prospect Hill and Tinker Hill, across Peekskill Hollow Road, and thence southeasterly across the Taconic State Parkway about one-half mile south of Bryant Pond to a point about one mile south of the Carmel Substation of the New York State Electric & Gas Corporation, where the route would intersect the company's existing right-of-way from Pleasant Valley (Dutchess County) to Millwood (Westchester County).

(3) Shall locate the overhead transmission facilities between the aforementioned point on its existing Pleasant Valley-Millwood transmission line right-of-way to the Millwood Substation on this existing right-of-way by replacing the existing 138 kilovolt double circuit transmission line, where necessary, and widening the right-of-way only where necessary to accommodate corners, transposition points, access points, or points of unusual character, either along the west or east existing boundary so as to cause a minimum interference with the interests of local property owners and local communities in the Towns of Putnam Valley, Carmel, Yorktown, and New Castle;

(4) Shall locate the overhead transmission facilities between Millwood substation and Sprain Brook substation on the right-of-way of an existing transmission line of the Licensee; and

(5) Shall, generally, traverse wooded and sparsely settled areas, and shall cross ridges, where possible, through valleys and draws so as to minimize the silhouette of the transmission line towers against the sky as viewed from highways. The transmission tower exteriors shall be treated to blend insofar as practical into the landscape and the right-of-way replanted after construction with native materials at road crossings and other points of major public view.

(B) This Article shall not restrict the use of the existing Pleasant Valley-Sprain Brook transmission line right-of-way in any manner deemed necessary for the marketing of Cornwall and other power.

Article 37. The Licensee—

(1) Shall with the advice and assistance of the New York State Conservation Department and the United States Fish and Wildlife Service, expand its proposed research program to include adequate sampling studies and tagging studies over a period of at least one year; institute studies of hydraulic conditions and their effect on fish behavior, including striped bass and shad; perform tests to determine swimming tolerances of various sizes of striped bass and shad in various water velocities which might be anticipated to be caused by the operation of the licensed project; and undertake studies concerning the mortality of eggs and larvae of striped bass and shad under pressure, in turbulence, and held against a screen by water pumped at varying velocities;

(2) Shall, after consultation with the United States Fish and Wildlife Service and the Fish and Game Division of the New York Conservation Department make, or pay the cost of making, such studies, including model studies, necessary to determine the location and design of fish protective facilities;

(3) Shall construct, operate and maintain or shall arrange for the construction, operation and maintenance of such fish protective facilities, the functional design of which has been approved by the Commission after considering the recommendations of the U. S. Fish and Wildlife Service and the Fish and Game Division of the New York Conservation Department;

(4) Shall make or pay the cost of making post-construction evaluation studies to determine the extent of any effect of the project on the Hudson River fishery resources;

(5) Shall make any needed modification of the fish protective facilities, as may be ordered by the Commission, after notice and opportunity for hearing, on its own motion or upon recommendations by the United States Fish and Wildlife Service and the Division of Fish and Game of the New York Conservation Department;

(6) Shall file progress reports with the Commission on the results of the studies as required under (1), (2) and (4) of this Article, including a report in sufficient time to permit determination whether to order construction of an independent fish protective structure. If the Licensee, the United States Fish and Wildlife Service, the New York State Conservation Department, and the staff of the Federal Power Commission are unable to agree upon the scope, objectives, timing, and manner of performance of the studies and tests herein ordered, the matter shall be submitted to the Commission for determination. After development of the final fish protective device, or at any earlier feasible time, the Licensee shall institute model studies to determine hydraulic conditions in the tailrace area of the project for the purpose of determining whether or not the works in such area need be redesigned or any conditions therein modified.

(B) Except as otherwise determined, all motions and all objections by parties to the proceeding to the examiner's rulings are denied.

(C) This order shall become final thirty (30) days from the date of its issuance unless application for rehearing shall be filed as provided by Section 313(a) of the Act, and failure by Licensee to file such an application shall constitute acceptance of this license. In acknowledgement of the acceptance of this license, it shall be signed for the Licensee and returned to the Commission within sixty (60) days from the date of issuance of this order.

Commissioner Ross *concurs* in this opinion subject to his previous dissent accompanying Opinion No. 452 issued March 9, 1965, 33 FPC at p. 458.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

TEXACO INC., ET AL. (FORMERLY SUNRAY DX OIL COMPANY, ET AL., DOCKET NO. G–4281, ET AL.), DOCKET NO. G–8087, ET AL.

SUPPLEMENTAL ORDER IN CLARIFICATION OF OPINION NO. 464

(Issued October 4, 1965)

By our Opinion No. 464, issued June 10, 1965, 33 FPC 1228, we disposed of various issues related to a large number of consolidated producer and pipeline applications. The principal issue there related to the permissibility of upward Btu adjustment clauses. Subsequent to that opinion and order several collateral questions have arisen which we here intend to clarify.

Rate schedule supplements must be filed in compliance with *both* Ordering Paragraphs (C) and (D) of said Opinion, requiring the inclusion of clauses calling for a proportional downward Btu adjustment and measurement of Btu content on a "wet" basis.[1]

Opinion No. 464 is applicable to the following amendments filed subsequent to the institution of these proceedings but prior to the issuance of our Opinion:

Docket No.	*Date Filed*
G–12710	8–26–63
G–13299	2–24–64
G–14953	9–26–63
G–16529	6–21–63
G–16878	8–27–63
G–17791	6–20–63
G–17791	2–27–64
G–17791	2–17–64
G–17791	11–16–64
G–18435	10–23–64
G–18435	6–7–65
G–18977	2–19–64
G–18977	2–24–64
G–18977	6–9–64
G–18977	7–27–64
G–19542	5–27–65
CI60–590	1–18–65
CI60–704	7–17–63
CI60–704	5–14–64
CP60–116	2–10–64
CI61–235	8–10–64
CI61–1642	3–23–64
CI62–1111	1–28–64
CI62–1111	3–9–65
CI63–1337	1–27–64

To avoid any possible inconsistency with our Regulations regarding rate filings, and in order that the rate schedules involved herein reflect the proper rates, all of the producers who had eliminated an upward Btu adjustment provision from their filings during the periods covered by the temporary certificates are hereby required to file a rate schedule supplement as a condition precedent to reinstate-

[1] Said filings may be unilateral.

ment of such adjustment. Such rate filings, if made within 30 days from the issuance of the instant Supplemental Order, will be accepted without suspension and with a waiver of the notice requirements, the effective date of such filings to be June 10, 1965, the date of issuance of Opinion No. 464.

Finally, we note that no time limit was prescribed in our Opinion within which the producers are to submit compliance filings. We shall here order that all such filings be made within 30 days of the issuance of the instant Supplemental Order.

The Commission further orders:

(A) Filings must be made to comply not only with Ordering Paragraph (C) of Opinion No. 464 but also with (D) of said Opinion and may be unilateral.

(B) The certificates issued herein by our Opinion are applicable to the amendments to the applications hereinbefore listed.

(C) Those producers who had eliminated the upward Btu adjustment clause from their rate schedules for the periods covered by their respective temporary certificates are required to file appropriate supplements to their filed rate schedules within 30 days of the issuance of the instant Supplemental Order as a condition precedent to reinstatement of such clause with an effective date of June 10, 1965. The Regulations relating to notice requirements with respect to the effective date of such filings are hereby waived, as are the detailed submittal provisions of Section 154.94(f).

(D) All filings in compliance with our Opinion No. 464, as supplemented, must be submitted within 30 days of the issuance of the instant Supplemental Order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

TEXAS EASTERN TRANSMISSION CORPORATION, DOCKET NO. RP66-12

ORDER SETTING HEARING ON REFUNDS

(Issued October 4, 1965)*

The Commission, by orders issued in various rate proceedings including but not limited to those below[1] has directed the natural gas companies whose rates are the subject matter of those orders, to retain the amounts computed to be due to be refunded on sales to Texas Eastern Transmission Corporation, pending our further order prescribing the disposition of those retained amounts.

Our records indicate that the amounts refundable to Texas Eastern which are being retained pursuant to the referenced orders, aggregate an approximate amount in excess of $8,00,000. Except for a minor portion thereof, those amounts relate to gas purchased and sold by Texas Eastern in the calendar years 1962, 1963 and 1964. Further, of that approximate total, about $7,700,000 is refundable

*Application for rehearing rejected and reconsideration denied by order issued November 30, 1965.

[1] Orders issued on: October 8, 1964, in *Atlantic Refining Company*, Docket No. G-9283, *et al.*, 32 FPC 933; October 5, 1964, in *General Crude Oil Company*, Docket No. G-13941, *et al.*, 32 FPC 912; January 27, 1964, in *Humble Oil & Refining Company*, Docket No. G-13732, *et al.*, 31 FPC 187; July 16, 1963, in *Hunt Oil Company*, Docket No. G-9065, *et al.*, 30 FPC 220; October 5, 1964, in *Southwest Gas Producing, Inc.*, Docket No. RI64-262, *et al.*, 32 FPC 916; December 23, 1964, in *United Gas Pipe Line Company*, Docket Nos. RP61-18, RP63-1, 32 FPC 1515; December 23, 1964, in *Union Producing Company*, Docket No. G-13811, *et al.*, 32 FPC 1506.

to Texas Eastern from United Gas Pipe Line Company in the latter's Docket Nos. RP61–18 and RP63–1.

Texas Eastern has asserted that it has no obligation to flow-through any refunds which result from supplier rate proceedings or new gas purchases subsequent to the settlement agreement in its Docket Nos. G–12706 and G–18841.[3] Texas Eastern has also made manifest its intention to retain such refunds.[5]

In the order issued July 16, 1963, in *Hunt Oil Company*, Docket No. G–9065, *et al.*, 30 FPC 220, we recognized the possibility that some natural gas companies might take the position that they were not under any obligation to flow-through the amounts that might be refundable to them from gas suppliers. We noted further, that in the absence of action by us, those pipelines would be in a position to hold such sums for their own use or distribution to their stockholders, even if they were, in the absence of such refunds, earning a reasonable rate of return on their invested capital during the past periods involved. We indicated that we were disturbed by the possible gap in the refund line and prescribed certain procedures which would aid us in determining whether the natural gas pipeline companies or their jurisdictional customers are entitled to such refunds.

In the order issued July 8, 1964, in *Humble Oil & Refining Company*, Docket No. G–9287, *et al.*, 32 FPC 49, we set out our policy and purpose on this issue in the statement that "in view of our duty to insure that the ultimate consumers of gas actually receive all of the benefits of our rate regulation to which they may be entitled, we shall take action here to assure that, within the limits of our jurisdictional reach, the refunds to be ordered actually flow to those parties legally and equitably entitled thereto. We also pointed to the statutory authority and certain court decisions which bear on this issue, and indicated that in such instances where it became necessary (*i.e.*, upon an asserted claim of a jurisdictional pipeline company to retain substantial refund sums) we would institute further proceedings "for determining the relative rights to such funds of such pipeline or its customers."

In view of Texas Eastern's asserted claim, referred to above, it is necessary and appropriate that these proceedings be instituted to determine the rights of Texas Eastern to the refund sums mentioned above.

We have stated,[4] and here reiterate, that we are not by this order prejudging or determining that a jurisdictional pipeline in the chain of resales between the producer and ultimate consumer is never entitled as a matter of law or equity to retain all or part of the refunds received from a supplier. Specifically, we have not made any determination that Texas Eastern is not entitled to receive and retain such monies. We have determined only that in view of the apparent excess in revenues otherwise enjoyed by Texas Eastern during the years to which these refunds apply, a substantial question arises as to the pipeline's legal and equitable claims to such refunds and that our final decision thereon should be made upon the basis of a full hearing record on all pertinent factual and policy matters.

Commission staff studies of Texas Eastern's actual costs and earnings for calendar years 1962, 1963 and 1964, as reflected in its Form No. 2 annual reports, indicate that without regard to the refund sums in issue herein, the company

[3] Approved by Commission order issued January 25, 1961, 25 FPC 172.

[5] Letter dated January 13, 1965, filed by Texas Eastern in Docket No. RP65–27.

[4] Order issued July 8, 1964, in *Humble Oil & Refining Company*, Docket No. G–9287, *et al.*, *supra*.

earned a jurisdictional return of 6.85 percent in 1962, 7.25 percent in 1963, and 7.18 percent in 1964.[5] If such earned rates of return are measured against the highest overall rates of return ever allowed a major pipeline company by the Commission, *i.e.*, 6½ percent, (without conceding that Texas Eastern is, in fact, entitled to a 6½ percent rate of return for the years listed), the studies indicate that Texas Eastern had excess earnings amounting to $4,954,000 in 1962, $10,490,010 in 1963, and $9,216,000 in 1964, from its jurisdictional operations and sales.

We see no point here in repeating the position outlined in our previous orders setting forth our reasons for believing that under the statutory scheme a pipeline customer may not be entitled automatically to refunds for payments made by it to a supplier whenever it has not tracked the increase with a filing of its own. We point out only that Section 4 of the Act does not in terms provide to whom any refunds we might decide to order should be paid, and that a failure to track a supplier's increase does not necessarily mean that a pipeline has absorbed any cost increase over that upon which its rates were based since it may well be that such increase has been offset by other purchased gas or other cost decreases, or by increased sales having the effect of reducing the unit costs. Insofar as the settlement agreements are concerned, it is sufficient in the absence of a complete hearing record thereon to note that the mere fact that Texas Eastern may not have bound itself to flow-through any refunds resulting from these particular increases (which had not even been filed for at the time of the agreements) regardless of the effect of such increases on its ability to earn a fair return on their investment, does not in itself grant Texas Eastern any rights to secure and retain such refunds.

The award of the refundable amounts at issue herein to Texas Eastern without a requirement that such refunds be flowed-through to jurisdictional customers would only serve to increase Texas Eastern's excess earnings in each of the aforementioned calendar years. Such unconditional release of the refunds to Texas Eastern might result in a permanent and irremediable gap in our authority to require flow-through of refunds to the detriment of the ultimate consumers whom the Natural Gas Act was designed to protect.

In keeping with our purpose heretofore expressed, we should note that upon a proper showing by Texas Eastern that any portion of the refunds being retained by its suppliers is applicable to its non-jurisdictional sales we shall direct the suppliers to release and pay such amounts to Texas Eastern.

The Commission finds:

It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that these proceedings be instituted pursuant to the provisions of Sections 4, 5, 10, 14 and 16 of the Act to determine whether Texas Eastern is legally and equitably entitled to the refundable amounts now being retained, or which may be retained hereafter pursuant to our order, by any supplier of gas to Texas Eastern, which amounts are attributable to gas purchased by Texas Eastern in calendar years 1962, 1963 and 1964.

The Commission orders:

(A) A hearing shall hereinafter be held to determine the extent to which, if any, Texas Eastern is entitled to receive and retain any of the sums of monies

[5] Appendix A hereto. A prospective rate reduction effective as of June 1, 1965, in Docket No. RP65–59 was approved by Commission order issued July 21, 1965, 34 FPC 98.

collected from Texas Eastern by its jurisdictional suppliers which the suppliers have been directed to refund with interest, but which, pursuant to the orders referred to in footnote 1 hereof, they have been directed to hold pending further order of the Commission.

(B) Texas Eastern shall within 45 days from the date of issuance of this order, file a special report in triplicate setting forth in detail its agreement or disagreement with the statement attached hereto as Appendix A indicating, on the basis of the Form No. 2 reports and refund statements filed with the Commission by Texas Eastern [and its suppliers], that Texas Eastern had earnings in excess of a 6½ percent rate of return on its jurisdictional operations amounting to $4,954,000 in 1962, $10,490,000 in 1963, and $9,216,000 in 1964. In making such report, Texas Eastern shall determine and set forth its earnings in each of the calendar years 1962, 1963, and 1964 upon the basis of its actual operations for such years as reflected in its books of accounts (maintained in accordance with our Uniform System of Accounts) and in properly prepared official reports to this Commission, utilizing a 6½ percent rate of return, and without "normalization" of conditions actually in effect during each such calendar year, annualizing adjustments, elimination of non-recurring items, or averaging of recurring items varying in amounts from year-to-year, except that all supplier refunds received by Texas Eastern from producers and pipelines, which are attributable to gas purchases made during each of these three years and have not been passed on to its jurisdictional customers, shall be regarded as a reduction in the reported cost of purchased gas for the calendar year involved. Copies of such report shall be made available upon request to any intervener in this proceeding.

(C) Within 45 days after receipt of Texas Eastern's report referred to in ordering paragraph (B) *supra*, the staff, Texas Eastern and all interveners shall file their direct testimony in writing with respect to all matters of fact or policy which they believe material to a determination of the issues herein. Any rebuttal testimony shall be filed within 30 days from the filing of such direct testimony. No testimony as to issues which raise questions of law only should be adduced,—such questions being deferred for briefs.

(D) Presiding Examiner Alvin A. Kurtz, or any other officer or officers of the Commission designated by it for that purpose, shall preside in the hearing of this matter and over any pre-hearing conferences which may be deemed necessary, pursuant to the Commission's Rules of Practice and Procedure and Section 2.59 of its Statement of General Policy, and as further provided by this order.

(E) Notices of intervention and petitions to intervene may be filed with the Federal Power Commission, Washington, D.C. 20426, in accordance with the Commission's Rules of Practice and Procedure, Sections 1.8 and 1.37(f) [18 CFR 1.8 and 1.37(f)], on or before October 26, 1965.

APPENDIX A

TEXAS EASTERN TRANSMISSION CORPORATION

Comparison of cost of service with revenues for the years 1962, 1963 and 1964 [1]

Line No.	Particulars	Year		
		1962	1963	1964
1	Operating expenses:			
2	Cost of purchased gas [2]	$134,603,752	$146,797,491	$149,643,120
3	Exchange gas	(176,601)	(1,413,019)	(195,893)
4	Purchased gas expense	295,284	301,889	638,302
5	Gas withdrawn from storage—debit	7,149,762	8,738,267	6,993,415
6	Gas delivered to storage—credit	(7,324,740)	(8,900,897)	(7,492,402)
7	Gas used in company operations	(3,975,807)	(4,824,948)	(3,606,161)
8	Other gas supply expenses	406,365	373,846	
9	Total gas supply expenses	130,978,015	141,072,629	145,980,381
10	Production and gathering expenses and products extraction	3,876,678	4,247,350	4,120,138
11	Exploration and development expenses	1,566,914	1,967,393	2,054,611
12	Total production expenses	136,421,607	147,287,372	152,155,130
13	Underground storage expenses	1,370,226	1,535,818	2,335,398
14	Transmission expenses	24,235,424	25,553,463	24,665,548
15	Administrative and general expenses	7,995,984	7,972,117	8,004,344
16	Total operating expenses	170,023,241	182,348,770	187,180,420
17	Depreciation, amortization and depletion expenses	35,590,013	36,619,766	36,787,200
18	Taxes other than income	8,166,576	8,700,647	8,777,236
19	State income taxes	605,700	866,912	743,620
20	Revenues credited to cost of service	(2,058,312)	(1,789,380)	(2,503,704)
21	Subtotal	212,327,218	226,746,715	230,984,772
22	Return at 6.5% [3]	43,859,981	43,812,861	44,191,569
23	Federal income taxes @ 52% and 50%	21,146,415	21,846,198	19,302,397
24	Total cost of service	277,333,614	292,405,774	294,478,738
25	Jurisdictional revenues	282,287,739	302,896,292	303,694,692
26	Revenues in excess of 6.5% return	4,954,125	10,490,518	9,216,224
27	Actual percent rate of return earned	6.85%	7.25%	7.18%

[1] All data based upon Texas Eastern's Form No. 2 Reports and refund statements.
[2] Reflects Form No. 2 cost of purchased gas less refunds received from Texas Gas Transmission Corporation and United Gas Pipe Line Company applicable to each year.
[3] Computed on rate base which excludes Accident Field.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

CENTRAL MAINE POWER COMPANY, PROJECT NO. 2335

ORDER APPROVING REVISED PROJECT EXHIBIT

(Issued October 5, 1965)

On July 21, 1965, Central Maine Power Company filed for Commission approval a revised Exhibit K showing the location of all transmission line facilities found by the Commission to be parts of Project No. 2335 in its license order issued July 24, 1964, 32 FPC 334, which order also, by Article 29 thereof, ordered their inclusion in the license.

Article 29 described the facilities as being the 6.9 kv generator leads, and the 115 kv transmission line from the 6.9/115 kv substation to the Wyman—Gulf Island 115 kv line.

The project, known as the Williams Project, is located on the Kennebec River in towns of Embdem and Solon, in Somerset County, Maine. No lands of the United States are involved.

The Commission finds:

Exhibit K, Sheet 2, Revision I (FPC No. 2335—14) conforms to the Commission's rules and regulations and should be approved as part of the license for the project.

The Commission orders:

The revised exhibit described in the above finding is hereby approved as part of the license for Project No. 2335.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

POTOMAC LIGHT & POWER COMPANY, PROJECT NO. 2343

ORDER APPROVING REVISED PROJECT EXHIBIT

(Issued October 5, 1965)

On June 11, 1965, Potomac Light & Power Company filed for Commission approval a revised print of Exhibit K (FPC No. 2343–3) showing the location of transmission facilities found by the Commission to be parts of Project No. 2343 in its license order issued August 11, 1964, 32 FPC 584, which order also, by Article 30 thereof, ordered their inclusion in the license.

Article 30 described the facilities as being: (1) the 2.4 kv transmission line from the Millville Hydro Plant to the old Millville Steam Plant; (2) the 34.5 kv transmission line from the Millville Hydro Plant to the old Millville Steam Plant; and (3) the generator leads and appurtenant facilities at the Millville Hydro Plant.

The licensee has requested that the revised print be reflected on Exhibit K (FPC No. 2343–3), on file with the Commission, as a part of the license for the project. The print shows that the transmission facilities involved are located on lands owned by the licensee which lie wholly within the project boundary. The project, known as the Millville Hydro Station, is located on the Shenandoah River, in Jefferson County, West Virginia.

The Commission finds:

Exhibit K (FPC No. 2343–3), revised by the staff to show the transmission facilities described in Article 30 of the license as parts of the project, conforms to the Commission's rules and regulations and should be approved as part of the license for the project.

The Commission orders:

Exhibit K (FPC No. 2343–3), revised by our staff to reflect thereon the transmission facilities described in Article 30 of the license is hereby approved as part of the license for Project No. 2343.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

SACRAMENTO MUNICIPAL UTILITY DISTRICT, PROJECT NO. 2101

ORDER APPROVING SUPPLEMENTAL PROJECT EXHIBIT L DRAWINGS

(Issued October 5, 1965)

On August 6, 1965, Sacramento Municipal Utility District filed for Commission approval Exhibit L drawings showing construction details for the Slab Creek

dam and White Rock Tunnel intake of its Upper American River Project No. 2101 located on the South Fork American River, California. The drawings supplement Exhibit L drawings filed with the Commission on March 22, 1965, which were approved by the Commission as parts of the license by its order of April 12, 1965, 33 FPC 722.

The construction details shown on the supplemental drawings relate to certain features of the Slab Creek dam and White Rock Tunnel intake, such as: Slab Creek dam excavation, spillway detail, and fishwater outlet, and White Rock Tunnel intake and adit details.

The Commission finds:

The following described supplemental Exhibit L drawings conform to the Commission's rules and regulations and should be approved as part of the license for the project:

Exhibit L–120 (FPC No. 2101–212) showing "Slab Creek Dam Excavation Plan and Sections,"

L–121 (FPC No. 2101–213) showing "Slab Creek Dam Concrete Outline, Spillway and Piers,"

L–122 (FPC No. 2101–214) showing "Slab Creek Dam Fishwater Outlet Works,"

L–123 (FPC No. 2101–215) showing "White Rock Tunnel Intake Structure,"

L–124 (FPC No. 2101–216) showing "White Rock Tunnel Intake Gate Shaft," and

L–125 (FPC No. 2101–217) showing "White Rock Tunnel Intake to Adit No. 3."

The Commission orders:

The supplemental Exhibit L drawings described in the above finding are hereby approved as part of the license for Project No. 2101.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

HUMBLE OIL & REFINING COMPANY (OPERATOR), ET AL., DOCKET NO. G–14604

ORDER AMENDING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued October 6, 1965)

On May 19, 1965 Humble Oil & Refining Company (Humble) filed in Docket No. G–14604 a petition to amend that portion of the certificate issued in Opinion No. 315, in Docket No. G–13169, *et al.* on September 4, 1958, 20 FPC 264, by including therein the interest of co-owners in the unit established by the Louisiana Conservation Commission, as more fully described in the petition to amend. The unit is located within the area dedicated to Humble's FPC Gas Rate Schedule No. 131 and sales of gas to Transcontinental Gas Pipe Line Corporation from this acreage located in the Rousseau Field, Lafourche Parish, South Louisiana were authorized in the instant docket.[1] No additional gas is being dedicated to the interstate market. Humble previously produced all the gas

[1] Docket No. G–14604 was one of numerous docketed applications included in the designation Docket No. G–13169, *et al.*

underlying the unit and the unit co-owners had no interest in the production until the unit was established. The co-owners have ratified the contract comprising Humble's Rate Schedule No. 131 and have designated Humble as their agent. No affiliation is said to exist between buyer and unit owners. Details of ownership are shown on the petition to amend. The currently effective rate under Humble's Rate Schedule No. 131 is 20.625¢ but since this amendment reflects only a redistribution of revenues resulting from established production, no rate question is presented.

Due notice of the filing of the petition to amend was published in the Federal Register on June 3, 1965 (30 F.R. 7329). The Public Service Commission of the State of New York intervened on June 9, 1965. However, on August 25, 1965 that Commission withdrew its petition to intervene upon learning that the amendment would not increase the buyer's obligation to take gas.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the certificate of public convenience and necessity issued in Docket Nos. G–13169 and G–14604 on September 4, 1958, be amended as hereinafter ordered.

The Commission orders:

(A) The certificate of public convenience and necessity issued in G–14604 on September 4, 1958, is amended to reflect Humble as operator of the unit and to include the unit co-owners' interest.

(B) Redesignation of Humble's Rate Schedule No. 131 as Humble Oil & Refining Company (Operator), *et al.*, and accepts the rate filing to be effective on the effective date of establishment of the unit, March 6, 1964.

(C) In all other respects the certificate in Docket No. G–14604 shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; Charles R. Ross, David S. Black and Carl E. Bagge.

SINCLAIR OIL & GAS COMPANY, DOCKET NO. G–13528, ET AL.[1]

ORDER ACCEPTING OFFER OF SETTLEMENT, REQUIRING REFUNDS, SEVERING AND TERMINATING PROCEEDINGS

(Issued October 6, 1965)

On August 13, 1965, Sinclair Oil & Gas Company (Sinclair) submitted an offer of settlement in these proceedings pursuant to Section 1.18(e) of the Commission's Rules of Practice and Procedure, and in accordance with the Seventh and Ninth Amendments to the Statement of General Policy No. 61–1 (18 CFR 2.56). The proposed settlement involves a sale of natural gas by Sinclair to Texas Eastern Transmission Corporation (TETCO) in the Greenwood-Waskom Field, Caddo Parish, Louisiana, under Sinclair's FPC Gas Rate Schedule No. 325. Each of the proposed increased rates was suspended by order of the Commission, and with the exception of Supplement No. 12 to said rate schedule, was made effective subject to refund by Sinclair's predecessor, Hiawatha Oil and Gas Company (Hiawatha).

Under the terms of the offer, Sinclair proposes to eliminate the favored-nation and annual periodic escalation provisions from said rate schedule, and to substi-

[1] The additional dockets involved herein are set forth in the appendix hereto.

tute, in lieu thereof, a base rate of 14.6154¢ per Mcf of natural gas at 15.025 psia, exclusive of tax reimbursement, and 1.0¢ periodic increase to occur on November 1, 1968, and November 1, 1973, the latter increase to be effective for the remaining term of contract, which is sometime in 1976. Additionally, Sinclair proposes to reduce the presently effective tax reimbursement, which is being collected subject to refund, from 1.875¢ to 1.75¢ per Mcf, and to refund to TETCO all amounts collected for tax reimbursement in excess of the latter rate since February 1, 1959. The proposed settlement rate, inclusive of tax reimbursement, is thus 16.3654¢ per Mcf. The total refunds, which will include amounts collected by both Sinclair and its predecessor, Hiawatha, will be approximately $725. Sinclair's annual revenues from this sale will be reduced approximately $239 under the terms of its proposal.

TETCO has filed its agreement to the proposal, and comments were filed by Public Service Electric and Gas Company, one of the parties to these proceedings. No protests or objections to the proposal have been filed.

We desire to make it clear that acceptance of Sinclair's offer of settlement shall not be construed as approval of any future increased rate filed in accordance with its substituted periodic escalation provisions or its reservation of the right to file increases to cover future tax increases as provided in its offer of settlement, and is without prejudice to any finding or order of the Commission in any future proceedings, including area rate or other similar proceedings, involving Sinclair's rate.

The Commission finds:

The proposed settlement of the above-designated proceedings, on the basis described herein, as more fully set forth in the offer of settlement filed with the Commission by Sinclair on August 13, 1965, as herein conditioned, is consistent with the Statement of General Policy No. 61–1, as amended, 18 CFR 2.56, and approval thereof as made effective and hereinafter ordered is in the public interest and is appropriate to carry out the provisions of the Natural Gas Act.

The Commission orders:

(A) The offer of settlement filed with the Commission by Sinclair on August 13, 1965, is approved in accordance with the provisions of this order.

(B) Sinclair shall file within 30 days from the issuance of this order, a notice of change in rate providing for the settlement rate of 16.3654¢ per Mcf under its Rate Schedule No. 325.

(C) Sinclair shall file within 30 days from the issuance of this order a contract amendment to its Rate Schedule No. 325 eliminating all the favored-nation and price escalation provisions therefrom and substituting periodic pricing provisions consistent with its settlement proposal.

(D) Sinclair shall compute the difference between the rates collected subject to refund in the above-entitled proceedings and the settlement rate of 16.3654¢ per Mcf for sales to TETCO in accordance with its settlement proposal, with applicable interest to the date of this order, and shall within 45 days from the date of issuance of this order submit a report to the Commission, with a copy to TETCO, setting out the amount of refunds (showing separately the principal and applicable interest) the bases used for such determination, the periods covered, and ten days thereafter file a letter from TETCO agreeing to the correctness of such amounts, and shall ten days from such filing refund such monies to TETCO.

(E) Upon notification by the Secretary of the Commission that Sinclair has complied with the terms and conditions of this order, the rate and charge of

16.3654¢ per Mcf of natural gas under its Rate Schedule No. 325, specified in its offer of settlement shall be effective as of the date of this order and these proceedings shall be deemed severed from the T. L. James, Inc., *et al.*, Docket No. G–16492, *et al.*, proceedings, and shall be deemed terminated, all without further order of the Commission.

(F) The acceptance by the Commission of Sinclair's offer of settlement, as conditioned herein, is without any findings or determinations that may be made in any proceeding now pending, or hereafter instituted by or against Sinclair and is without prejudice to claims or contentions which may be made by Sinclair, the Commission staff, or any affected party hereto, in any proceeding, including area rate or similar proceedings.

APPENDIX

Supplement No.	Docket No.	Effective date	Rates (¢ per Mcf @ 15.025 Psia)		
			Approved	Suspended	Settlement
2	G–13528	4–1–58	[1] [2] 14.4354	[2] 14.8456	[3] 16.3654
4	G–16663	4–1–59		[4] 15.9257	[3] 16.3654
5	G–17675	2–1–59		[4] [5] 15.7206	[3] 16.3654
6	G–20066	4–7–60		[4] 16.1308	[3] 16.3654
7	RI61–177	4–1–61		[4] 16.3360	[3] 16.3654
8	RI62–129	4–1–62		[4] 16.5411	[3] 16.3654
9	RI63–96	4–1–63		[4] 16.7462	[3] 16.3654
10	RI64–169	4–1–64		[4] 16.9513	[3] 16.3654
12	RI65–254	(6)		[4] 17.1564	[3] 16.3654

[1] Initial certificated rate.
[2] Includes 1 cent tax reimbursement.
[3] Includes 1.75 cents tax reimbursement.
[4] Includes 1.875 cents tax reimbursement.
[5] Reflects tax reimbursement increase from 1.0¢ to 1.875¢.
[6] Suspended until Apr. 1, 1965, but not made effective.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

ALABAMA POWER COMPANY, PROJECT NO. 2203

ORDER ISSUING LICENSE (MAJOR)

(Issued October 7, 1965)

Application was filed on November 10, 1959, and supplemented on April 17 and June 19, 1961, and December 10, 1964, by Alabama Power Company (Applicant) of Birmingham, Alabama, for a license under Section 4(e) of the Federal Power Act (Act) for proposed Project No. 2203, to be located at the U.S. Government Holt Lock and Dam on the Black Warrior River, Alabama, about five miles upstream from Tuscaloosa, and affecting a navigable water of the United States and lands acquired by the United States in connection with its Holt Lock and Dam.

As described in the application for license and supplements thereto, the project would consist of an intake structure and powerhouse with an installation of 40,000 kw at the Holt Dam. Applicant proposes to construct the power facilities concurrently with construction of the Holt Lock and Dam by the Corps of Engineers, Department of the Army. However, in order to expedite completion of the entire Holt Lock, Dam, and power facilities, Applicant has indicated that it proposes to enter into an arrangement with the Corps of Engineers to construct

that part of the dam and appurtenant facilities between the powerhouse and the right (west) bank.

The Corps of Engineers, through the Secretary of the Army, submitted to Congress by letter of March 12, 1963 [1] a report in regard to potential power development at Holt Lock and Dam in which the Corps concluded that power facilities should be included to assure the full development of the water resources of the Black Warrior River. No recommendation was made by the Corps as to who should construct the power facilities, nor has the Congress authorized the construction of such facilities by the United States.

The Secretary of the Army and the Chief of Engineers have, pursuant to Section 4(e) of the Act, approved the tracings of the project structures covered in the application for license as supplemented through December 10, 1964, insofar as the interests of navigation are concerned. They also made recommendations for inclusion in any license for the project of certain conditions in the interests of the United States which would provide for: (1) repayment by the licensee of the separable costs which would ensure that the total project cost of Holt Lock and Dam to the Government be no greater than the cost of the project which would have been constructed without power included as a function, and reimbursement by the licensee for any work performed by the Corps specifically for the licensee in the design and construction of features of the Holt navigation dam which are solely related to any part of the facilities constructed by the licensee; (2) relief to the Government from payment of any claim for damages resulting from fluctuation in the normal pool elevation; (3) a plan for regulating the reservoir during flood periods based upon studies to be made by the Corps; and (4) for corrective measures by the licensee, if necessary, to eliminate adverse effects on navigation caused by the discharge of the project power installation. In addition, the Corps recommended that any license for the project include the conditions in the interests of navigation set forth in attached Form L–6, *infra*, p. 1114.

In commenting on the Corps' recommendations, Applicant advises that its proposal to construct all facilities between the powerhouse section and the right bank, in addition to the powerhouse and intake section of the dam, has eliminated the need for the Corps' recommended condition requiring reimbursement by the licensee of separable costs. In response the Corps has advised that the proposal would be satisfactory subject to approval by the Corps of plans and specifications and standards of construction and maintenance of such facilities but added that while the licensee's proposed plan of construction would appear to ensure that the total project costs to the Government be no greater than the cost of the project without power facilities, the Corps suggested that its proposed condition respecting separable costs not be eliminated as a license requirement and that the determination of such costs, if any, be left to future consideration after actual construction costs are known. Applicant has advised that it is agreeable to the Corps' requests requiring the Corps' approval of plans and specifications and standards of construction and maintenance of such facilities and that separable costs, if any, be determined after actual construction costs are known. Applicant has stated that if a condition in the interests of navigation is required in the license (Corps' recommended condition (4) above) in addition to those found in Form L–6, such a condition should be modified to provide that the required corrective measures or modifications shall be consistent with the primary purposes of the project, shall not unduly impair the project power value, and shall only be required after notice and opportunity for hearing and upon a Commission finding that such modification is necessary, desirable, and consistent with the

[1] House Document No. 84, 88th Cong., 1st Sess.

provisions of the Federal Power Act. The Corps' recommended license conditions are included herein substantially as set forth as Articles 6, 8, 9 and 10 of attached Form L–6, and Articles 40, 42, 48 and 49.

The Department of the Interior has recommended for inclusion in any license for the project conditions in the interest of fish and wildlife and recreation usually included in licenses for such projects, and certain special conditions in the interests of fish and wildlife and archeological survey and salvage. These conditions are included herein substantially as Articles 15 through 18 of attached Form L–6 and Article 41. The Department also recommended that since there has not been an omnibus River and Harbor Act since the aforementioned March 12, 1963 report by the Corps to the Congress, the Commission should defer action on the application for license until the Congress has had sufficient opportunity to act upon the Corps' report.

The Department of Health, Education, and Welfare has recommended that any license for the project require the licensee to undertake the following measures which the Department believes necessary to avoid adverse effects by the operation of the proposed project on the quality of water below the Holt Dam: (1) installation of the over-flow weir or other device upstream from the intake to assure withdrawal of water from the reservoir into the turbine at the highest possible level; *i.e.*, upper 25 feet; (2) maintenance of a minimum dry weather flow of at least 500 cfs; and (3) clearing of all areas to be flooded and for which the licensee is responsible. By letter dated February 22, 1965, Applicant stated that no such adverse effects from the operation of the Holt powerhouse would occur. In this connection, available information shows that the intake of the existing Bankhead power plant upstream from the proposed Holt project skims the upper layers which usually contain the best quality of water. The Holt reservoir is limited in size, having an area of 3,160 acres at normal depth of 75 feet. Whether or not the Holt reservoir will stratify and thereby cause a deleterious effect on the quality of water flowing through the reservoir cannot presently be predicted. If the reservoir does stratify, oxygen deficient water from the lower depths of the reservoir could be discharged through the turbine during the summer months. However, rather than require now the construction of a skimming weir which may not be necessary, we are by Article 43 herein requiring that the licensee shall cooperate with the Alabama Water Improvement Commission and the U.S. Public Health Service in conducting an evaluation study to determine the dissolved oxygen content of the water just below the Bankhead dam and powerhouse and the Holt dam and powerhouse, and providing for modification of the project operation or project structures should the study show that the operation of the Holt powerhouse has a deleterious effect on the quality of the water downstream therefrom. With respect to the request for provision for minimum flows, the subject project has no conservation storage and, therefore, can pass only such flows as may be received from inflows. Clearing of the reservoir is presently being undertaken by the Corps of Engineers in connection with the latter's construction of the Holt Lock and Dam.

Congress has had before it since March 1963, the Corps of Engineers' recommendation that power generating facilities should be installed at the Holt Lock and Dam, but has taken no action on this recommendation. On July 27, 1965 the Senate passed the 1965 Omnibus River and Harbor Bill. The House passed an amended version of this Bill on September 22, 1965. Neither the Senate nor House versions of this Bill contained any provision for power facilities at the Holt Lock and Dam. Construction of the main dam, the spillway and the lock is approaching completion by the Corps within the cofferdam area. To minimize hazards and costly upkeep of cofferdam and diversion facilities, construc-

tion of power generating facilities should be commenced by the summer of 1966. Immediate steps should be taken to secure access roads and procurement contracts for necessary equipment should be awarded promptly. Since there appears to be no compelling reason for Federal construction of such power generating facilities as opposed to private construction and since there are compelling reasons for authorizing prompt commencement of work on such facilities, we believe it would now be in the public interest to issue a license to Applicant for the construction of power generating facilities at the Holt Lock and Dam.

In order to coordinate the project construction with the construction schedule of the Corps of Engineers, we are by Article 45 herein providing that construction of the project be commenced within one year of the date of issuance of this license and be completed and placed in operation within three years thereafter.

By Article 46 herein we are requiring Applicant to file an Exhibit R within one year from the date of issuance of this license.

The Commission finds:

(1) Applicant is a corporation organized under the laws of the State of Alabama, and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effectuate the purposes of a license for the project.

(2) Public notice of the filing of the application has been given. No protests or petitions to intervene have been received. No conflicting application is before the Commission.

(3) The project will utilize surplus water or waterpower from a Government dam, but the issuance of a license therefor, as hereinafter provided, will not affect the development of any water resources for public purposes which should be undertaken by the United States.

(4) Subject to the terms and conditions hereinafter imposed, the project will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of waterpower development, and for other beneficial public uses, including recreational purposes.

(5) The installed horsepower capacity of the project hereinafter authorized for the purpose of computing the capacity component of the administrative annual charge is 53,300 horsepower, and the amount of annual charges, based on such capacity, to be paid under the license for the project for the costs of administration of Part I of the Act is reasonable.

(6) The issuance of a license for the project as hereinafter provided will not interfere or be inconsistent with the purposes of any reservation or withdrawal of public lands.

(7) The exhibits designated and described in paragraph (B) below conform to the Commission's rules and regulations and should be approved as part of this license.

The Commission orders:

(A) This license is hereby issued to Alabama Power Company (Licensee) of Birmingham, Alabama, under Section 4(e) of the Federal Power Act (Act) for a period of 50 years, effective as of September 1, 1965, for the construction, operation and maintenance of Project No. 2203, affecting a navigable water of the United States and lands acquired by the U.S. Corps of Engineers in connection with its Holt Lock and Dam, subject to the terms and conditions of the Act, which is incorporated herein by reference as a part of this license, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) Proposed Project No. 2203 will consist of:

(i) all lands constituting the project area and enclosed by the project boundary or the limits of which are otherwise defined, and/or interests in such lands necessary or appropriate for the purpose of the project, whether such lands or interests therein are owned or held by the applicant or by the United States; such project area and project boundary being more generally shown and described by certain exhibits which formed part of the application for license and which are designed and described as follows:

Exhibit J: (FPC No. 2203–2) General Map of Project Area.

Exhibit K: (FPC No. 2203–13) Project Area Map.

(ii) Project works consisting of a power installation to be constructed concurrently with the proposed United States Holt Lock and Dam, which will create a reservoir of approximately 3,200 acres at elevation 186.5 feet, to include an intake structure located at the right end of the spillway, a power-house containing a 55,200 horsepower turbine operating under a gross head of 60 feet and connected to a 40,000 kilowatt generator, a substation, a tailrace, and a transmission line to the Holt substation; and other appurtenant facilities; the location, nature and character of which are more specifically shown and described by the exhibits which also formed part of the application for license and which are designated and described as follows:

Exhibit L: (FPC No. 2203–14) General Plan. (FPC No. 2203–15) Powerhouse—Transverse section through unit. (FPC No. 2203–16) General Plan—Power Plant. (FPC No. 2203–17) Powerhouse—Substructure floor plans. (FPC No. 2203–18) Powerhouse—Longitudinal Section through unit.

Exhibit M: Two typewritten sheets entitled, "General Description of Mechanical, Electrical and Transmission Equipment," filed April 17, 1961.

(iii) all other structures, fixtures, equipment or facilities used or useful in the maintenance and operation of the project and located on the project area, including such portable property as may be used or useful in connection with the project or any part thereof, whether located on or off the project area, if and to the extent that the inclusion of such property as part of the project is approved or acquiesced in by the Commission; also, all riparian or other rights, the use or possession of which is necessary or appropriate in the maintenance or operation of the project.

(C) This license is also subject to the terms and conditions set forth in Form L–6 (Revised September 1, 1965) entitled "Terms and Conditions of License for Unconstructed Major Project Affecting Navigable Waters and Lands of the United States" (*infra*, p. 1114), which terms and conditions, designated as Articles 1 through 39, are attached hereto and made a part hereof, except for Articles 4, 7 and 34, and subject to the following special conditions set forth herein as additional articles:

Article 40. The construction, operation, and maintenance of the project and any work incident to additions or alterations shall be subject to the inspection and supervision of the District Engineer, U.S. Army Engineer District, Mobile, Alabama, or of such other officer or agent as the Commission may designate, who shall be the authorized representative of the Commission for such purposes. The Licensee shall furnish detail plans and specifications to said representative and construction of the project works or any feature thereof shall not be initiated until such plans and specifications have been approved by said representative. The Licensee shall cooperate fully with said representative and shall furnish him a detailed program of inspection by the Licensee that will provide for an adequate and qualified inspection force for construction of the project. Construction of the project works or any feature thereof shall not be initiated until the program of

inspection for the project works or any such feature thereof has been approved by said representative. The Licensee shall also furnish to said representative such further information as he may require concerning the construction, operation, maintenance of the project, and of any alteration thereof, and shall notify him of the date upon which work will begin, and as far in advance thereof as said representative may reasonably specify, and shall notify him promptly in writing of any suspension of work for a period of more than one week, and of its resumption and completion. The Licensee shall allow him and other officers or employees of the United States, showing proper credentials, free and unrestricted access to, through, and across the project lands and project works in the performance of their official duties.

Article 41. The Licensee shall consult with the Alabama Museum of Natural History and shall furnish funds in a reasonable amount to be approved by the Commission to survey and/or salvage archeological remains, if any.

Article 42. The Licensee shall reimburse the United States for any work performed specifically for the Licensee on the design of any part of the facilities to be constructed by the Licensee and for the design and construction of features of the Holt navigation dam which are solely related to any part of the facilities to be constructed by Licensee. Arrangements for payment shall be made with the Chief of Engineers, Department of the Army, at the time of commencement of construction of the project.

Article 43. The Licensee shall, in cooperation with the Alabama Water Improvement Commission and the U.S. Public Health Service, conduct an evaluation study for a period of five years to determine the dissolved oxygen content of the water just downstream from the Bankhead dam and powerhouse and the Holt dam and powerhouse. An annual progress report of the evaluation study shall be filed with the Commission. The Licensee shall modify the project operation or project structures as may be prescribed by the Commission, after notice and opportunity for hearing, in the event the operation of Holt powerhouse has a deleterious effect on the quality of the water.

Article 44. The Licensee shall pay to the United States the following annual charge, effective September 1, 1965:

(i) For the purpose of reimbursing the United States for the costs of administration of Part I of the Act, a reasonable annual charge as determined by the Commission, in accordance with its regulations, in effect from time to time. The authorized installed capacity for such purposes is 53,300 horsepower.

(ii) For the purpose of recompensing the United States for the utilization of surplus water or water power from the Government dam or lands in connection therewith, an amount to be hereafter determined by the Commission. Such an amount will be based on the sharing of power benefits.

Article 45. Licensee shall commence construction of the powerhouse and intake section at the Holt Lock and Dam within one year from the date of issuance of this license, shall thereafter in good faith and with due diligence prosecute such construction, and shall complete the project facilities and place them in operation within 3 years thereafter.

Article 46. The Licensee shall within one year from the date of issuance of this license submit for Commission approval an Exhibit R, conforming to regulations contained in 18 CFR 4.41.

Article 47. The Licensee shall submit in accordance with the Commission's rules and regulations, Exhibit L drawings for the powerhouse and intake section at the Holt Lock and Dam and the Licensee shall not begin construction of the project works until the Commission approves the exhibits.

Article 48. Upon the petition of the Chief of Engineers, Department of the Army, the Licensee shall reimburse the United States in such amount, to be hereafter determined by the Commission as would ensure that the total project costs to the United States be no greater than the cost would have been if the Holt Lock and Dam had been constructed without power facilities.

Article 49. Licensee shall construct facilities or take other corrective measures to eliminate adverse effects on navigation caused by discharge from the power plant, as may be ordered by the Commission upon its own motion or upon the recommendation of the Chief of Engineers, Department of the Army, after notice and opportunity for hearing and upon findings based on substantial evidence that the construction of such facilities or the taking of other corrective measures are necessary and desirable to eliminate adverse effects on navigation and are otherwise consistent with the provisions of the Act.

(D) The exhibits designated and described in paragraph (B) above are hereby approved as part of this license.

(E) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgement of the acceptance of this license, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

FORM L–6

(REVISED SEPTEMBER 1, 1965)

TERMS AND CONDITIONS OF LICENSE FOR UNCONSTRUCTED MAJOR PROJECT AFFECTING NAVIGABLE WATERS AND LANDS OF THE UNITED STATES

Article 1. The entire project, as described in the order of the Commission, shall be subject to all the provisions, terms, and conditions of the license.

Article 2. No substantial change shall be made in the maps, plans, specifications, and statements described and designated as exhibits and approved by the Commission in its order as a part of the license until such change shall have been approved by the Commission: Provided, however, that if the Licensee or the Commission deems it necessary or desirable that said approved exhibits, or any of them, be changed, there shall be submitted to the Commission for approval amended, supplemental, or additional exhibit or exhibits covering the proposed changes which, upon approval by the Commission, shall become a part of the license and shall supersede, in whole or in part, such exhibit or exhibits theretofore made a part of the license as may be specified by the Commission.

Article 3. Said project works shall be constructed in substantial conformity with the approved exhibits referred to in Article 2 herein or as changed in accordance with the provisions of said article. Except when emergency shall require for the protection of navigation, life, health, or property, no substantial alteration or addition not in conformity with the approved plans shall be made to any dam or other project works under the license without the prior approval of the Commission; and any emergency alteration or addition so made shall thereafter be subject to such modification and change as the Commission may direct. Minor changes in the project works or divergence from such approved exhibits may be made if such changes will not result in decrease in efficiency, in material increase in cost, or in impairment of the general scheme of development; but any of such minor changes made without the prior approval of the Commission, which in its judgment have produced or will produce any of such results, shall be subject to such alteration as the Commission may direct. The

Licensee shall comply with such rules and regulations of general or special applicability as the Commission may from time to time prescribe for the protection of life, health, or property.

Article 4. The construction, operation, and maintenance of the project and any work incident to additions or alterations shall be subject to the inspection and supervision of the Regional Engineer, Federal Power Commission, in the region wherein the project is located, or of such other officer or agent as the Commission may designate, who shall be the authorized representative of the Commission for such purposes. The Licensee shall cooperate fully with said representative and shall furnish him a detailed program of inspection by the Licensee that will provide for an adequate and qualified inspection force for construction of the project. Construction of the project works or any feature thereof shall not be initiated until the program of inspection for the project works or any such feature thereof has been approved by said representative. The Licensee shall also furnish to said representative such further information as he may require concerning the construction, operation, and maintenance of the project, and of any alteration thereof, and shall notify him of the date upon which work will begin, and as far in advance thereof as said representative may reasonably specify, and shall notify him promptly in writing of any suspension of work for a period of more than one week, and of its resumption and completion. The Licensee shall allow him and other officers or employees of the United States, showing proper credentials, free and unrestricted access to, through, and across the project lands and project works in the performance of their official duties.

Article 5. Insofar as any material is dredged or excavated in the prosecution of any work authorized under the license, or in the maintenance of the project, such material shall be removed and deposited so it will not interfere with navigation, and will be to the satisfaction of the District Engineer, Department of the Army, in charge of the locality.

Article 6. The United States specifically retains and safeguards the right to use water in such amount, to be determined by the Secretary of the Army, as may be necessary for the purposes of navigation on the navigable waterway affected; and the operations of the licensee, so far as they affect the use, storage and discharge from storage of waters affected by the license, shall at all times be controlled by such reasonable rules and regulations as the Secretary of the Army may prescribe in the interest of navigation, and as the Commission may prescribe for the protection of life, health, and property, and in the interest of the fullest practicable conservation and utilization of such waters for power purposes and for other beneficial public uses, including recreational purposes; and the Licensee shall release water from the project reservoir at such rate in cubic feet per second, or such volume in acre-feet per specified period of time, as the Secretary of the Army may prescribe in the interest of navigation, or as the Commission may prescribe for the other purposes hereinbefore mentioned.

Article 7. Whenever the United States shall desire to construct, complete, or improve navigation facilities in connection with the project, the Licensee shall convey to the United States, free of cost, such of its lands and its rights-of-way and such right of passage through its dams or other structures, and permit such control of pools as may be required to complete and maintain such navigation facilities.

Article 8. The Licensee shall furnish free of cost to the United States power for the operation and maintenance of navigation facilities at the voltage and frequency required by such facilities and at a point adjacent thereto whether said facilities are constructed by the Licensee or by the United States.

Article 9. The operation of any navigation facilities which may be constructed as a part of or in connection with any dam or diversion structure constituting a part of the project works shall at all times be controlled by such reasonable rules and regulations in the interest of navigation, including the control of the level of the pool caused by such dam or diversion structure, as may be made from time to time by the Secretary of the Army.

Article 10. The Licensee shall for the protection of navigation, construct, maintain and operate at its own expense such lights and other signals on fixed structures in or over navigable waters of the United States as may be directed by the Secretary of the Department in which the Coast Guard is operating.

Article 11. The actual legitimate original cost of the original project, and of any addition thereto or betterment thereof, shall be determined by the Commission in accordance with the Act and the Commission's rules and regulations thereunder.

Article 12. After the first twenty (20) years of operation of the project under the license, six (6) percent per annum shall be the specified rate of return on the net investment in the project for determining surplus earnings of the project for the establishment and maintenance of amortization reserves, pursuant to Section 10(d) of the Act; one-half of the project surplus earnings, if any, accumulated after the first twenty years of operation under the license, in excess of six (6) percent per annum on the net investment, shall be set aside in a project amortization reserve account as of the end of each fiscal year, provided that, if and to the extent that there is a deficiency of project earnings below six (6) percent per annum for any fiscal year or years after the first twenty years of operation under the license, the amount of such deficiency shall be deducted from the amount of any surplus earnings accumulated thereafter until absorbed, and one-half of the remaining surplus earnings, if any, thus cumulatively computed, shall be set aside in the project amortization reserve account; and the amounts thus established in the project amortization reserve account shall be maintained therein until further order of the Commission.

Article 13. The Licensee shall install additional capacity or make other changes in the project as directed by the Commission, to the extent that it is economically sound and in the public interest to do so, after notice and opportunity for hearing.

Article 14. The Licensee shall, after notice and opportunity for hearing, coordinate the operation of the project, electrically and hydraulically, with such other power systems and in such manner as the Commission may direct in the interest of power and other beneficial public uses of water resources, and on such conditions concerning the equitable sharing of benefits by the Licensee as the Commission may order.

Article 15. The Licensee shall, for the conservation, and development of fish and wildlife resources, construct, maintain, and operate, or arrange for the construction, maintenance and operation of such facilities and comply with such reasonable modifications of the project structures and operation as may be ordered by the Commission upon its own motion or upon the recommendation of the Secretary of the Interior or the fish and wildlife agency or agencies of any State in which the project or a part thereof is located, after notice and opportunity for hearing and upon findings based on substantial evidence that such facilities and modifications are necessary and desirable, reasonably consistent with the primary purpose of the project, and consistent with the provisions of the Act.

Article 16. Whenever the United States shall desire, in connection with the project, to construct fish and wildlife facilities or to improve the existing fish and wildlife facilities at its own expense, the Licensee shall permit the United

States or its designated agency to use, free of cost, such of Licensee's lands and interest in lands, reservoirs, waterways and project works as may be reasonably required to complete such facilities or such improvements thereof. In addition, after notice and opportunity for hearing, the Licensee shall modify the project operation as may be prescribed by the Commission, reasonably consistent with the primary purpose of the project, in order to permit the maintenance and operation of the fish and wildlife facilities constructed or improved by the United States under the provisions of this article. This article shall not be interpreted to place any obligation on the United States to construct or improve fish and wildlife facilities or to relieve the Licensee of any obligation under this license.

Article 17. The Licensee shall construct, maintain and operate or shall arrange for the construction, maintenance and operation of such recreational facilities including modifications thereto, such as access roads, wharves, launching ramps, beaches, picnic and camping areas, sanitary facilities and utilities, as may be prescribed hereafter by the Commission during the term of this license upon its own motion or upon the recommendation of the Secretary of the Interior or other interested Federal and State agencies, after notice and opportunity for hearing and upon findings based upon substantial evidence that such facilities are necessary and desirable, and reasonably consistent with the primary purpose of the project.

Article 18. So far as is consistent with proper operation of the project, the Licensee shall allow the public free access, to a reasonable extent, to project waters and adjacent project lands owned by the Licensee for the purpose of full public utilization of such lands and waters for navigation and recreational purposes, including fish and hunting, and shall allow to a reasonable extent for such purposes the construction of access roads, wharves, landings, and other facilities on its land the occupancy of which may in appropriate circumstances be subject to payment of rent to the Licensee in a reasonable amount: Provided, that the Licensee may reserve from public access, such portions of the project waters, adjacent lands, and project facilities as may be necessary for the protection of life, health, and property and Provided further, that the Licensee's consent to the construction of access roads, wharves, landings, and other facilities shall not, without its express agreement, place upon the Licensee any obligation to construct or maintain such facilities. These facilities are in addition to the facilities that the Licensee may construct and maintain as required by the license.

Article 19. The Licensee shall be responsible for and shall minimize soil erosion and siltation on lands adjacent to the stream resulting from construction and operation of the project. The Commission upon request, or upon its own motion, may order the Licensee to construct and maintain such preventive works to accomplish this purpose and to revegetate exposed soil surface as the Commission may find to be necessary after notice and opportunity for hearing.

Article 20. No lease of the project or any part thereof whereby the lessee is granted the occupancy, possession, or use of the project, or any part thereof, shall be made without prior written approval of the Commission; and the Commission may, if in its judgment the situation warrants, require that all the conditions of the license, of the Act, and of the rules and regulations of the Commission shall be applicable to such property so leased to the same extent as if the lessee were the Licensee: Provided, that the provisions of this article shall not apply to leases of land or buildings or other property while not required to achieve the purposes of the license.

Article 21. Upon the completion of the project, or at such other time as the Commission may direct, the Licensee shall submit to the Commission for approval revised maps, plans, specifications, and statements insofar as necessary to show any divergence from or variations in the project area and project boundary as finally located or in the project works as actually constructed when compared with the area and boundary shown and the works described in the license or in the maps, plans, specifications, and statements approved by the Commission, together with a statement in writing setting forth the reasons which in the opinion of the Licensee necessitated or justified variations in or divergence from the approved maps, plans, specifications, and statements. Such revised maps, plans, specifications, and statement shall, if and when approved by the Commission, be made a part of the license under the provisions of Article 2 hereof.

Article 22. In the construction and maintenance of the project, the location and standards of roads and trails, and other land uses, including the location and condition of quarries, borrow pits, spoil disposal areas, and sanitary facilities, shall be subject to the approval of the department or agency of the United States having supervision over the lands involved.

Article 23. In the construction and maintenance of the project works, the Licensee shall place and maintain suitable structures and devices to reduce to a reasonable degree the liability of contact between its transmission lines, and telegraph, telephone, and other signal wires or power transmission lines constructed prior to its transmission lines and not owned by the Licensee, and shall also place and maintain suitable structures and devices to reduce to a reasonable degree the liability of any structures or wires falling and obstructing traffic and endangering life on highways, streets, or railroads. None of the provisions of this article is intended to relieve the Licensee from any responsibility or requirement which may be imposed by other lawful authority for avoiding or eliminating inductive interference.

Article 24. The Licensee shall make provision, or shall bear the reasonable cost, as determined by the agency of the United States affected, of making provision for avoiding inductive interference between any project transmission line or other project facility constructed, operated, or maintained under the license, and any radio installation, telephone line, or other communication facility installed or constructed before or after construction of such project transmission line or other project facility and owned, operated, or used by such agency of the United States in administering the lands under its jurisdiction.

Article 25. The Licensee shall clear such portions of transmission line right-of-way across lands of the United States as are designated by the officer of the United States in charge of the lands; shall keep the areas so designated clear of new growth, all refuse, and inflammable material to the satisfaction of such officer; shall trim all branches of trees in contact with or liable to contact the transmission line; shall cut and remove all dead or leaning trees which might fall in contact with the transmission line; and shall take such other precautions against fire as may be required by such officer. No fires for the burning of waste material shall be set except with the prior written consent of the officer of the United States in charge of the lands as to time and place.

Article 26. Timber on lands of the United States, cut, used, or destroyed in the construction and maintenance of the project works or in the clearing of said lands shall be paid for in accordance with the requirements of and at the current stumpage rates applicable to the sale of similar timber by the agency of the United States having jurisdiction over said lands; and all slash and debris resulting from the cutting or destruction of such timber shall be disposed of as the officer of such agency may direct.

Article 27. The Licensee shall do everything reasonably within its power and shall require its employees, contractors, and employees of contractors to do everything reasonably within their power, both independently and upon request of officers of the agency of the United States concerned, to prevent, make advanced preparations for suppression, and suppress fires on lands occupied under the license.

Article 28. The Licensee shall interpose no objection to, and shall in no way prevent, the use by the agency of the United States having jurisdiction over the lands of the United States affected, or by persons or corporations occupying lands of the United States under permit, of water for fire suppression from any stream, conduit or body of water, natural or artificial, used by the Licensee in the operation of the project works covered by the license, or to the use by said parties of water for sanitary and domestic purposes from any stream or body of water, natural or artificial, used by the Licensee in the operation of the project works covered by the license.

Article 29. The Licensee shall be liable for injury to, or destruction of, any buildings, bridges, roads, trails, lands, or other property of the United States, occasioned by the construction, maintenance, or operation of the project works or of the works appurtenant or accessory thereto under the license. Arrangements to meet such liability, either by compensation for such injury or destruction, or by reconstruction or repair of damaged property, or otherwise, shall be made with the appropriate department or agency of the United States.

Article 30. The Licensee shall allow any agency of the United States, without charge, to construct or permit to be constructed on, through, and across the project lands, conduits, chutes, ditches, railroads, roads, trails, telephone and power lines, and other means of transportation and communication not inconsistent with the enjoyment of said lands by the Licensee for the purposes stated in the license. This article shall not be construed as conferring upon the Licensee any right of use, occupancy, or enjoyment of the lands of the United States other than for the construction, operation, and maintenance of the project as stated in the license.

Article 31. There is reserved to the appropriate department or agency of the United States, or of the State or county involved, the right to take over, maintain, and supervise the use of any project road as a public road after construction of the project works is completed.

Article 32. The Licensee, its successors and assigns shall, during the period of the license, retain the possession of all project property covered by the license as issued or as later amended, including the project area, the project works, and all franchises, easements, water rights, and rights of occupancy and use; and none of such properties necessary are useful to the project and to the development, transmission, and distribution of power therefrom will be voluntarily sold, transferred, abandoned, or otherwise disposed of without the approval of the Commission: Provided, that a mortgage or trust deed or judicial sales made thereunder, or tax sales, shall not be deemed voluntary transfers within the meaning of this article. In the event the project is taken over by the United States upon the termination of the license, as provided in Section 14 of the Act, or is transferred to a new licensee under the provisions of Section 15 of the Act, the Licensee, its successors and assigns will be responsible for and will make good any defect of title to or of right of user in any of such project property which is necessary or appropriate or valuable and serviceable in the maintenance and operation of the project, and will pay and discharge, or will assume responsibility for payment and discharge, of all liens or incumbrances upon the project or project property

created by the Licensee or created or incurred after the issuance of the license: Provided, that the provisions of this article are not intended to prevent the abandonment or the retirement from service of structures, equipment, or other project works in connection with replacements thereof when they become obsolete, inadequate, or inefficient for further service due to wear and tear, or to require the Licensee, for the purpose of transferring the project to the United States or to a new Licensee, to acquire any different title to or right of user in any of such project property than was necessary to acquire for its own purposes as Licensee.

Article 33. For the purpose of determining the stage and flow of the stream or streams from which water is diverted for the operation of the project works, the amount of water held in and withdrawn from storage, and the effective head on the turbines, the Licensee shall install and thereafter maintain such gages and stream-gaging stations as the Commission may deem necessary and best adapted to the requirements; and shall provide for the required readings of such gages and for the adequate rating of such stations. The Licensee shall also install and maintain standard meters adequate for the determination of the amount of electric energy generated by said project works. The number, character, and location of gages, meters, or other measuring devices, and the method of operation thereof, shall at all times be satisfactory to the Commission and may be altered from time to time if necessary to secure adequate determinations, but such alteration shall not be made except with the approval of the Commission or upon the specific direction of the Commission. The installation of gages, the ratings of said stream or streams, and the determination of the flow thereof, shall be under the supervision of, or in cooperation with, the District Engineer of the United States Geological Survey having charge of stream-gaging operations in the region of said project, and the Licensee shall advance to the United States Geological Survey the amount of funds estimated to be necessary for such supervision or cooperation for such periods as may be mutually agreed upon. The Licensee shall keep accurate and sufficient record of the foregoing determinations to the satisfaction of the Commission, and shall make return of such records annually at such time and in such form as the Commission may prescribe.

Article 34. On the application of any person, association, corporation, Federal agency, State or municipality, the Licensee shall, after notice and opportunity for hearing, permit such reasonable use of its reservoirs or other project works or parts thereof as may be ordered by the Commission in the interest of comprehensive development of the waterway or waterways involved and the conservation and utilization of water resources of the region for water supply for steam-electric, irrigation, industrial, municipal or similar purposes consistent with the primary objective of the project. The Licensee shall receive such reasonable compensation as may be appropriate for use of its reservoirs or other project works or parts thereof for such purposes, any such compensation to be fixed either by Commission approval of an agreement between the Licensee and the party or parties benefiting or by the Commission in the event the parties are unable to agree. Applications shall contain information in sufficient detail to afford a full understanding of the proposed use, including satisfactory evidence that the applicant possesses necessary water rights pursuant to applicable State law, or a showing of cause why such evidence cannot be submitted, and a statement as to the relationship of the proposed use to any or municipal plans or orders which may have been adopted with respect to the use of such waters.

Article 35. Whenever the Licensee is directly benefited by the construction work of another licensee, a permittee, or of the United States of a storage reservoir or other headwater improvement, the Licensee shall reimburse the owner of the headwater improvement for such part of the annual charges for

interest, maintenance, and depreciation thereon as the Commission shall determine to be equitable, and shall pay to the United States the cost of making such determination as fixed by the Commission. For benefits provided by a storage reservoir or other headwater improvement of the United States the Licensee shall pay to the Commission the amounts for which it is billed from time to time for such headwater benefits and for the costs of making the determinations pursuant to the then current Commission Regulations under the Federal Power Act within 60 days from the date of rendition of a bill therefor and, upon failure to do so, shall thereafter be subject to the payment of the penalties specified in the then current Regulations. The Licensee shall have the right to pay such amounts under protests within the 60-day period and to reconsideration of the amounts billed or a hearing as provided by the then current Regulations under the Act.

Article 36. If the Licensee shall cause or suffer essential project property to be removed or destroyed or to become unfit for use, without replacement, or shall abandon or discontinue good faith operation of the project for a period of three years, or refuse or neglect to comply with the terms of the license and the lawful orders of the Commission mailed to the record address to the Licensee or its agent, the Commission will deem it to be the intent of the Licensee to surrender the license, and not less than 90 days after public notice may in its discretion terminate the license.

Article 37. Upon abandonment of the project the Licensee shall remove all buildings, equipment and power lines from lands of the United States and restore said lands to a condition satisfactory to agency having jurisdiction over the lands and shall fulfill such other obligations under the license as the Commission may prescribe.

Article 38. The right of the Licensee and of its transferees and successors to use or occupy navigable waters or lands of the United States under the license for the purpose of maintaining the project works or otherwise, shall absolutely cease at the end of the license period, unless a new license is issued pursuant to the then existing laws and regulations.

Article 39. The terms and conditions expressly set forth in the license shall not be construed as impairing any terms and conditions of the Federal Power Act which are not expressly set forth herein.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., David S. Black and Carl E. Bagge.

BATTLE CREEK GAS COMPANY AND PANHANDLE EASTERN PIPE LINE COMPANY, DOCKET NO. CP66-70

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued October 7, 1965)

On September 13, 1965, Battle Creek Gas Company (Applicant) filed in Docket No. CP66-70 an application, as supplemented on September 30 and October 1, 1965, pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Panhandle Eastern Pipe Line Company (Respondent) to establish a physical connection and point of delivery between its transportation facilities and the facilities proposed to be constructed by Applicant and to sell and deliver to Applicant an additional 1,500 Mcf of natural gas per day for resale and distribution to the Job Corps Training Center to be located at Fort Custer, Michigan, as more fully set forth in the application.

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Fort Custer, a military establishment owned and operated by the United States, has been designated as a site for a Job Corps Training Center. Applicant serves the adjacent area and has reached a tentative agreement with U. S. Industries, Inc., Educational Science Division, Custer Job Corps Center, Fort Custer, Michigan, to serve the requirements of the Training Center.

The United States will construct a gas distribution system to be owned and operated by it. Gas will be required for cooking, water heating and heating for 114 buildings which will be used for housing, training and servicing an initial component of 1,500 corpsmen and a staff of 300 to be located at the Training Center.

Applicant is an existing customer of Respondent and is presently authorized to receive up to 34,500 Mcf per day of natural gas through an existing delivery point.

Under the present proposal, Applicant will construct and operate approximately 4.8 miles of 8-inch and 0.6 mile of 6-inch lateral extending from the new delivery point to Fort Custer. The cost of these facilities is estimated to be $195,600, which will be financed from current operating revenues.

Respondent will construct and operate a meter and regulator station at an estimated construction cost of $29,500. Respondent sells gas to Applicant under Rate Schedule G–1 which provides for a contract demand rate of $2.19 per Mcf and a commodity rate of 24.1¢ per Mcf. The project is economically feasible.

By its order of September 23, 1965, the Michigan Public Service Commission authorized Applicant to construct and operate the proposed lateral and to sell the gas to the Job Corps Training Center.

Respondent filed a letter with the Commission on September 15, 1965, which stated that it had no objection to the proposal.

Due notice of the filing of the application and opportunity for hearing thereon was published in the Federal Register on September 22, 1965 (30 F.R. 12082). No protest, petition to intervene or notice of intervention has been filed.

The Commission finds:

(1) Panhandle Eastern Pipe Line Company, a Delaware corporation having its principal place of business in Kansas City, Missouri, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of September 23, 1942, in Docket Nos. G–200 and G–207 (3 FPC 273).

(2) Applicant is a public utility company in the State of Michigan and is authorized to construct and operate facilities to distribute and sell natural gas to inhabitants of the communities along its system.

(3) It is necessary and desirable in the public interest that Respondent be directed to establish a physical connection of its transportation facilities with the facilities proposed to be constructed by Applicant and to sell and deliver up to an additional 1,500 Mcf of natural gas per day to Applicant, as hereinbefore described and as more fully set forth in the application, as hereinafter ordered and conditioned.

(4) The requirement that Respondent serve Applicant, as requested, will not place an undue burden upon Respondent nor impair its ability to render adequate service to existing customers.

The Commission orders:

(A) Respondent is directed to establish a physical connection of its natural gas transmission system with the facilities to be constructed by Applicant and

to sell and deliver up to an additional 1,500 Mcf of natural gas per day to Applicant, all as hereinbefore described and as more fully described in the application.

(B) Applicant shall be prepared to receive natural gas from Respondent at the proposed new connection within one year from the date of this order.

(C) Respondent shall notify the Commission of the commencement of service within 10 days thereof.

(D) Respondent shall execute and file with the Commission a service agreement with Applicant in accordance with the Commission's Regulations.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., David S. Black and Carl E. Bagge.

IDAHO POWER COMPANY, PROJECT NO. 1975

ORDER APPROVING SUPPLEMENTAL PROJECT EXHIBIT M

(Issued October 8, 1965)

On September 20, 1965, Idaho Power Company, licensee for Bliss Project No. 1975, filed for Commission approval Supplemental Exhibit M showing an additional conductor to be bundled to the 81.1 mile long Midpoint-Brady section of the Boise Bench-Brady No. 1 line. The Bliss project is located on the Snake River in Elmore, Twin Falls and Gooding Counties, Idaho, and affects lands of the United States in Elmore and Twin Falls Counties.

The licensee advises that the additional conductor is needed to increase the capacity of the licensee's 230 kv transmission system between Midpoint and Brady Substation to transmit power from the western portion of the licensee's system to the eastern portion. The alteration of the No. 1 Midpoint-Brady section of line will be accomplished by installing one conductor for each of the phases one foot above the existing conductor which will be lowered by one foot. The additional line will be on an existing transmission line right-of-way, and, consequently, no additional lands of the United States will be involved.

The licensee further advises that there would be no cancellation or reduction of service during the low load shut down construction period of October–December, 1965, which occurs between the irrigation load season and the winter peak load, since during this period the licensee's No. 2 Midpoint-Brady section of line alone can carry the total load requirements.

Our records show that the licensee's load on the eastern end of the system was 257 mw in 1964 and the system load growth is estimated by the licensee to be about 6 percent per year. The proposed transmission capacity to be provided by the additional conductor would carry power equal to normal load growth for 5 to 6 years in the licensee's service area involved. In the circumstances, the increased transmission capacity, estimated by the licensee to cost approximately $750,000, appears to be an economically reasonable means of providing about 100 mw of transmission capacity to the eastern end of the licensee's system to assure transmission capacity at peak load times.

The Commission finds:

The following-described exhibit conforms to the Commission's rules and regulations and should be approved as part of the license for the project:

Exhibit M in one typewritten sheet dated September 16, 1965, entitled "Midpoint-Brady 230 KV Transmission Line-General Description & Specifications of Equipment to be Added", filed in the Commission on September 20, 1965.

The Commission orders:

The Exhibit M described in the above finding is hereby approved as part of the license for Project No. 1975.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., David S. Black and Carl E. Bagge.

PHILLIPS PETROLEUM COMPANY, G–16611, G–16612; KERR-MCGEE OIL INDUSTRIES, INC., G–16718, G–16719; THE JUPITER CORPORATION, G–16679

ORDER DENYING REHEARING

(Issued October 8, 1965)

Applications for Rehearing of our Opinion No. 470, issued August 11, 1965, 34 FPC 486, in the above proceeding, were filed on September 10, 1965, by The Jupiter Corporation and the Public Service Commission of the State of New York. In Opinion No. 470 we determined that a retroactive jurisdictional finding should not be made with regard to sales by Phillips Petroleum Company and Kerr-McGee Oil Industries, Inc. from the Hog Bayou and Rollover fields in South Louisiana and that an in-line price should be applied to these sales. We also found that a determination of the status of The Jupiter Corporation's activities in connection with the Rollover field sales should be deferred until the record in the proceeding in RI63–212 is before us.

In its application the New York Commission continues to urge a retroactive jurisdictional finding and also contends, as does Jupiter, that in any event the producers are selling directly to Tennessee Gas Transmission Corporation and thus anything paid to Jupiter should be included in the in-line price. Our position on a retroactive jurisdictional finding was made clear in Opinion No. 470. All of the other arguments made relate to the status of Jupiter and the contractual relationships involved in Docket No. RI63–212. These contentions must await a determination in that proceeding.

The Commission finds:

The applications for rehearing filed herein by Jupiter and the New York Commission present no facts or legal principles which would warrant any change or modification of the Commission's Opinion No. 470 issued August 11, 1965 in this proceeding.

The Commission orders:

The applications for rehearing in the above proceedings filed on September 10, 1965, by The Jupiter Corporation and the Public Service Commission of the State of New York are hereby denied.

Commissioner Bagge *not participating.*

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., David S. Black and Carl E. Bagge.

ALGONQUIN GAS TRANSMISSION COMPANY, DOCKET NO. CP64–6

ORDER AMENDING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued October 11, 1965)

On August 30, 1965, Algonquin Gas Transmission Company (Petitioner) filed in Docket No. CP64–6 a petition to amend the certificate of public convenience

and necessity issued in said docket by the Commission on December 19, 1963, 30 FPC 1559, which certificate has heretofore been amended by Commission orders issued on October 28, 1964, 32 FPC 1229, and March 29, 1965, 33 FPC 642, as more fully set forth in the petition to amend.

Petitioner is authorized to make additional Maximum Daily Quantity sales of firm gas to certain of its existing customers commencing on November 1, 1964, and November 1, 1965, as authorized in the orders mentioned above. By the instant filing, Petitioner seeks to alter the amounts of firm gas authorized for sale to three of its customers beginning November 1, 1965, under Petitioner's Rate Schedule F–1, as shown in the following table:

Customer	Volumes—Mcf at 14.73 p.s.i.a.		
	Presently authorized	Proposed change	Proposed maximum daily quantity
Newport Gas Light Company	3,940	(440)	3,500
Bristol and Warren Gas Company	1,500	150	1,650
North Attleboro Gas Company	560	40	600
Total	6,000	(250)	5,750

These customers have agreed to the proposed changes which were brought about as the result of the failure of gas loads to develop as anticipated, in the case of The Newport Gas Light Company, and the recent acquisition of previously unanticipated gas loads, in the cases of Bristol and Warren Gas Company and North Attleboro Gas Company. No new facilities will be required.

The net reduction in volumes of 250 Mcf per day will have no appreciable effect upon Petitioner's system capacity or economic feasibility. The decrease in estimated annual sales for the period will be approximately 67,500 Mcf out of a total annual volume of more than 97,000,000 Mcf.

Due notice of the filing of the petition was published in the Federal Register on September 11, 1965 (30 F.R. 11700). No protest, petition to intervene, or notice of intervention has been filed in this proceeding.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the certificate of public convenience and necessity issued in Docket No. CP64–6 on December 19, 1963, be further amended as hereinafter ordered.

The Commission orders:

(A) The certificate of public convenience and necessity issued to Algonquin Gas Transmission Company in Docket No. CP64–6 on December 19, 1963, and amended by orders issued on October 28, 1964, and March 29, 1965, is further amended by authorizing a net reduction of 250 Mcf of natural gas per day in firm deliveries to three customers served under Rate Schedule F–1, as hereinbefore described and as more fully described in the petition to amend.

(B) In all other respects said certificate, as amended, shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., David S. Black and Carl E. Bagge.

EAST TENNESSEE NATURAL GAS COMPANY AND TEXAS EASTERN TRANSMISSION CORPORATION, DOCKET NO. CP66-47

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued October 11, 1965)

On August 11, 1965, East Tennessee Natural Gas Company (East Tennessee), and Texas Eastern Transmission Corporation (Texas Eastern), jointly referred to as Applicants filed in Docket No. CP66-47 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of interconnecting facilities and emergency deliveries of natural gas, all as more fully set forth in the application.

The proposed interconnections will be located (1) where Texas Eastern's 30-inch line crosses East Tennessee's 12-inch South Line in Giles County, Tennessee, and (2) at a point where Texas Eastern's 30-inch line crosses East Tennessee's 22-inch North Line in Trousdale County, Tennessee.

The estimated total cost of the proposed facilities is $36,900 of which East Tennessee's share is $20,900, and Texas Eastern's share is $16,000 and which will be defrayed by the respective companies from funds on hand.

Texas Eastern and East Tennessee have entered into a letter agreement dated August 9, 1965, which provides for the utilization of the proposed interconnections in the event either company is confronted with an emergency which can be alleviated by the deliveries of natural gas from the other, without impairing their respective service obligations.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on October 7, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorization sought and upon consideration of the record,

The Commission finds:

(1) Applicant, East Tennessee Natural Gas Company, a Tennessee corporation having its principal place of business in Knoxville, Tennessee, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of January 30, 1948, in Docket No. G-889 (7 FPC 5).

(2) Applicant, Texas Eastern Transmission Corporation, a Delaware corporation having its principal place of business in Shreveport, Louisiana, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of March 30, 1949, in Docket No. G-1089 (8 FPC 228).

(3) The proposed emergency exchange of natural gas between the Applicants, and the construction and operation of the proposed facilities for the transportation of natural gas in interstate commerce, as hereinbefore described and as more fully described in the joint application and exhibits in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(4) The aforesaid proposed exchange and delivery of natural gas on an emergency basis, and the construction and operation of facilities are required by the

public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Applicants are able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(6) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that East Tennessee and Texas Eastern shall file their letter of agreement dated August 9, 1965, covering the proposed emergency interconnection and service as a special rate schedule to their respective FPC Gas Tariffs within 30 days after the date of issuance of this order.

(7) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicants' compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to the Applicants in this proceeding, jointly, authorizing the emergency exchange and delivery of natural gas as hereinbefore described, and the construction and operation of facilities for the transportation of natural gas in interstate commerce, as hereinbefore described and as more fully described in the joint application and exhibits in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicants' compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities authorized shall be completed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the aforesaid Regulations within 3 months of the date on which this order issues.

(D) East Tennessee and Texas Eastern shall file within 30 days after the issuance of this order their letter of agreement dated August 9, 1965, as a special rate schedule to their respective FPC Gas Tariffs.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., David S. Black and Carl E. Bagge.

HUMBLE GAS TRANSMISSION COMPANY, DOCKET NO. CP65-395

ORDER GRANTING RECONSIDERATION AND ISSUING TEMPORARY CERTIFICATE

(Issued October 11, 1965)

On June 9, 1965, Humble Gas Transmission Company (Humble) of New Orleans, Louisiana, filed an application pursuant to Section 7 of the Natural Gas Act, for a certificate of public convenience and necessity, as amended on July 6, 1965, for authorization to construct a measuring station and one four-inch pipeline approximately 4,100 feet in length, to maintain and operate approximately 2,350 feet thereof, and to transport, sell, and deliver natural gas to Diamond National Corporation (Diamond), as hereinafter described. The proposed lateral line will extend from a point of connection with Humble's

existing facilities near Natchez in Adams County, Mississippi, to Diamond's plant.

Humble agreed that upon completion of the construction of such facilities it would assign title to Diamond, free of cost, of that portion of the connecting line extending from the discharge side of its measuring station to the terminal end of the line at the plant. The proposed facilities are estimated to cost $21,000. The line section of approximately 1,750 feet in length that Humble intends to assign to Diamond represents approximately $8,400 of the estimated total cost of the proposed facilities.

Humble seeks authority to construct the aforementioned facilities in order to make a direct sale of natural gas to Diamond. Diamond will use this gas in boilers to produce steam for processing, for direct-fired driers, and miscellaneous plant uses in a facility that it is presently constructing near Natchez, Mississippi. Humble in its application, requests permission to transport for sale 500,000 Mcf of gas to Diamond on an annual basis and a maximum of 3,000 Mcf on a daily basis.

On July 12, 1965, Mississippi Valley Gas Company (Mississippi) filed a petition to intervene in opposition to Humble's application. In its petition to intervene, Mississippi alleges that it is a local gas distribution company serving over one hundred communities in Mississippi and that the Diamond plant will be located within the geographical confines which have been designated as its service area by the Mississippi Public Service Commission. Mississippi purchases gas to serve its customers in this area under a service agreement dated September 11, 1963, with Humble. Humble's effective gas tariff on file with the Commission contains a provision that could preclude Mississippi from attaching industrial loads of any significant size in this area.[1]

On August 18, 1965, Humble filed an application for a temporary certificate under the provisions of Section 157.17 of the Regulations to construct the aforementioned facilities in order to commence sales of natural gas to Diamond. Humble urged that a temporary certificate was necessary because unless gas was forthcoming to commence the operation of the plant between September 15, 1965 and October 1, 1965, Diamond would suffer irreparable loss in the market, as well as serious loss on its $12,000,000 plant investment. It further pointed out that the City of Natchez would also suffer economically because of the loss of Diamond's payroll and certain operational expenditures it anticipates making in the immediate area.

The Commission as a result of the aforementioned filings issued an order on September 17, 1965, 34 FPC 873, directing Humble to show cause in a formal hearing why it should not be found that the above-mentioned provision in Humble's tariff is unjust and unreasonable. The Commission in that order, mindful of the consequences that would result in the event that timely gas service was not afforded to Diamond, scheduled a prehearing conference for October 11, 1965, in order to seek means to afford service on some interim basis pending the final determination of this proceeding. The Commission therefore, by letter-order dated September 17, 1965, denied Humble's application for a temporary certificate in hope that the parties could arrive at some mutually satisfactory arrangement for interim service.

On September 30, 1965, the Staff of the Commission met with representatives of Humble, Mississippi, and Diamond in an attempt to arrive at some acceptable

[1] Paragraph 10 of the General Terms and Conditions of Humble's FPC Gas Tariff, Original Volume No. 1, provides as follows:

Buyer shall not sell gas purchased under Seller's Rate Schedule G–1 to any one industrial consumer in excess of 100,000 cubic feet per month except by written consent of Seller.

solution of the problem of interim service to Diamond. The parties were not able at this time to agree to a satisfactory solution to the interim service problem to Diamond. The Commission will therefore cancel the prehearing conference it had scheduled for October 11, 1965, with respect to this matter in light of the fact that the September 30, 1965 conference was directed to the precise problem for which the October 11 meeting was called and clearly indicated that the parties will not be able to voluntarily arrive at a mutually satisfactory solution.

On October 1, 1965, Humble filed a motion for reconsideration of the Commission's denial of the temporary certificate. Humble set forth that the settlement attempts, on an interim basis, have been fruitless, and that there remained a dire economic need to Diamond of assurance of a gas supply since the plant was virtually ready to begin operation.[2]

The Commission is of the opinion that as a result of these developments Humble's motion for reconsideration of the Commission's letter-order of September 17, 1965, denying its application for a temporary certificate in the instant proceedings, should be granted and that Humble should be granted the temporary certificate requested by its application filed on August 16, 1965. The Commission in granting this temporary certificate is mindful that the cost of the facilities to be installed by Humble is extremely small compared to the consequential loss that would be suffered by Diamond in the event they were forced to await a final determination of this proceeding in order to obtain natural gas service. However, the Commission also wants to make it abundantly clear herein that the installation of these facilities is not in any manner to prejudice the final outcome of the instant proceeding.

The Commission finds:

(1) No purpose will be served in holding the prehearing conference that it previously had scheduled for October 11, 1965, in its order to show cause issued on September 17, 1965, in the above-styled proceeding.

(2) An emergency as contemplated by Section 157.17 of the Regulations under the Natural Gas Act has been shown to exist warranting the issuance of a temporary certificate to Humble Gas Transmission Company to construct those facilities set forth above.

(3) The public convenience and necessity requires that Humble Gas Transmission Company's motion for reconsideration be granted.

The Commission orders:

(A) The prehearing conference scheduled to be held in the proceeding entitled *Humble Gas Transmission Company*, Docket No. CP65-395, on October 11, 1965, in the order to show cause issued by the Commission in the above-styled proceeding is cancelled.

(B) Humble Gas Transmission Company is granted the reconsideration it has requested in connection with the action taken by the Commission in its letter-order of September 17, 1965.

(C) Humble Gas Transmission Company is issued a temporary certificate of public convenience and necessity authorizing it to do and perform all of the matters requested to be authorized in its original application dated June 7, 1965, as supplemented on July 6, 1965, subject to the following conditions: (1) The cost of the facilities permitted under this temporary certificate is not to be included in the rate base of the Humble Gas Transmission Company, and (2) the granting of this temporary certificate is not to prejudice the outcome of the above-styled proceeding in any way.

Commissioner Black *not participating.*

[2] On October 8, 1965, Mississippi filed an answer in opposition to Humble's motion.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., David S. Black and Carl E. Bagge.

THE MANUFACTURERS LIGHT AND HEAT COMPANY AND TEXAS EASTERN TRANSMISSION CORPORATION, DOCKET NO. CP66-42

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued October 11, 1965)

On August 6, 1965, The Manufacturers Light and Heat Company (Manufacturers) and Texas Eastern Transmission Corporation (Texas Eastern) filed in Docket No. CP66-42 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the exchange and delivery of natural gas and the construction and operation of exchange facilities, all as more fully set forth in the application.

Manufacturers desires to test oil and gas leases owned by it by drilling a natural gas test well at a location on one of the leases in Monroe Township, Bedford County, Pennsylvania. Texas Eastern's facilities are approximately 13 miles closer to the test area than are the facilities of Manufacturers.

Manufacturers proposes to construct and operate approximately 1.7 miles of 6-inch diameter pipeline from a point of connection with a well line from the proposed exploratory well to a point of connection with one of Texas Eastern's parallel 20-inch and 24-inch diameter transmission pipelines, to be known as the Emerson Connection, to be located in Monroe Township. The facilities would be used by Manufacturers to transport gas from the first producing well and such other local natural gas as may be developed and become available from other wells which may be drilled in the area, whether by Manufacturers or by independent producers.

Pursuant to an exchange agreement entered into between the parties on July 23, 1965, Texas Eastern would simultaneously return substantially equal quantities of natural gas to Manufacturers at presently existing points of delivery provided in the service agreement between the parties dated October 20, 1964. The maximum daily quantities of gas to be exchanged under the proposal would not exceed 20,000 Mcf unless otherwise agreed by the parties.

Texas Eastern will make the necessary tap to its facilities and install and operate at the Emerson Connection the necessary valves, fittings and meter furnished by Manufacturers. Manufacturers will reimburse Texas Eastern for all labor costs in making such connection while Texas Eastern will operate such valves and fittings.

The total cost of construction of all the facilities is estimated to be $79,000, which will be borne by Manufacturers from funds on hand. Total yearly operating expenses are estimated at $4,000. The project appears to be economically feasible.

Due notice of the filing of the application was published in the Federal Register on August 18, 1965 (30 F.R. 10258). No petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on October 7, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, The Manufacturers Light and Heat Company, a Pennsylvania corporation having its principal place of business in Pittsburgh, Pennsylvania, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of December 29, 1944, in Docket No. G–593, *et al.* (4 FPC 821).

(2) Applicant, Texas Eastern Transmission Corporation, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order issued March 30, 1949, in Docket No. G–1098 (8 FPC 228).

(3) The facilities hereinbefore described and as more fully described in the application in this proceeding are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the transportation of natural gas by Applicants are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(4) Applicants are able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) The construction and operation of the proposed facilities and the transportation of natural gas by Applicants are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(6) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicants' compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of said Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to The Manufacturers Light and Heat Company and Texas Eastern Transmission Corporation authorizing the construction and operation of the facilities and the exchange and delivery of up to 20,000 Mcf of natural gas per day as hereinbefore described and as more fully set forth in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicants' compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) Construction of the facilities authorized herein shall not commence until such time as The Manufacturers Light and Heat Company discovers commercial quantities of gas in the proposed exploratory well which it intends to drill in Monroe Township, Bedford County, Pennsylvania.

(D) The facilities authorized shall be completed and placed in actual operation and the exchange and delivery of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within one year from the date of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., David S. Black and Carl E. Bagge.

MIDWESTERN GAS TRANSMISSION COMPANY, DOCKET NOS. RP61-19 AND RP62-7; NATURAL GAS PIPELINE COMPANY OF AMERICA, DOCKET NO. RP63-6

ORDER GRANTING INTERVENTION

(Issued October 11, 1965)

On August 31, 1965, the American Public Gas Association (Association), a nonprofit association of publicly owned gas distribution systems located in eighty-six communities in twenty-six (26) states, filed a petition to intervene in these proceedings for the purpose of filing pleadings and briefs and to participate in oral argument. The Association states that its members purchase natural gas from pipelines serving the twenty-six (26) states therein designated and that the resolution of the issue with respect to the proper method of determining the amount of depreciation to be reflected in calculating Midwestern's Federal income taxes "will directly affect the prices many of the Petitioner's members will pay for natural gas."

Answers and objections to the petition were filed on September 10, 1965, by Independent Natural Gas Association of America (INGAA) and on September 14, 1965, by Midwestern. Among the objections raised are: (1) The petition was not timely filed; (2) the substantive view expressed in the petition is already being advanced by the City of Chicago; and (3) the Association has failed to show that its members will be directly affected by a decision in these proceedings.

It would appear that the aforestated objections are not well taken in that the Association is in effect requesting limited intervention and such intervention, if granted, would in no way delay the progress of the proceedings. Further, it is not the substantive position advanced by a petitioner which should be the basis of granting or denying intervention, but rather whether the petitioner has an interest which may be adversely affected by a decision in the proceedings involved. *City of Pittsburgh* v. *F.P.C.*, 237 F. 2d 741; *National Coal Association* v. *F.P.C.*, 191 F. 2d 462; *Virginia Petroleum Jobbers* v. *F.P.C.*, 265 F. 2d 364; *Michigan Consolidated Gas Company* v. *F.P.C.*, 282 F. 2d 854. Accordingly, it is our view that the petition to intervene should be granted as hereinafter provided.

The Commission finds:

Good cause exists to accept the late filing of American Public Gas Association's petition to intervene and the participation of that intervener in these proceedings for the limited purpose set forth in its petition may be in the public interest.

The Commission orders:

The Association is hereby permitted to become an intervener in these proceedings herein provided, subject to the Rules and Regulations of the Commission; *Provided, however,* that its participation shall be limited to matters affecting its asserted rights and interests specially set forth in its petition for leave to intervene; and *Provided, further,* that the admission of the petitioner shall not be construed as recognition by the Commission that it might be aggrieved because of any order or orders of the Commission entered in these proceedings.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., David S. Black and Carl E. Bagge.

MILWAUKEE GAS LIGHT COMPANY AND MICHIGAN WISCONSIN PIPE LINE COMPANY, DOCKET NO. CP66-56

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued October 11, 1965)

On August 20, 1965, Milwaukee Gas Light Company (Applicant) filed in Docket No. CP66-56 an application pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Michigan Wisconsin Pipe Line Company (Respondent) to establish physical connection of its transmission facilities with the proposed facilities of Applicant and to sell natural gas to Applicant for resale and distribution in the village of Rudolph, Wood County, Wisconsin, and environs, as more fully described in the application.

Applicant proposes that Respondent be required to construct a measuring station and a four-inch transmission main, the transmission main to be constructed from a point on Respondent's present facilities which are located approximately 0.3 mile west of Rudolph to the proposed measuring station, by application of Respondent's "10-cent formula." Also proposed is the construction by Applicant of a complete distribution system in the village of Rudolph.

The total estimated volumes of gas required to meet Applicant's annual and maximum day requirements for the first three years of proposed operation in the village of Rudolph are stated to be:

	First year	Second year	Third year
Annual (Mcf)	12,688	14,901	16,654
Peak day (Mcf)	57	81	92

The total estimated cost of Applicant's proposed distribution system is $45,611, which will be financed with cash on hand. The lateral and necessary meter station to be constructed by Respondent are estimated to cost $26,000. The proposal is economically feasible.

On June 21, 1965, the village of Rudolph granted Applicant a franchise to supply natural gas in said village, and on August 12, 1965, the Public Service Commission of Wisconsin granted Applicant a certificate authorizing the construction and operation of the necessary facilities and the service to the public in the village of Rudolph.

On September 13, 1965, Respondent filed an answer to the application stating that it has no objections to providing the proposed service and constructing the proposed facilities. Respondent states that in view of the *de minimis* nature of the volumes involved, it can provide the requested service from existing sources of gas supply without the construction of additional main line facilities.

Due notice of the filing of the application and opportunity for hearing thereon was published in the Federal Register on September 2, 1965 (30 F.R. 11293). No protest, petition to intervene or notice of intervention has been filed.

The Commission finds:

(1) Respondent, Michigan Wisconsin Pipe Line Company, a Delaware corporation having its principal place of business in Detroit, Michigan, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore

found by the Commission in its order of November 30, 1946, in Docket No. G-669 (5 FPC 953).

(2) Applicant is a public utility company in the State of Wisconsin and is authorized to construct and operate facilities to distribute and sell natural gas to inhabitants of the communities along its system.

(3) It is necessary and desirable in the public interest that Respondent be directed to establish physical connection of its transportation facilities with the facilities proposed by Applicant and to sell and deliver up to 92 Mcf of natural gas per day to Applicant, as hereinbefore described and as more fully set forth in the application, as hereinafter ordered and conditioned.

(4) The requirement that Respondent serve Applicant, as requested, will not place any undue burden upon Respondent nor impair its ability to render adequate service to existing customers.

The Commission orders:

(A) Respondent is directed to establish physical connection of its natural gas transmission system with the facilities to be constructed by Applicant and to sell and deliver up to 92 Mcf of natural gas per day to Applicant, all as hereinbefore described and as more fully described in the application.

(B) Applicant shall be prepared to receive natural gas from Respondent within one year from the date of this order.

(C) Respondent shall notify the Commission of the commencement of service within 10 days thereof.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., David S. Black and Carl E. Bagge.

PANHANDLE EASTERN PIPE LINE COMPANY, DOCKET NO. CP66-7

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued October 11, 1965)

On July 12, 1965, Panhandle Eastern Pipe Line Company (Applicant), filed in Docket No. CP66-7 an application as supplemented on August 9, 1965, pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of two pipeline loop segments, all as more fully described in the application and supplement thereto.

Applicant proposes to construct and operate a 7.9-mile continuation of the 22-inch partial loop between Sneed, Texas, and Hansford, Texas, and an 18.5-mile 26-inch loop of a portion of the line between Hansford, Texas, and Liberal, Kansas. The facilities are needed in order to accommodate the volumes of gas which Applicant obtains from sources in the vicinity of the Panhandle field of Texas. The total volume to be transported through this lateral is being increased by 64,000 Mcf/d to 560,000 Mcf/d. The total volume of 1,119,000 Mcf/d flowing in the main transmission lines east of Liberal is the same volume authorized in Docket No. CP65-255, Applicant's last system expansion.

The estimated cost of the facilities is $1,933,000, which will be financed from funds on hand.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on October 7, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including

the application, as supplemented, and exhibits submitted in support of the authorization sought, and upon consideration of the record,

The Commission finds:

(1) Applicant, Panhandle Eastern Pipe Line Company, a Delaware corporation having its principal place of business in Kansas City, Missouri, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of October 17, 1945, in Docket No. G–254 (4 FPC 1081).

(2) The proposed construction and operation of facilities and transportation of natural gas by Applicant as hereinbefore described, and as more fully described in the application and exhibits in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid construction and operation of facilities and transportation of natural gas are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(2), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to the Applicant in this proceeding authorizing the construction and operation of facilities and the transportation of natural gas, as hereinbefore described and as more fully described in the application, as supplemented, and exhibits in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(2), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities authorized shall be completed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the aforesaid Regulations within 12 months of the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., David S. Black and Carl E. Bagge.

AREA RATE PROCEEDING (PERMIAN BASIN), DOCKET NO. AR61–1, ET AL.

ORDER DENYING MOTIONS FOR RECONSIDERATION OF ORDER TO SHOW CAUSE

(Issued October 12, 1965)

On August 5, 1965, 34 FPC 424, in the above-designated proceeding we ordered that certain respondents show cause why the rates prescribed by Opinion No. 468 and the accompanying order should not be applicable to certificate applications and rates for sales of gas made in the Permian Basin which were not covered

by such Opinion. Various parties to the proceeding have filed applications for rehearing of this order.[1] On October 4, 1965, we issued Opinion No. 468–A, *supra*, p. 1068, which denied rehearing of Opinion No. 468, 34 FPC 159, but makes certain modifications and clarifications.

In view of the modifications to Opinion No. 468 we shall extend the time for filings required by Ordering Paragraphs (A), (B), and (C) of the show cause order until December 6, 1965.

Except for the corrections set forth in the separate errata notice issued concurrently herewith, the motions for reconsideration set forth no new facts or principles of law which were not fully considered prior to the issuance of the subject Order to Show Cause or which, now being considered, warrant any change or modification of said order. In view of the modifications to Opinion No. 468, references to Opinion No. 468 in the show cause order should be read as meaning Opinion No. 468 as modified and clarified by Opinion No. 468–A and accompanying order.

The Commission orders:

(A) The motions for reconsideration filed herein are hereby denied.

(B) The time for complying with filing requirements set forth in Ordering Paragraphs (A), (B), and (C) of the August 5, 1965, Order to Show Cause are hereby extended until December 6, 1965.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., David S. Black and Carl E. Bagge.

HUNT OIL COMPANY, DOCKET NO. CI65–1241

ORDER DENYING APPLICATION FOR REHEARING AND RECONSIDERATION AND GRANTING EXTENSION OF TIME TO ACCEPT TEMPORARY CERTIFICATE

(Issued October 14, 1965)

On September 17, 1965, Hunt Oil Company (Hunt) filed an application for rehearing and reconsideration of the Commission's letter-order issued August 20, 1965, which granted to Hunt a temporary certificate of public convenience and necessity authorizing a proposed sale of natural gas to Panhandle Eastern Pipe Line Company (Panhandle) from Woodward and Dewey Counties, Oklahoma. The temporary certificate was issued pursuant to Hunt's request filed on May 27, 1965, to commence immediate service. It authorized the above-described sale subject, *inter alia*, to the following conditions:

(1) The initial price for gas sales attributable to:

(a) acreage in Woodward County shall be 17.0¢ per Mcf at 14.65 psia, subject to Btu adjustment as provided in the rate schedule.

(b) acreage in Dewey County shall not exceed 15.0¢ per Mcf at 14.65 psia, subject to Btu adjustment as provided in the rate schedule.

(2) The above-specified rates shall remain in effect until changed by Commission order in this proceeding, Docket No. CI65–1241.

(3) In the event that the Commission amends its General Policy Statement No. 61–1, by adjusting the boundary between the Panhandle area and the "Other" Oklahoma area so as to increase the initial wellhead price for new gas in the area of the sales in Dewey County involved herein, Hunt Oil Company may thereupon

[1] The order in question is interlocutory, relates only to procedural matters and therefore is not subject to an application for rehearing. The pleadings are therefore treated as motions for reconsideration.

substitute the new rate reflecting the amount of such increase, and thereafter collect such new rate prospectively in lieu of the initial rate herein required.

As Hunt correctly states, the differential in pricing reflected in the certificate conditions set out above arises from the Commission's General Policy Statement No. 61–1, which includes Woodward County, Oklahoma, in the Oklahoma "Panhandle" pricing area, a 17 cent area, and Dewey County, Oklahoma, in the Oklahoma "Other" area, a 15 cent area.

In its application for reconsideration Hunt points out that it will produce the gas involved herein from a well located in Woodward County. However, since the well is located on a 640 acre unit which spreads across Woodward and Dewey Counties, working interest owners holding leases in Dewey County will receive only 15 cents for their proportionate share of the gas by virtue of the terms of the temporary certificate. Hunt argues that the only justification for this result is the Commission's insistence upon adhering to its guideline boundaries established in its policy statement.

Hunt further set forth the Commission's announcement in its original policy statement to the effect that:

> The geological areas which we have used are convenient and well known. They are not necessarily in complete accord with geographical and economic factors which may be relevant to the establishment of pricing areas. As experience and changing factors may indicate, we will change or alter these areas from time to time in order to eliminate such inequities as may appear to exist because of our use of geographical boundaries. 24 FPC 818, 819.

On June 11, 1962, in Docket No. R–128 the Commission announced its proposal to change the boundaries of its natural gas pricing areas. It indicated that some of the original boundaries would not be changed, but that other areas have been divided or consolidated to form new areas. The Commission specifically set forth a proposal that the Oklahoma Panhandle and Carter-Knox areas be combined with Northwestern Oklahoma Counties into the Anadarko Basin Area. This proposed revision was predicated on accumulated experience which suggested the need for some revisions in the boundaries. The Commission invited interested parties to submit their views and comments. *Inter alia*, the existing boundary between the Oklahoma Panhandle and the Oklahoma Anadarko areas (both in the Anadarko Basin Area) was proposed to be eliminated (see Docket No. R–218, Proposed Revision, General Policy Statement 61–1 Pricing Areas). The revisions proposed in Docket No. R–218 have not been finally determined by the Commission.

On November 27, 1963, 30 FPC 1354, the Commission issued an order instituting an area rate proceeding (AR64–1); and, for the purpose of determining area rates, established the Hugoton-Anadarko Area. The Commission's order recognized four separate sub-areas within the Hugoton-Anadarko area. Furthermore, the Commission indicated that its investigation will "also consider whether such area rates should be uniform throughout separate production areas which are being consolidated for joint hearing or should vary from different production areas or for any other geological area encompassed within the proceeding" (30 FPC at p. 1357). In a related order the Commission expressly deferred further consideration of R–218. (30 FPC 1374).

It is clear that final disposition of the issues in AR64–1 will resolve the problem of the appropriate price to be charged for gas to be sold from the Hugoton-Anadarko area upon a complete evidentiary record. That price of course is now controlled by the delineation of areas in Policy Statement No. 61–1 and, as we pointed out in Opinion No. 446 (32 FPC 1306), "the appropriate procedure for effecting changes in area prices is not through piecemeal determinations in individual certificate proceedings, but rather in a rule-making or

rate proceeding in which all relevant factors may be evaluated." In short, the just and reasonable rates for the proposed sale herein will be established in the area rate hearing already underway. Pending such determination, we must adhere to the ceiling prices and area definitions set forth in our General Policy Statement No. 61–1.

Finally, Hunt complains that by the terms of the temporary certificate the specified rates (the initial price) to be charged shall remain in effect until changed by Commission order in this proceeding.[1]

We believe this provision is necessary pending ultimate determination of the price required by public convenience and necessity, in order to discharge our duty in the language of the Supreme Court that we "so condition the certificate that the consuming public may be protected while the justness and reasonableness of the price fixed by the parties is being determined under other sections of the Act." See *Atlantic Refining Company* v. *P.S.C. of New York*, 360 U.S. 378, 392.

The Commission orders:

(A) The application of Hunt Oil Company for reconsideration of the Commission's letter-order issued August 20, 1965, is denied.

(B) The request for extension of time to accept the temporary certificate to a date within 15 days after the issuance of the order herein is granted.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

PHILLIPS PETROLEUM COMPANY, DOCKET NOS. G–11217, G–14115, G–18417, G–18418, G–13734, G–15314, G–15315, G–18206, G–18207 AND G–18215

ORDER ON REMAND

(Issued October 14, 1965)

Phillips Petroleum Company (Phillips), on September 27, 1965, filed a motion requesting the Commission to enter an order directing El Paso Natural Gas Company (El Paso) to pay Phillips the sum of $26,248.67, together with simple interest thereon at 6 percent from April 8, 1964 (the date such sum was received by El Paso) until the date of payment. Phillips' request is based on the Court's decision in *Phillips Petroleum Company* v. *F.P.C.* (CA10, No. 7845) issued July 22, 1965, 349 F. 2d 535 setting aside the Commission's orders issued April 3, 1964, and June 10, 1964, 31 FPC 774, 1524, in the above-entitled proceedings insofar as they provide for the payment of interest on refunds made by Phillips subsequent to February 29, 1964, the date Phillips' tendered refunds herein with interest to El Paso. According to Phillips the principal amount of $26,248.67 represents the excess interest which Phillips was erroneously required to pay El Paso. In light of the court's decision, it is appropriate to grant Phillips' motion.

The Commission orders:

Within 30 days of the date of issuance of this order, El Paso shall refund to Phillips the amount of excess interest which Phillips was required to pay El Paso pursuant to the Commission's orders of April 3, 1964, and June 10, 1964, herein,

[1] As noted above, the temporary certificate specifically stated that if the Commission shall adjust its boundaries so as to increase the initial wellhead price for new gas in the area of the sales in Dewey County herein Hunt may substitute the new rate and collect such new rate prospectively.

with interest thereon at 6 percent from the date of payment by Phillips to the date El Paso makes refunds pursuant to this order. Within 10 days thereafter, El Paso shall file a copy of a release from Phillips with respect to such refunds.

OPINION NO. 479

NORTHERN NATURAL GAS COMPANY, DOCKET NOS. G–17485 AND G–17486; TOWN OF MANILLA, IOWA, DOCKET NO. RP64–46

OPINION AND ORDER MODIFYING AND ADOPTING INITIAL DECISION OF PRESIDING EXAMINER AMENDING CERTIFICATES

(Issued October 14, 1965)*

Syllabus

1. Northern's certificate should be amended to grant reduction in third-year contract demand since municipalities have no immediate need therefor, have suffered economic hardships from associated costs and there is no likelihood of material harm to pipeline's customers. P. 1140.
2. Fears that reduced contract demands will result in a revenue deficiency to Northern to be shouldered by Interveners is groundless—increased revenues from additional sales utilizing the released mainline capacity could reduce or totally eliminate claimed revenue deficiency. P. 1140.
3. North Central has not shown it is entitled to requested relief; unlike municipalities, it is suffering no economic hardship and seeks opportunity of increasing utilization of its propane air plant through reduction of contract demand. P. 1141.
4. North Central granted permission to defer use of its third-year contract demand until 1965–1966 heating season. P. 1141.
5. Reductions in contract demands can be made only with Commission approval on appropriate filings. P. 1141.
6. In a proceeding under Section 7 of the Natural Gas Act, Commission *issues* certificates of public convenience and necessity.

Justin R. Wolf, Charles A. Case, Jr., F. Vinson Roach, Jack C. Osborne, Daniel B. O'Brien and *Peter M. Andersen* for Northern Natural Gas Company

Robert F. Culver for Emmetsburg Municipal Gasworks and Town of Graettinger, Iowa

John F. Gaston for Iowa Electric Light & Power Company

Robert S. Hunt for Northwestern Public Service Company

Lloyd J. Marti for Western Power & Gas Company

George C. Mastor for Minneapolis Gas Company

George C. Pardee for Metropolitan Utilities District of Omaha

Mark W. Putney for Iowa Power & Light Company

A. R. Renquist for Northern States Power Company (Minnesota)

Justin A. Stanley, Robert A. Helman and *John L. McCausland* for Northern Illinois Gas Company

Charles F. Wheatley, Jr. for Manilla, Woodbine & Cascade, Iowa

Ned Willis for North Central Public Service Company

Richard C. Steffey for the Staff of the Federal Power Commission

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*Initial decision appears on p. 1143. Rehearing denied by order issued December 8, 1965, 34 FPC 1417.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., David S. Black and Carl E. Bagge.

BLACK, *Commissioner:*

This is a proceeding on requests by five Iowa towns operating municipal gas systems, namely, Emmetsburg, Graettinger, Manilla, Cascade, and Woodbine, and one private distributor, North Central Public Service Company (North Central) for Commission authorization permitting Northern Natural Gas Company (Northern) to reduce the third-year contract demand volumes prescribed for these customers by the order accompanying Opinion No. 324, issued on July 31, 1959, in *Northern Natural Gas Company*, 22 FPC 164.

By his initial decision issued July 1, 1965, following a four-day hearing, Presiding Examiner Harry W. Frazee would grant the requests of the five towns but would deny the request of North Central. The case is now before us on exceptions in opposition to the examiner's grant of relief, filed by two intervening customers of Northern, the Metropolitan Utilities District of Omaha and Minneapolis Gas Company (Interveners); and by North Central, urging reversal of the examiner's denial of its requested contract demand reduction. Northern's reply brief contends that there are extenuating circumstances which would justify approving all of the requested reductions as being in the public interest.

We conclude that the examiner correctly held that the certificate approving the five towns' contract demands should be amended to grant the reductions they request. As set forth in his decision, Cascade's 702 Mcf per day authorized third-year contract demand should be reduced by 93 Mcf to 609 Mcf; Emmetsburg's 1,415 Mcf reduced by 281 Mcf to 1,134 Mcf; Graettinger's 552 Mcf by 152 Mcf to 400 Mcf; Manilla's 477 Mcf by 86 Mcf to 391 Mcf; and Woodbine's 551 Mcf by 148 Mcf to 403 Mcf. We also conclude that the examiner correctly denied the reduction requested by North Central.

As to the five towns, the record shows that they do not presently need the contract demands they would release, that they have suffered definite economic hardship from the costs associated with their unneeded contract demands, and that there is no likelihood of any material harm resulting to Northern or its other customers from permitting the reductions requested. Also, here, as in our decision in *Transcontinental Gas Pipe Line Corporation*, 30 FPC 1044 (1963), granting the relief requested will permit the company to divert presently held but unused capacity to meet the needs of other customers. In the light of these facts, which are fully supported by detailed findings in the examiner's decision and by the record, the amendment of Opinion No. 324 and accompanying order to provide the relief requested by the five towns is clearly appropriate to carry out the provisions of the Act and is required by the public convenience and necessity.

The objections to granting such relief advanced by Interveners in their exceptions, are sufficiently answered by the examiner's decision. Primarily, Interveners fear that reducing the five towns' contract demands will result in a revenue deficiency to Northern that Interveners would have to shoulder. Such fears are groundless and do not justify withholding the relief the five towns request. The Interveners allege that the maximum estimated third-year revenue deficiency that might result from granting relief to the five towns is $54,592; the five towns place the figure at around $20,000. Either amount is minuscule in relation to Northern's gas utility operating revenues of over $225 million or the $168 million it realizes for its gas sold for resale. Further, increased revenues from additional sales by Northern utilizing released mainline capacity could reduce or totally eliminate the revenue deficiency claimed by Interveners.

As to North Central, it requests a reduction in its authorized third year contract demand by 1,482 Mcf, from 10,387 Mcf to 8,959 Mcf a day. We are of the opinion that North Central has not shown by substantial evidence that it is entitled to the requested relief. Unlike the five towns it is suffering no economic hardship. Rather it seeks through the reduction of its third year contract demands the opportunity of increasing the utilization of its propane air plant. There is no evidence here offered demonstrating that the contract demand requirements initially requested by North Central were the result of any policy of Northern to require or encourage customers to obtain inflated contract demand requirements. The sole basis for the relief requested is the availability of more economical alternative supplies. We find no basis justifying the requested relief.

Alternatively, North Central requests that, in the event we deny the reduction it seeks, we grant it permission to defer use of its third-year contract demand until the 1965–1966 heating season, which is, of course, now upon us. There appears to be no opposition to this request except that mentioned by Staff. Granting this request would evidently assist North Central to effect savings in its operations without any injury to Northern or its customers, and on the facts presented, appears to be in the public interest. Accordingly, we shall grant this request.

A question is raised concerning what is the proper basis for the relief the parties request. They contend that they are entitled to these reductions under the terms of Section 17.5 of the General Terms and Conditions of Northern's FPC gas tariff.[1] They argue that Northern has heretofore granted numerous contract reductions below the third-year contract demands certificated in Opinion No. 324. Thus, they conclude, it would be discriminatory and inequitable to deny their requested reductions. Northern concedes it has reduced the contract demands for some of the other customers but now disputes that its tariff permits automatic reductions of a party's contract demands without Commission approval. We agree with Staff and the examiner that the Commission's holding in the *Transco* case[2] is controlling on this point. Reductions in a party's contract demands can be made only with approval of the Commission on appropriate filings. In the light of this holding, we need not here concern ourselves with Northern's past interpretation of the effect of its tariff provisions.

The Interveners contend that the relief proposed by the examiner to the municipal systems retroactively applies a different test of economic feasibility to them than we applied to all other communities certificated in Opinion No. 324 and unlawfully discriminates against Interveners and Northern's other customers. They contend that these municipalities were certificated in Opinion No. 324 on condition that they either purchase certain minimum volumes or make a contribution in aid of construction. In support of their position, Interveners sought to address interrogatories to Northern to ascertain the various modifications to the third year contract demand requirements of the customers certificated in Opinion No. 324. Through these interrogatories, Interveners also sought to obtain from Northern the contributions in aid of construction

[1] (17.5) *Gas Utilities' Right to Decrease the Contract Demand:* The Gas Utility shall have the right to decrease the Contract Demand for any community effective with the billing month of November of any year, under any of the following conditions:

(a) When and to the extent that the capacity so released can be made available to and is offset by increases in the Contract Demands for other communities served by Northern in the same Rate Zone.

(b) When and to the extent that Northern elects to otherwise utilize the release capacity.

[2] *Transcontinental Gas Pipe Line Corporation*, Opinion No. 406, issued October 21, 1963, 30 FPC 1044, 1046, referred to hereinabove.

which would have been required of the five municipal parties in the present proceeding if they had requested in Opinion No. 324 the third year contract demand requirements as here reduced. Northern, while protesting the relevancy of this information, submitted answers to the interrogatories concerning the modifications of third year contract demands of other customers certificated in Opinion No. 324, as well as information concerning the contributions in aid of construction required of the various customers certificated by Opinion No. 324. It refused to provide information regarding the contributions in aid of construction which would have been required of the present parties on the grounds that such required a computation. Examiner Frazee upheld Northern's protest and refused to admit such information into evidence.

Although we would normally disagree with the examiner's ruling as to the irrelevancy of such information in this type proceeding, we believe the examiner's ruling should be upheld in the present case. It was developed on the present record that Northern, acting under an erroneous interpretation of its tariff provisions has permitted significant modification of the contract demand requirements of its various utility customers without reference to or approval by this Commission. Thus substantial modifications of the contract demand requirements of the various customers certificated in Opinion No. 324 have been effected, without protest of other customers and without question by the Commission. Our ruling in the present proceeding as to the requirements that all such modifications be submitted to and approved by the Commission will preclude a recurrence. Recognizing the substantial adverse economic impact which would result to innocent communities and customers from any effort on our part to retroactively impose the Opinion No. 324 contract demand requirements, we conclude that no regulatory purpose would be served by pursuing this matter further. But, we recognize the inequities which would result to the present parties were we to deny their requests. Thus, we conclude that the requested reductions of the five municipal customers in their third year contract demands should be approved but we would caution the industry that inflated market predictions, in the future, will not necessarily be accepted by the Commission as a basis for avoiding contribution in aid of construction that otherwise might be required of a customer.

Interveners contend that the real issue in the present proceeding is whether the municipalities, having chosen to purchase certain minimum volumes and having been certificated on that basis can now change the test of their certification. We disagree. In Opinion No. 324 the fundamental issue was the economic feasibility of the system expansion there proposed by Northern. We found that, subject to the terms and conditions therein prescribed, the proposed laterals met the tests of economic feasibility and were required by the public convenience and necessity. The issue now before us is whether it is in the public interest to continue to require Northern to hold unused pipeline capacity available for these towns when Northern's system is expanding rapidly and other uses of this capacity can be made, and where our refusal to do so would impose an unnecessary economic hardship on these distributors.

We have considered with care the exceptions to the examiner's decision not discussed herein, but have concluded that they are without substantial support in fact or reasonable basis in law, or are immaterial to decision in this case, and should therefore be denied. With the modifications described hereinabove, the presiding examiner's decision should be adopted herewith, as our decision in this case, effective as of the date of issuance of this opinion.

The Commission orders:

(A) The presiding examiner's initial decision issued herein on July 1, 1965, is modified as hereinabove set forth, and as so modified, is adopted as our decision in this case, effective as of the date of issuance of this opinion.

(B) North Central is authorized to defer the use of its third-year contract demand volumes authorized by Opinion No. 324, 22 FPC 164, as amended, until October 27, 1965.

(C) Except to the extent herein granted, the exceptions to the examiner's decision are denied.

INITIAL DECISION

OF THE PRESIDING EXAMINER UPON APPLICATIONS TO AMEND CERTIFICATES

(Issued July 1, 1965)

FRAZEE, *Presiding Examiner:*

This proceeding originates from a petition filed by the Northern Natural Gas Company (Northern) on June 12, 1964, for an amendment of the order accompanying Opinion No. 324 issued by the Commission on July 31, 1959, in *Northern Natural Gas Company*, Docket Nos. G–17485, G–17486, *et al.*, 22 FPC 164; affirmed *sub nom. Minneapolis Gas Co., et al.* v. *F.P.C.*, 278 F. 2d 870; cert. den. *Minneapolis Gas Co., et al.* v. *F.P.C.*, 346 U.S. 891, 81 S. Ct. 220. In its petition Northern requests authority to reduce the third year contract demand volume of natural gas which it has been certificated to sell to the City of Emmetsburg, Iowa.

Subsequent to Northern's filing, other petitions requesting reductions in their third year contract demand volumes were filed by the Iowa towns of Cascade, Graettinger, Woodbine, Osage,[1] and by North Central Public Service Company (North Central) for the Anoka, Minnesota, lateral.

Additionally, the town of Manilla, Iowa, filed a request for a reduction in its third year contract demand, but its filing is in the form of a complaint filed pursuant to Section 5(a) of the Natural Gas Act, as amended. It was docketed by the Commission as Docket No. RI'64–46.

On July 13, 1964, a "Joint Answer of Four Intervenors" was filed by Metropolitan Utilities District of Omaha, Nebraska, Minneapolis Gas Company, Northern States Power Company (Minnesota), and Western Power and Gas Company, opposing the granting of the requested reduction in the third year contract demand volume of the City of Emmetsburg.

On November 2, 1964, the Commission issued its order herein consolidating the proceedings, permitting intervention,[2] prescribing procedure, and fixing the date of hearing.

Hearings were held at which all parties were afforded an opportunity to offer evidence, and a substantial volume was offered and received. Further, those desiring to do so were permitted to file briefs.

The following tabulation summarizes the requests for reduction of the third year contract demand volumes which were certificated by the Commission's order accompanying its Opinion No. 324, issued July 31, 1959, in *Northern Natural Gas Company, et al.*, 22 FPC 164.

[1] By letter of the Secretary dated January 18, 1965, the request by the town of Osage, Iowa, to withdraw its petition filed October 2, 1964, seeking a reduction in its contract demand volumes was granted and its petition was severed from these proceedings.

[2] Permitted to intervene were: Towns of Manilla, Cascade, and Woodbine, Iowa (Joint Petition); Iowa Power and Light Company; Metropolitan Utilities District of Omaha; Minneapolis Gas Company; Northern States Power Company (Minnesota); Western Power and Gas Company; and Towns of Whittemore, West Bend, and Graettinger, Iowa (Joint Petition).

Petitioner and docket Nos.	Date of filing	3d year CD [3] certificated (Mcf @14.73)	CD presently sought	Reduction in CD requested (Mcf @14.73)
Cascade, Iowa, G–17485 and G–17486	8–27–64	702	609	93
Emmetsburg, Iowa, G–17486 [4]	8– 3–64	1,415	1,134	281
Graettinger, Iowa, G–17486	7–20–64 amended 9–28–64	552	400	152
Manilla, Iowa, RP64–46	6–30–64	477	391	86
North Central Public Service Co., G–17485 and G–17486	9– 2–64	[5] 10,387	8,959	1,428
Woodbine, Iowa, G–17485 and G–17486	8–27–64	551	403	148
Total		14,084	11,896	2,188

[3] Adjusted for the 2.5 percent increase in CD volumes caused by the reduced Btu value of Northern's gas resulting from the authorization in *Northern Natural Gas Co.*, 28 FPC 1155, 1164, to transport and deliver gas to its extraction plant near Bushton, Kansas.

[4] Northern had already filed a petition on June 12, 1964, requesting authorization to reduce Emmetsburg's CD from 1,415 to 1,134 Mcf.

[5] Total CD required to serve North Central's customers in the seven Minnesota communities of Anoka, Blaine, Champlin, Coon Rapids, Elk River, Lexington, and Spring Lake Park, all of which are situated on Northern's Anoka branch line, or lateral, just north of Minneapolis.

CASCADE

Natural gas service for the town of Cascade, Iowa, was found to be economically feasible by the Commission in its Opinion No. 324. A certificate was issued authorizing Northern to deliver and sell to Cascade a third year contract demand of 702 Mcf. Cascade issued and sold bonds to finance the construction of its distribution system. Initial service began in November 1961. Its system has operated at a financial loss since then. The manager of its natural gas system said the town's firm natural gas requirements have never been over 416 Mcf which was used on a peak day in December 1963, during its second heating season. He estimated Cascade's firm requirements for the 1966–67 heating season to be 526 Mcf, which is 83 Mcf more than the 609 Mcf of CD herein requested.

Cascade's problem is ascribable to those persons (or individuals) who made the original survey and estimates of the number of customers who would be attached in the first three years of service and the gas usage by each customer. The witness who made this survey prepared the estimates and testified for Cascade in the original application for a certificate authorizing service overestimated by 51, the number of residential space-heating customers that would be attached to the system in its third year of operation. He also over-estimated, by 700 cubic feet per residential customer, their gas usage on a peak day. A second witness, the present manager of its municipal gas system, says homeowners are reluctant to convert, or abandon, recently installed oil burning heating furnaces, to natural gas. However, by persistent effort, Cascade has been able to sell 85,858 Mcf of gas to interruptible customers in its third year of operation. However, the interruptible rates are so low that they produce little revenue over cost. Thus Cascade's problem arises primarily from its failure to attach the originally estimated number of residential space-heating customers and the failure of those attached to use as much gas as estimated.[6]

Cascade's operating loss from the beginning of service in November 1961 through December 1963 amounts to $22,914.77, including bond interest and redemptions. The reduction of 93 Mcf of CD herein sought would reduce its annual expenses, or costs of operation, by $3,610.26. After giving credit for additional estimated sales in 1965, and adding the costs for eleven months of

[6] The third year estimated usage was 45,000 Mcf, whereas actual usage was only 23,842 Mcf.

demand charges on 93 Mcf of gas, its estimated operating loss will amount to $6,309.41; however, if the CD is reduced by 93 Mcf annually, as herein requested, this estimated operating loss for 1965 would be reduced to $3,000, which is a considerable sum for a community of this size. Cascade has used its sinking fund and what cash remained from its initial financing to meet these operating losses. At the end of 1964 its bond retirement, or sinking fund, had a balance of $25. Therefore, even if the reduction of 93 Mcf of CD is allowed, the financial position of Cascade's municipal gas system will remain critical and, no doubt, require refinancing before it can operate profitably.

EMMETSBURG

Based upon the evidence of the record then before it, the Commission found, by its Opinion No. 324, the extension of natural gas service to the Emmetsburg Municipal Gasworks to be economically feasible and issued it a certificate on July 31, 1959, authorizing a contract demand (CD) of 738 Mcf/d for the first year (October 26, 1961 to October 25, 1962); for the second year 1,134 Mcf/d (as adjusted by Opinion No. 373, see fn. 3); and 1,415 Mcf/d for the third year (October 26, 1963 to October 25, 1964). Northern constructed the necessary facilities and initiated service to Emmetsburg in August 1961.

After receiving its certificate Emmetsburg promptly launched a promotional campaign to attach customers to its natural gas system. These efforts were expensive and the results were disappointing for, on the peak day of its first year, its total sales were only 707 Mcf, which was 31 Mcf less than its CD. Continuing its efforts to attach new customers, in the second year its peak-day total sales were 1,039 Mcf, which was 95 Mcf below its CD. Intensifying its efforts to attach new customers for its third year sales, the results were again below the original estimates, with peak-day third year actual sales at 1,094 Mcf, or 321 Mcf below the CD. The actual sales on these three year peak days included about 200 Mcf to interruptible customers who were not curtailed. Not withstanding its efforts to attach customers throughout the entire three year period the number of residential space-heating customers on November 13, 1964, was 189 less than estimated and the number of commercial space-heating customers was 13 less than was estimated at the time the record was made in Opinion No. 324 *supra*.

The witness now is the one who testified in the original hearing. He here admits his original estimates as to the number of customers and their gas usage were too optimistic. He now bases his testimony on actual experience rather than estimates and states that a contract demand of 1,113 Mcf would be ample to meet Emmetsburg's requirements during the 1965–66 heating season, but to make certain there will be no shortage on a peak day he recommends a CD of 1,134 Mcf. Thus, in its fifth year of natural gas service, Emmetsburg will need 281 Mcf less than he had originally estimated would be required in its third year of operation.

The witness for Emmetsburg in the first, as well as the present, hearing is unable to explain his over-estimating the gas requirements for Emmetsburg. He says he prepared estimates for other Iowa towns, using identical factors, and their third year usage exceeded his estimates. Because of this situation he offered no suggestion as to how over-estimating could be prevented in the future.

Emmetsburg issued and sold bonds to finance the construction of its natural gas plant. In its agreement with the bondholders, Emmetsburg must establish and pay substantial annual sums into a bond retirement fund and improvement fund. By the end of 1964—which was the latest report available—it had made these payments and reflected a net profit from its operation. Therefore, it would

currently be possible for Emmetsburg to pay for its certificated third year contract demand and yet show an operating net profit. The witness contends, however, the purchase of 281 Mcf of CD in excess of its requirements, even in its fifth year of service, keeps the cost of gas so high that potential customers will not convert from other fuels. On the contrary, a larger sales volume and additional customers would permit a reduction in local rates which would enable the city then to take additional CD.

GRAETTINGER

The town of Graettinger is served by Northern from the same branch line as Emmetsburg. Also, as in the case of Emmetsburg, the same witness here testifies for Graettinger who made its original estimates and who testified for it in the original proceedings. Based in part upon his estimates, the Commission in Opinion No. 324 found the extension of service to Graettinger to be economically feasible and issued it a certificate authorizing a CD of 552 Mcf for its third year requirements. Service was initiated in August of 1961.

Graettinger launched a promotional campaign to attach natural gas customers to its system. The campaigns were expensive and the results were disappointing; its experience in attaching gas customers was analogous to that of Emmetsburg and other applicants herein seeking a third year CD reduction. In the third year of service Graettinger had attached 17 less residential customers, 24 less residential space-heating customers,[7] and 8 less commercial space-heating customers than had originally been estimated. Graettinger's difficulty arises not only from its over-estimating the number and class of customers who would be attached for service in the third year, but also from the over-estimation of the peak-day usage of gas by these customers. The peak-day usage of an average residential space-heating customer was over-estimated by 180 cubic feet and the peak-day usage of an average commercial space-heating customer was over-estimated by 1,120 cubic feet of gas. On an annual basis the usage of an average residential heating customer was over-estimated by 28.5 Mcf and the average commercial heating customer by 122 Mcf.

Graettinger owns a municipal electric power plant which is operated by a Board of Trustees. It converted from fuel oil to natural gas in 1962 and has used about 85 Mcf per day. The Board of Trustees found they could purchase the electric energy requirements for the Graettinger municipal system from the U.S.B.R. from energy generated at dams on the Missouri River, at a substantial savings over their own generating costs, so in December of 1963 the municipal generating plant was closed and a substantial gas sale was lost to the town.

The evidence shows that if Graettinger is required to continue to pay the demand charges on 152 Mcf of gas which it does not need to meet its customer requirements, it will not be able to pay its operating costs, including the principal payments and interest due on its bonds. By the end of 1966 it will have exhausted its bond retirement and improvement funds and be in default on its bond obligations. Therefore, for these several reasons, it seeks a reduction of 152 Mcf in its third year certificated contract demand from 552 Mcf to 400 Mcf.

MANILLA

The Commission in its Opinion No. 324 found the extension of natural gas service to the Town of Manilla, Iowa, by Northern to be economically feasible and, based upon the evidence then before it, a certificate was issued authorizing a third year contract demand of 477 Mcf.

[7] The Census Bureau reported a 1950 population of 1,016 for Graettinger and a 1960 population of 879, a drop of 13.5 per cent.

Construction of its Municipal Gas Department was started in April 1961 and service was initiated when Northern made gas available in August 1961. Manilla issued and sold bonds to provide the funds for the construction of its gas distribution system.

Manilla's present predicament arises from its having originally over-estimated the number of customers who would convert to natural gas by the third year of service. Additionally, the gas usage factor was unusually large per average commercial space-heating customer. There is a shortage, as compared with actual, of 64 residential space-heating customers and 2 commercial space-heating customers from the number originally estimated for the third year. (Exh. 202) It was originally estimated the residential space-heating customers would use 38,080 Mcf annually, however, only 21,600 Mcf was used in the third year. It was also estimated that 39 commercial heating customers would use 105 Mcf on a peak day; in fact, however, 37 such customers used only 61 Mcf on the peak day of the third year. Therefore, experience shows the town would not have used its third year CD of 477 Mcf even if it had connected all the customers estimated. The population of the town decreased from 1,035 in 1950 to 921 in 1964, an 11 per cent loss. The effect was a decline in business economy resulting in the closing of at least four commercial establishments. Most of the homes in the town are occupied by elderly retired inhabitants[8] with incomes derived from farm crop rentals or pensions. Natural gas is not competitive with other fuels[9] in Manilla, which accounts for a reluctance to convert.

Manilla seeks to have its contract demand reduced from 477 Mcf to 391 Mcf, a reduction of 86 Mcf of gas, which would effect a reduction of $3,008.28 in its annual cost of gas. Its costs, including the payment of principal and interest on its bonds, for 1964 resulted in a net operating loss of $4,177.64 (this included the payment of CD charges on 477 Mcf for only one month). Its estimated net loss, after paying 11 months of CD charges on the 86 Mcf not needed, would amount to $6,222.73. With this operating record, Manilla contends it cannot meet its expenses if it is required to continue to purchase the certificated third year CD of 477 Mcf. The superintendent of the gas department testified that firm gas requirements have never exceeded 260 Mcf and that, in his opinion, a CD of 374 Mcf would be sufficient to meet its requirements for the 1966–67 heating season. He stated that a CD of 391 Mcf would meet their gas requirements for many years to come.

WOODBINE

In Opinion No. 324 the Commission authorized the Iowa Power and Light Company (Iowa Power) to distribute natural gas in the town of Woodbine, Iowa, and authorized Northern to sell and deliver gas to Iowa Power for distribution in Woodbine on condition that Iowa Power make a $14,200 contribution to Northern toward the cost of construction of the Woodbine measuring station. Thereafter, on November 7, 1960, Woodbine, by its Ordnance No. 63, cancelled and terminated the gas distribution franchise which had been granted to Iowa Power on June 4, 1954. The town of Woodbine then filed an application with the Commission on August 28, 1961, as amended on November 15, 1961, to amend the order accompanying Opinion No. 324 by substituting the town of Woodbine for Iowa Power as the gas distributor for Woodbine. Northern, in an answer to Woodbine's application, said it would sell and deliver gas to Woodbine if Woodbine would sign service agreements and make the $14,200 contribution in aid of

[8] More than 63 per cent of these houses are occupied by only one elderly person.

[9] Statistics show the cost per heating season for heating an average residence with fuel oil to be $147.42, with LPG to be $152.10, and with natural gas $180.00.

construction of the measuring station. Woodbine agreed and estimated its first, second and third year peak day CD would be 393 Mcf, 466 Mcf, and 538 Mcf,[10] respectively. The Commission, on February 20, 1962, issued its order in *Northern Natural Gas Company, et al.*, 27 FPC 382, amending Opinion No. 324 and authorizing Northern to sell and deliver gas to Woodbine for its municipal distribution system, instead of Iowa Power, provided Woodbine made the contribution in aid of construction.

Woodbine issued and sold gas revenue bonds to finance the construction of its distribution system. It commenced operation in September 1962. Now, in its third year of operation, Woodbine seeks a reduction in its contract demand to 403 Mcf, its estimated first year CD volume. Its witness said even the first year CD of 403 Mcf was greater than the town's requirements of 319 Mcf for the 1964–65 heating season. Woodbine's difficulty in not being able to use its third year CD is due to originally over-estimating the number of customers who would convert to natural gas. It was originally estimated Woodbine would attach 293 residential space-heating customers by its third year of service; it actually attached 147.[11] The original gas usage factor for residential space-heating customers proved to be relatively accurate.[12] Like other applicants herein, Woodbine experienced a decline in population from 1,467 in 1940 to 1,304 in 1960. This witness said 75 per cent of the town's population consists of retired farmers with small incomes or pensions who are reluctant to incur the costs for converting their present heating systems—mostly fuel oil—to natural gas.

According to the record, Woodbine paid its 1964 bond interest and principal from sources other than gas revenue. Its gas department has been operating at a loss since it began operations. At the end of 1964 its operating loss, including interest and principal payments on bonds, was $29,020.33. The annual CD charges on the 148 Mcf of gas—the amount of the reduction herein requested—amounts to $5,177.04. Its witness, the superintendent of the department, estimates the net operating loss to approximate $11,440 for the year 1965. Under these circumstances, if the reduction in CD is allowed as requested, Woodbine will continue to operate at an annual net loss of approximately $6,000 unless it can attach additional customers and increase the gas usage.

NORTHERN'S EVIDENCE

Northern's evidence consisted primarily of statements concerning the basic problem of economic feasibility standards and market estimates in certificate proceedings.

When Northern presented its evidence upon which Opinion No. 324 was issued, its branch line extension policy simply required that a branch line return sufficient revenues by the fifth year of service to pay for the gas in the field plus the out-of-pocket costs (compressor fuels, etc.) of transporting the gas to the town border stations, for the fixed and operating charges on the branch lines, and, in addition, contribute something—no matter how little—to Northern's main-line cost of service. In that matter, however, Northern presented engineering evidence and supporting data based upon the third year of service and the Staff,

[10] Adjusted upward from 393 to 403, 466 to 478, and 538 to 551 by new service agreements filed as a result of the Commission's order in *Northern Natural Gas Co.*, 28 FPC 1155. See fn. 3 *supra*.

[11] At the end of its third year of operation, which was 1964, the town actually had 238 gas customers of all classes. See Exh. 204, p. 1 of 2, col. 4, ln. 8. It was estimated it would attach an additional 26 customers, of all classes, in 1965. See Exh. 204, p. 1 of 2, col. 5, ln. 8.

[12] It was originally estimated that 293 residential space-heating customers would use 34,281. The 147 customers actually attached used 17,199.

in their brief, contended that the third year, rather than the fifth year, was the proper test period for determining the feasibility of a given branch line. This was adopted by the Commission. *Northern Natural Gas Co.*, 22 FPC 164, 172–173, wherein it was said "where the annual revenues from a given branch line on the third year basis will not be sufficient to meet the costs associated with the measuring stations for that particular branch line, service on such branch line must be denied unless the distributors for the communities served by the branch line make an appropriate contribution to the cost of constructing the measuring stations. Likewise, where the revenues are insufficient not only to cover the cost of the measuring stations, but also fail to cover the costs of the branch line, service must, of course, be denied unless a contribution is made not only for the construction of the necessary metering stations but also for the branch line." This reduction from five to three year economic feasibility requirement has strengthened Northern's branch line standards. Northern now uses this third year test of economic feasibility and applies the Opinion No. 324 branch line contribution formula. *Northern Natural Gas Co.*, 30 FPC 859, 865, particularly the initial decision of Presiding Examiner Allen C. Lande in that case as reported at 30 FPC 869, at page 880, regarding the application of Tipton, Iowa, for initial service.

Northern's policy witness states that the economic feasibility tests become meaningless when distributors fail to purchase their third year CD volumes on which economic feasibility was based when the necessary facilities were authorized. Northern is also very much aware of the dangers of over-estimating the market requirements, which was the primary difficulty experienced by the applicants in this hearing. To cope with this problem Northern has established a department in its Marketing Division which now makes an actual field survey of each new community proposed for natural gas service. Unless the applicant and Northern's Marketing Division are within five percent of each other, the applicant must review with Northern each factor used by it in making its market estimate. Unless the applicant will reduce its market estimate to levels considered realistic by Northern's experience then, as in the above-cited case of Tipton, Iowa, Northern will not agree to submit the proposal to the Commission for authorization.

Northern's position, at this hearing, is that it is willing, under the circumstances set out on this record, to amend its service agreements, as requested by the applicants herein, to provide for the purchase of reduced CD volumes upon a finding by the Commission that the reductions are in the public interest.

Northern's response, to the contention of the applicants that they are entitled to the requested reductions of CD volumes under Section 17.5 of its tariff, is that the distributor is only entitled to such a reduction in CD when there is an offsetting increase in the same rate zone and then only if the distributor has paid the full third year CD for at least one heating season. Northern says that until a distributor has paid for its third year CD volume it is still considered to be "new service" and that Northern is prohibited, by the Commission's certificate authorizing the service, from reducing the CD therein certificated. Northern says, after the payment of the third year CD, then the distributor becomes "old service" and qualifies for a reduction under Section 17.5 upon request.

Northern has not uniformly applied this rule. It has made exceptions and, of course, the applicants point to them. For example, see Docket No. RP62–5, encompassing Northern's application to reduce the CD of Circle Pines, Minnesota, upon a showing of dire financial circumstances; also Northern's deferral of the third year CD of North Central herein considered, as well as reductions to Western Power and Gas Company, Iowa Electric Light & Power Company, and its own Peoples Natural Gas Division.

Northern's response to the applicants' evidence that exceptions have been granted to certain distributors, some are referred to *supra*, is that each of the reductions in contract demand, with the exception of Circle Pines,[13] has been clearly set forth in the certificate applications filed by it in Docket Nos. CP62–178, CP63–219, and CP64–112. Northern alleges that Exhibit I of those applications reflects the reductions both by distributors and by towns. Reductions by towns are shown in the service agreements submitted as a part of Exhibit I, and reductions by distributors are shown in the summary of each distributor's CD subdivided by billing group. That this unorthodox manner of amending previously issued certifications was not acceptable to the Commission was clearly stated in *Transcontinental Gas Pipe Line Corporation*, issued October 21, 1963, as Opinion No. 406, 30 FPC 1044, 1046, where, under similar circumstances, the Commission said it was not foreclosed from passing upon the merits of a proposed reduction in CD simply because a new service agreement reflecting the reduction had been filed with and accepted for filing by the Commission. The fact that the pipeline and the distributor have agreed to the reduction does not establish that the public interest has been so well considered, or protected, that no further inquiry need be made.

Northern's present policy is to refuse all requests for reductions of a contract demand. Thus, a distributor desiring a change in contract demand must petition the Commission for such authorization. Northern's policy witness testified that, as it gains operating experience, Northern has developed some principles which it thinks are applicable to the granting of any requests for changes in CD volumes by these, and any future, applicants. Northern suggests the first determination to be made is whether the considerations for the reductions will outweigh any detriment or burden that might accrue to its existing customers. When this determination has been made, then Northern believes the reductions should be authorized if each of the following suggested findings can be made:

(1) That the over-estimation of third year contract demand resulted from an honest mistake of fact;

(2) That the distributor has made all reasonable efforts required to develop the load and that there will not be such load growth in the community so as to absorb the third year contract demand within a reasonable period of time;

(3) That the investment in the distribution plant is prudent;

(4) That all peak-day requirements, up to at least the original third year contract demand, will be met by the purchase of additional contract demand from Northern and not by the construction, expansion or utilization of peak-shaving facilities;

(5) That payment of the demand charge for the third year volumes would result in an undue financial burden on the distributor;

(6) That it is in the public interest for Northern and its other customers to in effect be guarantors of the risk money invested by the bondholders.

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[13] (a) Regarding the changes in CD for Circle Pines, Northern says, in Appendix A to its reply brief herein, that Docket No. RP62–5 authorized a CD of 357 Mcf. Docket No. CP62–178 authorized a CD of 450 Mcf. Docket No. CP63–219 authorized a CD of 670 Mcf, and that Docket No. CP64–112 authorized a CD of 870 Mcf.

(b) Regarding the failure, or refusal, of Duluth to take its third year CD of 25,548 Mcf. Northern says in Appendix A to its reply brief, that the Commission authorized a reduction of 9,148 Mcf in Docket No. CP62–178.

(c) Northern also says in its Appendix A to its reply brief that the changes in CD for the Western Power & Gas Co. were authorized in Docket No. CP64–112; the changes in CD for the Iowa Electric Light & Power Co. were authorized in Docket Nos. CP63–219 and CP64–112, and the changes in the CD for its own Peoples Natural Gas Division were authorized in Docket No. CP64–112.

Despite the fact that the applicants and others who were certificated in Opinion No. 324 have failed to purchase their authorized third year CD, Northern has annually requested the Commission for authority to expand its system capacity to meet the increased requirements of its customers. This is illustrated in the following tabulation:[14]

Heating season and docket numbers	Zone 1 (Mcf)	Zone 2 (Mcf)	Zone 3 (Mcf)	Zone B (Mcf)	Zone C (Mcf)	Total (Mcf)
1962–63 (CP62–178)	299	20,046	13,858	915	470	35,588
1963–64 (CP63–219) (CP63–150)	5,799	13,538	10,672	173	6,000	36,182
1964–65 (CP64–112)	474	8,160	11,427	5		20,066
Total increase	6,572	41,744	35,957	1,093	6,470	91,836

The Metropolitan Utilities District of Omaha and the Minneapolis Gas Company, intervenors, are local gas distributors who purchase their natural gas requirements from Northern. These two intervenors offered no admissible evidence, yet in their joint brief they argue that the relief sought by the applicants would apply a retroactive economic feasibility test which would unlawfully discriminate against these intervenors by holding Northern's rate structure at a higher level than would be feasible if the relief sought was denied. The intervenors allege, in their brief, the failure of these applicants to pay for their full third year CD will not reduce Northern's cost of service sufficiently to permit lower rates for the intervenors, and further, that if the relief sought is granted, then the applicants should be required to make contributions in aid of construction.

In their joint brief these intervenors allege the third year annual revenue deficiency to Northern would be $54,592 if the relief is granted to Emmetsburg, Graettinger, Manilla, and Woodbine. The record shows Northern has annually requested and received authorization from the Commission to increase its system capacity to meet increased customer demand. A revenue deficiency of $54,592 in Northern's present cost of service would be *de minimis non curat lex*. The argument to require a present contribution in aid of construction from the applicants falls short of being convincing for the reason that sales in the rate zone affected continue to increase and the test is not what an individual distributor purchases, but the total volume that is sold on the entire branch line or lateral. The arguments of these two intervenors appear to be a continuation of those made by them to the Commission during the course of the hearing in which Opinion No. 324 was issued and the petition for court review thereof filed by them. *Minneapolis Gas Company, et al.* v. *F.P.C.*, 278 F. 2d 870. There they objected to the Commission's orders because, on the basis of the rates then charged Northern's customers, the new service would not yield in the first three years as high a percentage of profit as the present service, and might therefore tend to keep up the rates which petitioners pay to Northern. The Court upheld the finding of the Commission (in Opinion No. 324) that Northern's project to attach the new communities would be, under the conditions attached, economically feasible and required by the public convenience and necessity even though the new service might not yield in the first three years as high a percentage of profit as Northern's service at that date.

The evidence in this record, based upon the actual operating experience of the natural gas systems in the towns of Cascade, Emmetsburg, Graettinger, Manilla and Woodbine, is conclusive that the present economic difficulties of

[14] The tabulation does not include Northern's expansion authorized by Opinion No. 345, on June 28, 1961, 25 FPC 1234, for the 1961–62 heating season of 99,050 Mcf of additional CD, nor does it include the 75,000 Mcf per day to Michigan Wisconsin Pipe Line Company.

their gas distribution systems is due to the initial inaccurate estimates of the number of customers of all classes, who would be attached during the first three years of service and the volumes of gas to be used by them. The Staff says, in their brief, there is no reason to require Northern to hold unused pipeline capacity available for these five towns when Northern's system is expanding rapidly; this pipeline capacity can well be diverted to other Northern customers for additional revenues from both demand and commodity charges. Staff recommends approval of the relief requested by these five towns. Northern, the supplier, has no objection to granting the relief sought by these five towns, providing the Commission finds it to be in the public interest.

Witnesses for each of the towns of Cascade, Emmetsburg, Graettinger, Manilla, and Woodbine testified there was no present possibility of reducing the rates being charged their consumers for natural gas, but there was the likelihood that rates might be increased, unless the relief sought was granted. Rate reductions would make gas service more competitive with other fuels in these towns.

Section 7(e) of the Natural Gas Act requires an initial finding that any proposed service or sale is required by the present or future public convenience and necessity. This finding was initially made by the Commission in *Northern Natural Gas Co.*, Opinion No. 324, 22 FPC 164, 178. These five towns now request a partial abandonment of a part of the contract demand heretofore found to be required to be allocated to them by the public convenience and necessity. There were objections by several intervenors herein that Opinion No. 324 is *res judicata* and cannot now be amended in this proceeding. The purpose of the Natural Gas Act was to underwrite just and reasonable rates to the consumers of natural gas. *Federal Power Commission* v. *Hope Natural Gas Co.*, 320 U.S. 591. The original Section 7(c) of the Act provided it was "the intention of Congress that natural gas shall be sold in interstate commerce for resale for ultimate public consumption for domestic, commercial, industrial, or any other use at the lowest possible reasonable rate consistent with the maintenance of adequate service in the public interest."[15] This intent of Congress to give full protective coverage to the consumer as to price is further emphasized in Section 5 of the Act, which authorizes the Commission to investigate existing rates and charges and to fix them at a just and reasonable level. That the Commission should maintain full and continuing supervision over certificates of public convenience and necessity issued by it therefore seems apparent from the Act. That the doctrine of *res judicata* can have no application to a proceeding which involves a determination of the present or future public convenience and necessity with respect to the continuance or abandonment of natural gas service was established in *Panhandle Eastern Pipe Line Co.* v. *Federal Power Commission*, 236 F. 2d 289, 292, where it was said "In a situation such as this the Commission is exercising delegated legislative power to make a rule to guide the conduct of the parties in the future."

Since the Commission has no jurisdiction over the five towns, they cannot be compelled to take-or-pay for the CD volumes. However, the Commission does have jurisdiction over Northern; the question therefore is simply, should Northern be required to hold pipeline capacity available for these five towns when there is an express showing upon this record that it may never be needed. In *Transcontinental Gas Pipe Line Corp.*, Opinion No. 406, 30 FPC 1044 (issued October 23, 1963), the Commission determined in an analogous situation it was in the public interest to permanently authorize a reduction in a previously authorized third year CD volume.

[15] The 1942 amendments to Section 7 of the Act were not intended to change this declaration of purpose. See House Interstate and Foreign Commerce Committee report No. 1200, H.R. 5249, and Senate Commerce Committee report No. 948, 77th Congress.

Therefore, from the record herein, it is found and determined the public convenience and necessity requires the granting of the relief sought by the towns of Cascade, Emmetsburg, Graettinger, Manilla, and Woodbine, and their contract demand volumes will be reduced as hereinafter ordered.

NORTH CENTRAL PUBLIC SERVICE COMPANY

At the time of the original proceedings culminating in Opinion No. 324, North Central was serving only four Iowa communities. It sought and received from the Commission in Opinion No. 324 an allocation of gas from Northern sufficient to serve the requirements of seven additional communities, Anoka, Blaine, Champlin, Coon Rapids, Elk River, Lexington, and Spring Lake Park, Minnesota. Northern, without contributions in aid of construction, installed a lateral line from which it then proceeded to sell and deliver gas to the municipal gas system of Circle Pines and North Central's seven towns. This lateral became known as the Anoka Branch Line.

In 1953 North Central commenced its efforts to secure gas service for these seven towns.[16] However, it was not until July 31, 1959, that service was authorized by the Commission in Opinion No. 324.

On March 25, 1959, the town of Coon Rapids, Minnesota, granted North Central a gas distribution franchise upon condition that if the Federal Power Commission had not approved Northern's proposed service to Coon Rapids by August 1, 1959; or it became evident to North Central that natural gas would not become available to Coon Rapids in 1959; then North Central would construct a distribution system and a propane plant to serve manufactured gas to a specified part of the town by October 1, 1959. North Central was further required to post a $100,000 performance bond.[17]

North Central witnesses state they were unable to determine prior to August 17, 1959, [18] when natural gas would be made available to it by Northern for Coon Rapids. Under the terms of its franchise and performance bond, North Central says it was required to commence planning its propane plant before May 15, 1959. It purchased a site and started construction in the summer of 1959 and its five, 30,000 gallons each, LPG tanks were shipped in July 1959. Upon learning that Northern would be able to make gas available on the Anoka Branch for distribution in Coon Rapids in 1959, North Central delayed completion of its propane plant and concentrated on installing the Coon Rapids natural gas distribution system. The propane plant was later completed at a cost of $235,000. It is capable of delivering 225 Mcf of 1,360 Btu propane gas per hour. However, because the plant produces 1,360 Btu propane gas, the plant cannot be used to supply more than fifty (50%) per cent of Coon Rapids' requirements [19] without North Central's customers encountering difficulties with their gas burners. (Tr. 4453–56.) North Central's first year contract demand, which became effective in November 1959, from Northern for the seven communities served off the Anoka Branch was 7,058 Mcf. In October 1960, the second year CD was placed in effect. Since then North Central has repeatedly told Northern it did not want its third year CD made effective and Northern has deferred placing the third year CD in effect for the years beginning October 1961, October 1962, and October 1963. North Central witnesses state they have repeatedly sought release by Northern of the excess of 1,428 Mcf of third year CD over their second year CD (Exh. 213).

[16] See Docket Nos. G–2063, G–2399, and G–12241.

[17] See Exh. 210.

[18] Northern's letter was received by North Central on August 17, 1959, saying that natural gas service might be available for Coon Rapids in 1959. See Exh. 211.

[19] The Coon Rapids distribution system serves part of the gas requirements for the nearby towns of Anoka and Blaine. (Tr. 1456.)

but Northern has replied it would be necessary for North Central to purchase its full third year CD effective October 1964. Thus, in its sixth year of service to Coon Rapids, and the other towns served from the Anoka Branch, North Central is required for the first time to pay the CD charges on its third year volume of gas authorized by this Commission.

North Central requests a reduction of 1,428 Mcf from its third year CD of 10,387 Mcf. This would reduce its allocation for the Anoka Branch Line towns to the second year CD volume of 8,959 Mcf as authorized by Opinion No. 324 as adjusted by Opinion No. 373 (see fn. 3 *supra*).

Initially North Central's attaching of customers and their gas usage for the Anoka Branch towns generally followed the pattern of the other applicants in this proceeding—they were over-estimated. However, beginning with 1962 the actual customers attached and their gas usage exceeded the estimates for that period. North Central contends its second year CD volume of 8,959 Mcf, plus the 225 Mcf of 1,360 Btu per hour volume from its Coon Rapids propane plant, gives it a volume deliverability on the Anoka Branch which is greater than the requirements of its customers and, therefore, it does not need, because of the propane plant, any more than the second year CD of 8,959 Mcf from Northern. North Central's evidence shows the demand charge on this 1,428 Mcf annually amounts to $55,812.

Since the filing of Opinion No. 324 on July 31, 1959, Northern has been authorized in *Northern Natural Gas Company*, Opinion No. 404, 30 FPC 859, issued September 30, 1963, to deliver first, second, and third year CD volumes of 500, 1000, and 1,650 Mcf, respectively, to North Central for the beginning of natural gas service in the towns of Big Lake, Buffalo, and Monticello, Minnesota. (Exh. 212.) These three towns are served from the Anoka Branch Line. North Central's evidence on this record combines the gas requirements of these three towns with those certificated by Opinion No. 324. (Exh. 214, p. 2.) Therefore, to sufficiently understand the current situation of North Central it is necessary to combine the third year CD volumes certificated by Opinion Nos. 324 and 404 in order to compare the actual requirements of North Central's customers with the CD volumes which the Commission has authorized Northern to deliver to North Central. Based upon the testimony of North Central's controller and treasurer (Tr. 4463–65), the Staff in their brief (pps. 33–34) present a tabulation of this comparison, as follows:

	1964–65 (*Mcf*)	*1965–66* (*Mcf*)
Third-year volume certificated in Opinion No. 324, 22 FPC 164, Exh. 212	10,387	10,387
Second-year and third-year volumes certificated in Opinion No. 404, 30 FPC 859	1,000	1,650
Total contract demand Northern is authorized to deliver to North Central to serve Anoka Branch Line communities	11,387	12,037
Total estimated peak-day requirements of all communities served by North Central on Anoka Branch Line, Exh. 214, p. 3	12,720	13,720
Less the total contract demand volume North Central is entitled to purchase from Northern for Anoka Branch Line communities	11,387	12,037
Amount by which peak-day requirements *exceed* the total third-year contract demand volume which Northern is authorized to deliver to North Central	1,333	1,683

From the Staff's tabulation it appears obvious that North Central will need all of its third year CD volumes from Northern in order to meet the requirements of its customers on a peak day and, in addition, it would be necessary for it to use its propane plant to furnish an additional 1,333 Mcf on a peak day during the 1964–65 heating season, and 1,863 Mcf on a peak day during the 1965–66 heating season.

The North Central situation is quite different from the five towns previously considered. Without the peak-shaving plant volumes North Central would require more third year CD volumes than it is presently authorized. That Northern has been cognizant of and sympathetic to North Central's investment problem in its peak-shaving plant is well shown upon this record by Northern's having deferred for three successive heating seasons the filing of a service agreement for the third year CD volumes. This deferral has been of great financial benefit to North Central for, during this period, it connected more customers who used more gas than was originally estimated. So, by the time North Central was required by Northern to purchase its third year CD, its market requirement was 1,333 Mcf greater than its CD. From this record it also appears that North Central's need for additional quantities of natural gas will increase annually. North Central's present market situation and forecasts appear to indicate an increasing demand by present and potential customers for additional volumes of natural gas. North Central offered no evidence showing an economic justification for its request for a reduction in its third year CD. If the requested relief should be granted, then North Central would increase the output of its propane plant. Northern's policy witness objects to a reduction of North Central's third year CD to permit greater use of the propane plant. His testimony is that North Central should be required to take its third year CD and, if it needs additional volumes of "swing" gas, then it could economically make use of its propane plant.

North Central knew that Northern had requested authorization from the Commission to initiate natural gas service to Coon Rapids before the franchise was accepted, in fact a date for the hearing upon Northern's application had been fixed before the franchise was accepted. North Central wanted the Coon Rapids distribution franchise and was willing to asume the conditions imposed in it. This risk was a management decision by North Central and, upon this record, it has demonstrated no economic difficulties for having accepted the franchise and constructed the propane plant.

North Central has failed to establish upon this record by a preponderance of the evidence that its third year CD volume should be reduced. Therefore, having failed to sustain its burden of proof and upon the grounds hereinabove considered, North Central's request should be denied.

NORTHERN'S TARIFF

Each of the parties herein contend they are entitled to the reductions requested under Section 17.5 of the General Terms and Conditions of Northern's Tariff. In Opinion No. 324 the Commission approved Northern's proposed tariff and rate zones for servicing the new communities. Standard form service agreements which were executed by each of applicant's herein contain identical provisions, as follows:

> *Section 3. Additional Volumes of Gas.* The Contract Demand for a community may be increased or decreased as provided in Northern's applicable Rate Schedule(s). * * *
>
> * * * * * * *
>
> Section 5. * * * This contract shall be subject to the provisions of such rate schedules and the General Terms and Conditions applicable thereto

on file with the Federal Power Commission and effective from time to time, which by this reference are incorporated herein and made a part thereof. Northern's filed tariff contains Section 17.5 as follows:

(17.5) *Gas Utilities' Right to Decrease the Contract Demand*: The Gas Utility shall have the right to decrease the Contract Demand for any community effective with the billing month of November of any year, under any of the following conditions:

(a) When and to the extent that the capacity so released can be made available to and is offset by increases in the Contract Demands for other communities served by Northern in the same Rate Zone.

(b) When and to the extent that Northern elects to otherwise utilize the released capacity.

Northern's filed tariff sheets, which became effective on December 27, 1964, set forth the contract demand volumes for each community by rate zone. The customers served from the Anoka Branch are in Northern's Rate Zone B. These rate zones are based upon pipeline mileages north of the Bushton, Kansas, station. Counsel for Northern stated for the record (Tr. 4362–3) that, as of the date of the hearing "for Zone B there is a decrease (of CD) of 9,285 Mcf" from the third year CD authorized by Opinion No. 324, as adjusted by Opinion No. 374, "and in explanation of that figure I might mention that the community of Duluth, Minnesota,[20] represents 9,148 Mcf of that and the community of Circle Pines [21] represents 516 Mcf. In adding those up, you will come to a figure greater than 9,285 Mcf, and the difference is that other towns in Zone B have increased a total of 379 Mcf." However, of all the 342 new towns certificated for service in Opinion No. 324 only 282 had been attached. These 282 towns have a third year CD of 199,951 Mcf, as adjusted by Opinion No. 374, and they are collectively purchasing 18,830 Mcf less than this volume.[22]

[20] In Opinion No. 324 Northern was authorized to sell and deliver to Duluth a third year CD of 24,925 Mcf. This authorization was based upon Duluth's estimate of its market requirements. Northern made its own independent check of Duluth's estimate and concurred with Duluth there was a market for a third year CD of 24,925 Mcf. Duluth, like the other communities in Opinion No. 324, agreed to execute service agreement contracts for the CD authorized. When the time arrived for Duluth to sign the agreement for its third year CD it refused to sign because its actual gas usage had failed to come up to its estimates by some 9,148 Mcf (Duluth's CD as of the hearing was 16,400 Mcf. (Tr. 4580.)) Northern has participated with Duluth, and on its own, in sales promotion and advertising programs "to help get the loads on as an encouragement for them (Duluth) to execute the agreement." Northern says "We have done about everything we could think of to get them to execute that contract" for their third year CD but without success.

[21] On November 21, 1961, [unreported] the Commission issued an order in Docket No. RP62–5 authorizing Northern to reduce the CD of Circle Pines to 357 Mcf effective from October 27, 1961, to October 27, 1976. Northern had filed a superseding service agreement to this effect on October 25, 1961. By this reduction Circle Pines is taking 870 Mcf less than its third year CD.

[22] The greatest failure of Opinion No. 324, certificating distributors to purchase their third year CD volumes, occurred in Northern's Rate Zone 3 as is illustrated by a tabulation in the Staff brief as prepared from the testimony of a Northern witness (Tr. 4548–49):

Distributors Serving communities certificated	Number of communities served	3d year CD certificated by opinion No. 324 (Mcf)	Contract demand now being purchased (Mcf)	(Decrease) below or increase above 3d year CD (Mcf)
Central Natural Gas Co	10	4,095	3,415	(680)
Interstate Power Co	1	702	900	198
Iowa Electric Light & Power Co	23	21,040	12,296	(8,744)
Northwestern Public Service Co	9	2,517	2,587	70
The Western Power and Gas Co	4	2,133	1,051	(1,082)
Northern's Peoples Natural Gas Division	66	26,136	25,170	(966)
Total Zone 3 net decrease in contract demand below the third-year contract demand certificated by Opinion No. 324				(11,204)

The Staff contends Section 17.5 of Northern's tariff is not applicable to the relief sought by these applicants. They rely upon *Transcontinental Gas Pipe Line Corp.*, 30 FPC 1044, wherein the Commission said that any reduction in contract demand must be authorized by the Commission under the Natural Gas Act even though the pipeline and the distributor had agreed upon the reduction and had signed new service agreements. To permit any interstate natural gas pipeline to make changes in previously issued Commission certificates would defeat the purpose of the Act. Section 154.21 of the Commission's Regulations under the Natural Gas Act requires the filing of a new service agreement prior to the beginning of service under that agreement. Section 154.22 of the Regulations provides " * * * that no natural gas company shall *file* under this part any new schedule or contract for the performance of any service for which a certificate of public convenience and necessity must be obtained pursuant to Section 7(c) of the Natural Gas Act until such certificate *has been* issued. * * *" (Emphasis supplied). *Fuels Research Council, Inc., et al.*, 30 FPC 1138, 1142, fn. 4. It is clear, therefore, that Section 17.5 of Northern's tariff is not applicable and that the relief sought can only be granted by the Commission upon the filing of an application by Northern to amend the existing certificate or for the issuance of a new certificate. This follows the orderly procedure provided by the Regulations of the Commission promulgated under the Natural Gas Act.

The intervenors allege a change in CD, as sought by these applicants, would only encourage future applicants for new gas service to overestimate the number of potential customers and their gas usage as a hedge against having to make a contribution in aid of construction. As outlined upon this record, and specifically commented upon in this decision, Northern has established rigid standards of its own which it says must be met before it will request authorization to construct facilities to initiate new service to a new distribution system. Northern's standards should be the minimum guide-line test for other interstate pipelines considering the attachment of new distributors. The Staff, in its brief, says that in the future it will apply more rigid standards in considering market estimates for new distribution systems. The Staff further states that any proposed future service based on a forecast of economic feasibility involving the attachment of more than 50 percent of the potential number of residential space-heating customers should be denied or, if certificated, a condition be attached requiring cash deposits from enough prospective customers to assure the economic feasibility of the project. Such conditions have been attached in the past. *Chattahoochee Valley Gas District*, Docket No. CP63–163, 32 FPC 811, September 17, 1964. Thus the Staff, as well as the Commission, are formulating economic feasibility standards to be applied in future applications for the attachment of new distribution systems.

FINDINGS AND CONCLUSIONS

Upon consideration of the entire record in this proceeding, the evidence adduced and the briefs filed, the Examiner finds and concludes, in addition to the findings and conclusions hereinabove stated, that:

(1) The present and future public convenience and necessity permit and require a permanent reduction of Northern Natural Gas Company's allocation to Cascade by 93 Mcf (to a CD of 609 Mcf); to Emmetsburg by 281 Mcf (to a CD of 1,134 Mcf); to Graettinger by 152 Mcf (to a CD of 400 Mcf); to Manilla by 86 Mcf (to a CD of 391 Mcf); and to Woodbine by 148 Mcf (to a CD of 403 Mcf).

(2) The present and the future public convenience and necessity does not permit nor require a reduction of Northern Natural Gas Company's allocation of natural gas to the North Central Public Service Company.

(3) The granting of the foregoing reductions in contract demand volume will not discriminate against any Northern customer nor invalidate the branch line economic feasibility formula of the Commission in *Northern Natural Gas Co., et al.*, 22 FPC 164, 172.

(4) The procedure for obtaining a change in the contract demand volume is to file an application requesting an amendment of the certificate order which originally authorized the contract demand volume.

(5) The legal doctrines of *res judicata* and collateral estoppel are not applicable and do not prohibit the Commission from considering, and amending, a previously issued certificate of public convenience and necessity.

ORDER

WHEREFORE, *It is ordered*, subject to review by the Commission on appeal, or review by the Commission on its own motion, as provided in its Rules of Practice and Procedure, that:

(A) Ordering paragraph (A) of the Commission's order accompanying its Opinion No. 324, issued July 31, 1959, in *Northern Natural Gas Co.*, 22 FPC 164, 169, as amended, is hereby further amended to reduce the contract demand volumes of the distribution systems in the towns of Cascade, Emmetsburg, Graettinger, Manilla, and Woodbine, Iowa, to 609 Mcf, 1134 Mcf, 400 Mcf, 391 Mcf, and 403 Mcf, respectively, effective as of October 27, 1964, and subject to Northern's agreement to refund the difference in demand charges collected on presently effective contract demand volumes and the reduced contract demand volumes provided for by this order.

(B) As a condition to the amendment of paragraph (A) of the order accompanying Opinion No. 324 Northern is hereby required to file an application for amendment of the order originally authorizing third-year contract demands in all cases where a distributor seeks a reduction in third-year contract demand, including all cases where Northern's Peoples Division desires a reduction in third-year contract demand and all cases where a distributor may be failing to use third-year contract demands within billing groups where third-year volumes could be shifted to other communities whose market requirements have increased beyond the original third-year certificated contract demands.

(C) North Central's petition to amend the order accompanying Opinion No. 324 is hereby denied.

(D) All other provisions of the order accompanying Opinion No. 324, as heretofore amended, shall remain unchanged.

HARRY W. FRAZEE,
Presiding Examiner.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., David S. Black and Carl E. Bagge.

NATURAL GAS COMPANIES—EMERGENCY PLANNING—ANNUAL REPORTS OF SYSTEM FLOW DIAGRAMS, DOCKET NO. R-257

ORDER GRANTING RECONSIDERATION OF ORDER NO. 303 AND POSTPONING DATE FOR FILING INITIAL REPORT

(Issued October 14, 1965)*

Subsequent to the issuance on August 19, 1965, of Order No. 303, 30 F.R. 11101, which prescribed annual reports to be filed by certain natural gas pipeline

*Published in the Federal Register on October 21, 1965 (30 F.R. 13359).

companies, a joint application was filed on behalf of the Columbia Companies listed in the margin.[1] The application petitioned for rehearing, reconsideration, stay and abrogation in toto of Order No. 303, 34 FPC 536.

Although most of the points raised in the applications are substantially the same as those heretofore presented to the Commission in written submittals made pursuant to the notice of proposed rule-making issued herein on February 12, 1964 (29 F.R. 2912) and the amended notice issued January 7, 1965 (30 F.R. 447), we believe that a reexamination of the new § 260.8 would be in the public interest. Accordingly, we are granting reconsideration of our order for that purpose.

In addition, it is now apparent that it will be impossible to complete the steps we have taken in compliance with the Federal Reports Act of 1942 (5 U.S.C. 139c) in time to enable adherence to the November 15 filing date for 1964 required by ordering paragraph (A)(c) of Order No. 303. We are, therefore, extending the time for such filing to all the companies required to make the report.

The Commission finds:

It is appropriate and in the public interest in administering the Natural Gas Act that the aforesaid application of Columbia Companies, dated September 17, 1965, insofar as it requests reconsideration of Order No. 303, be granted; that the application for rehearing and abrogation of the order be denied; and that the November 15, 1965 filing date for 1964 data be extended, as hereinafter ordered.

The Commission orders:

(A) The aforesaid application of the Columbia Companies for reconsideration is granted.

(B) Ordering clause (A)(c) of Order No. 303 is amended to read as follows:

(c) Flow diagrams depicting 1964 operations shall be filed by a date to be fixed hereafter.

(C) The application of Columbia Companies is, in all other respects, *denied*.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., David S. Black and Carl E. Bagge.

CHATHAM STRAIT FISH COMPANY, PROJECT NO. 2013

ORDER ACCEPTING SURRENDER OF LICENSE (MINOR)

(Issued October 15, 1965)

On March 12, 1965, Washington Fish & Oyster Company (Applicant), as successor in title to the project facilities under license to Chatham Strait Fish Company as minor Project No. 2013, filed an application for surrender of the license for the project, located on an unnamed tributary of Crab Bay and affecting lands of the United States within the Chugach National Forest on Evans Island, Alaska. The energy generated by the project is used for lighting Applicant's cannery.

In accordance with a written understanding between the Forest Service and the Commission, dated November 28, 1962, and pursuant to application therefor, the Forest Service has issued a Special Use Permit to Applicant for the continued occupancy by the project of the National Forest lands involved. The permit was made effective as of January 1, 1965.

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[1] Atlantic Seaboard Corporation, Kentucky Gas Transmission Corporation, United Fuel Gas Company, The Ohio Fuel Gas Company, The Manufacturers Light and Heat Company, Home Gas Company and Columbia Gulf Transmission Company.

Annual charges under the license for the project, in the amount of $10.00, have been paid through December 31, 1962. Public notice of the application for surrender has been given. No protests or petitions to intervene have been received.

The Commission finds:

Acceptance of surrender of the license for the project is appropriate, as hereinafter provided.

The Commission orders:

Surrender of the license for Project No. 2013 is hereby accepted, effective as of December 31, 1964, subject to the payment of annual charges through said date in the amount of $20.00.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

IDAHO POWER COMPANY, DOCKET NO. E-7239

ORDER AUTHORIZING ISSUANCE OF PROMISSORY NOTES

(Issued October 15, 1965)

Idaho Power Company (Applicant) filed an application with the Federal Power Commission on August 18, 1965, seeking an order pursuant to Section 204 of the Federal Power Act authorizing it to issue short-term Promissory Notes in the aggregate amount of not more than $40,000,000 outstanding at any one time. Applicant is incorporated under the laws of the State of Maine and qualified to do business in the States of Idaho, Oregon and Nevada, with its principal place of business at Boise, Idaho, and is engaged in the generation, purchase, sale at wholesale, transmission and distribution of electric energy in its service area in the three states.

According to the application, Applicant proposes to make short-term borrowings from commercial banks and have unsecured notes up to an aggregate of $40,000,000 outstanding at any one time. The notes are to be issued from time to time before or on December 31, 1966; and each new or renewal note is expected to have a maturity of six months from issue, with no maturities of over one year.

Applicant states that the purpose for which the proposed short-term bank borrowings will be made and promissory notes issued is to obtain temporary interim capital for the Applicant's construction program for the last half of 1965 and for 1966. The total cost of this program is estimated at $61.6 million. The principal items in this program include $37.3 million for three generating units at Hells Canyon, $10.4 million for distribution plant facilities, $3.2 million for construction of the 106 mile Boise Bench-Midpoint 230 kv line and $2.1 million for other transmission lines and substations.

During 1966, Applicant expects to undertake permanent financing arrangements including the issue and sale of additional fixed capital securities, including equity securities, probably in the spring of said year, however, the kinds and amounts of securities to be issued, as well as the time or times of issuance thereof, have not been and cannot now be determined as this will depend upon market and other conditions which may exist during 1966 and at time of said issue. The net proceeds of any such financing will be applied in partial payment of short-term notes at such time or times outstanding.

Although the Applicant has requested permission to issue notes of up to $40,000,000, it presently estimates that the maximum amount of notes to be

outstanding at any time during the period to December 31, 1966, will not exceed $30,000,000 assuming a permanent financing transaction during 1966. However, should market or other conditions cause a delay in or postponement of any contemplated permanent or long-term financing, it may be necessary for the Applicant to issue notes up to the full amount of $40,000,000 in order to avoid delay and additional cost in the construction of essential service facilities, including construction pursuant to the Commission's license for Project No. 1971.

Written notice of the application has been given to the Idaho Public Utilities Commission, the Nevada Public Service Commission, and the Oregon Public Utility Commissioner and to the Governor of each of those States. Notice has also been given by publication in the Federal Register on September 1, 1965 (30 F.R. 6603), stating that any person desiring to be heard or to make any protest with reference to the application, shall file petitions or protests on or before September 15, 1965, with the Federal Power Commission, Washington, D.C. 20426. No protest, petition or request to be heard in opposition to the granting of the application has been received. On September 1, 1965, the Idaho Public Utilities Commission issued an order authorizing this proposed issuance of short-term notes.

The Commission finds:

(1) Applicant, a corporation, is a public utility within the meaning of Section 204 of the Federal Power Act, subject to the jurisdiction of the Commission as heretofore described and set forth in the Commission's order issued November 7, 1957, *Idaho Power Company*, Docket No. E–6781 (18 FPC 603).

(2) The proposed issuance of Promissory Notes in the aggregate principal amount of $40,000,000, all as described above, will constitute an issuance of securities within the purview of Section 204 of the Act.

(3) The proposed issuance of Promissory Notes in the aggregate principal amount of $40,000,000, all as described above, will be in excess of 5% of the par value of the other securities of Applicant, and, therefore, will not be exempt by virtue of Section 204(e) from the requirements of Section 204(a) of the Act.

(4) Applicant is not organized and operating in a State, under the laws of which the issue here involved is regulated by a State Commission within the meaning of Section 204(f) of the Act, and the proposed issuance is, therefore, not exempt by virtue of that Section from the requirements of Section 204 of the Act.

(5) The proposed issuance of Promissory Notes will be exempt from the competitive bidding requirements of Section 34.1a of the Commission's Regulations under the Federal Power Act by reason of paragraph 34.1a(a)(2).

(6) The proposed issuance of securities, as hereinafter authorized, will be for a lawful object, within the corporate purposes of Applicant and compatible with the public interest, which is appropriate for and consistent with the proper performance of service by Applicant as a public utility, and which will not impair its ability to perform that service, and is reasonably necessary and appropriate for such purposes.

(7) The period of public notice given in this matter is sufficient.

The Commission orders:

(A) The proposed issuance of Promissory Notes in the aggregate principal amount of $40,000,000 outstanding at any one time, whether an original issue or a renewal note, upon the terms and conditions and confined to the purposes set forth in the application, all as described above, is hereby authorized, subject to the provisions of this order.

(B) This authorization is expressly conditioned upon the issuance of all notes to be issued being not later than December 31, 1966 and the final authority of said notes being not later than December 31, 1967.

(C) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations of cost or any other matter whatsoever now pending or which may come before this Commission.

(D) Nothing in this order shall be construed to imply any guarantee or obligation on the part of the United States in respect to any security to which this order relates.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., David S. Black and Carl E. Bagge.

INTERNATIONAL PAPER COMPANY, PROJECT NO. 2375

ORDER WAIVING PENALTY FOR DELINQUENCY IN PAYMENT OF ANNUAL CHARGES

(Issued October 15, 1965)

On July 1, 1965, a statement of annual charges for the period October 1, 1950 through December 31, 1964 under the license for Project No. 2375 was mailed to International Paper Company, licensee for the project. It was noted on the statement that the charges should be paid "within 45 days of rendition of a bill therefor" pursuant to Section 11.31 of the Commission's Regulations under the Federal Power Act. This was the first statement rendered for charges due under the license for the project.

When payment was not received within the time prescribed, a penalty attached for such delinquency under the Commission's Regulations.

By letter dated August 31, 1965, the licensee advises that the delay in payment was due to the facts that (1) absence of key personnel who were being reassigned from Project No. 2375 to the newly opened Androscoggin Mill and (2) an accounting error.

The Commission finds:

It will not be inconsistent with the public interest to waive the penalty which attached by reason of the licensee's delay in payment of the annual charges under the license for Project No. 2375.

The Commission orders:

The aforementioned penalty is hereby waived.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

NORTHERN NATURAL GAS COMPANY, DOCKET NO. RP66-3

ORDER APPROVING PROPOSAL PROVIDING FOR RATE REDUCTIONS AND REFUNDS AND ACCEPTING REVISED TARIFF SHEETS FOR FILING

(Issued October 15, 1965)

Northern Natural Gas Company (Northern) on August 5, 1965, tendered for filing certain revised sheets to its FPC Gas Tariff, First Revised Volume No. 1,[1] to become effective June 27, 1965, and a "Statement of Intention" (Statement)

[1] Ninth Revised Sheet Nos. 18h, 18i, 18j, 18–1.1, 18–1.2, 18p, and 18q; Tenth Revised Sheet Nos. 18d and 18e; Eleventh Revised Sheet No. 18c; Twelfth Revised Sheet Nos. 18m and 18n; Fourteenth Revised Sheet Nos. 4, 5, 6, 9, 10, 11, 14, 15 and 16.

with regard to its rates and charges for the future. The proposed revised tariff sheets would reduce the currently effective demand charge in all of Northern's jurisdictional rate schedules by 17.4 cents per Mcf, resulting in an annual reduction in revenues of approximately $3,500,000, based on contract demands to be effective as of October 27, 1965. Northern will make refunds to reflect this rate reduction for the period from June 27, 1965, to the month following Commission approval of the rate reduction.

Northern will also refund to its jurisdictional customers approximately $670,000, to reflect the reduction in the federal income tax rate from 50 percent to 48 percent for the period January 1, 1965, to June 27, 1965. This refund will be allocated among Northern's jurisdictional customers on the basis of the proportionate share of each such customer in Northern's total jurisdictional contract demand billing units during the period of six months ending June 27, 1965. This refund is to be made without interest within thirty days after the Commission accepts the settlement proposal.

This filing is the result of numerous conferences between Northern and the Commission Staff concerning the level of Northern's jurisdictional rates. The remaining provisions contained in the Statement may be summarized as follows:

(1) The refund and rate reduction obligations imposed upon Northern in Section IV of the rate settlement in Docket No. G–19040, *et al.* approved by order issued December 21, 1961, 26 FPC 901, shall remain in full force and effect and nothing in the Statement shall be construed to modify those obligations.

(2) The obligations imposed upon Northern in the order issued January 2, 1964, 31 FPC 7, approving the rate settlement in Docket No. RP64–15, shall terminate as of the date the rates proposed herein become effective.

(3) Northern will make refunds to its jurisdictional customers of the jurisdictional portion of refunds and interest received from producers as a result of Northern's having purchased gas at rates made effective subject to refund after December 27, 1961, to the extent attributable to purchases during the period from December 27, 1961 to the date the Statement ceases to be effective.

(4) Northern will flow through the jurisdictional portion of refunds received after September 1, 1965, as a result of proceedings under Section 5(a) of the Natural Gas Act, to the extent those refunds result in a reduction of purchased gas costs for the relevant period below 14.2 cents per Mcf at 14.73 pounds.

(5) If Northern's annualized weighted average cost of purchased gas is decreased, as a result of reductions in producer rates, below 14.2 cents per Mcf at 14.73 pounds or below the cost determined as of Northern's most recent reduction under Section VI of the Statement, whichever is less, Northern will reduce its jurisdictional demand charges to reflect such reductions, if the cumulative effect of such reductions equals or exceeds two cents per Mcf on the annual jurisdictional billing demand units.

(6) If Commission Opinion Nos. 417 and 417–A, 31 FPC 208, 928 *Alabama-Tennessee Natural Gas Company* (*Alabama-Tennessee*) are finally affirmed, the Statement calls for the following procedure:

(a) Within thirty (30) days after judicial review of *Alabama-Tennessee* is concluded, or after any order on remand becomes final, Northern and Staff will initiate conferences to determine the extent to which Northern must make refunds or rate reductions to reflect that decision.

(b) If these conferences have not been concluded and agreement reached within thirty (30) days after they commenced, Northern shall petition promptly for a Declaratory Order by the Commission determining the applicability to Northern of the principles upheld in *Alabama-Tennessee* and the propriety of the Commission's fixing Northern's rates for the future on the basis of liberalized deprecia-

tion, if Northern were to use straight-line depreciation for tax purposes. Northern agrees to assume the burden of proof on issues raised by its petition for a Declaratory Order.

(c) Any refunds and rate reductions required shall be made from and after December 27, 1965, except that, if the effect of the review of *Alabama-Tennessee* or any orders therein is to delay the effectiveness of Opinion Nos. 417 and 417–A, the commencement date for refunds and rate reductions shall be the effective date of the Commission order issued in *Alabama-Tennessee* after judicial review is completed or the date the Commission's Declaratory Order described above is issued, whichever is earlier.

(d) If a rate reduction is required by the Declaratory Order, Northern may submit studies to the Commission showing that a rate reduction would be conducive to a rate increase filing. To the extent the Commission agrees with Northern, the rate reduction obligation will be modified, but the refund obligation will not be affected.

(e) Any refunds and rate reductions required to reflect the principles of *Alabama-Tennessee* shall be based on the rate effect of the excess of liberalized depreciation over straight line depreciation for the twelve months ending December 31, 1965, and on the balance in Account No. 282 as of December 31, 1965.

(f) If it is decided in the Declaratory Order proceeding, including judicial review, that Northern's rates will not be computed on the basis of liberalized depreciation if it uses straight line depreciation for tax purposes, and if Northern advises the Commission of its election to so use straight line depreciation, Northern will have no obligation to reduce its rates, but Northern will be obligated to make refunds for the relevant period prior to December 27 of the year preceding the calendar year in which Northern returns to the use of straight line depreciation for tax purposes.

(g) Northern reserves the right to return to straight line depreciation for tax purposes for the calendar year 1966, and, if it elects to do so, a decision in the Declaratory Order proceeding setting Northern's rates on the basis of liberalized depreciation notwithstanding that election will operate only prospectively, except for the issue of deducting the amount in Account No. 282 from the rate base.

(7) Northern will not file any rate increase to become effective prior to December 27, 1966, after statutory suspension.

(8) The Statement will terminate on the date a rate increase filed by Northern under Section 4 of the Natural Gas Act becomes effective, either with or without suspension, or on the date new rates are made effective pursuant to proceedings instituted by the Commission against Northern.

Northern requests that the Commission waive the thirty-day notice period and other rules necessary to allow the proposed revised tariff sheets to become effective as of June 27, 1965.

No objections to the proposed rate reduction and Statement have been filed.

The Commission finds:

(1) The settlement of Northern's rates and charges as provided in the "Statement of Intention" is reasonable, proper, and in the public interest in carrying out the provisions of the Natural Gas Act, and that Statement should be approved and made effective subject to the terms and conditions hereinafter provided and ordered.

(2) Good cause exists for the Commission to accept for filing the revised tariff sheets tendered by Northern on August 5, 1965, and to waive the notice requirements of the Regulations under the Natural Gas Act in order to allow those tariff sheets to become effective as hereinafter ordered.

The Commission orders:

(A) The settlement of Northern's rates and charges, as proposed in Northern's "Statement of Intention" is approved and made effective, subject to the terms and conditions hereinafter specified.

(B) The revised tariff sheets tendered by Northern on August 5, 1965, are accepted for filing, and the thirty-day notice requirements of Section 154.22 of the Regulations are waived to permit such revised tariff sheets to take effect as of June 27, 1965.

(C) Northern shall comply with each of the provisions of the "Statement of Intention."

(D) Within fifteen days after making refunds in accordance with the "Statement of Intention", Northern shall report to the Commission, in writing and under oath, the amount of the refund to each customer, showing separately the amount of principal and interest so paid, together with a computation showing the manner in which such refund was determined, shall serve a copy of this report upon each customer, and shall submit to the Commission a copy of the release signed by such customer acknowledging receipt of the amount refunded.

(E) This order is without prejudice to any findings or orders which have been or may hereafter be made by the Commission, and is without prejudice to any claims or contentions which may be made by the Commission, its staff, Northern, or any affected party herein in any proceeding now pending, or hereafter instituted by, or against, Northern, or any other company or person.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., David S. Black and Carl E. Bagge.

PACIFIC POWER & LIGHT COMPANY, DOCKET NO. E-7123

SUPPLEMENTAL ORDER EXTENDING EXPIRATION DATE OF COMMISSION'S ORDER

(Issued October 15, 1965)

By order issued October 14, 1963, 30 FPC 1006, in the above docket, the Commission authorized Pacific Power & Light Company (Pacific) to assume liability as guarantor of promissory notes or other evidences of indebtedness or obligations issued by persons to commercial banks for the following purposes:

(1) To finance extensions to Pacific's facilities to serve new customers where circumstances are such that the new customer is required to make advance payments to Pacific as a condition to obtain service. (No note is to exceed $5,000 or extend for a period in excess of 10 years.)

(2) To finance payments for wiring modernization and improvement, electric equipment, and appliances by residential consumers. (No note is to exceed $1,200 or extend for a period in excess of five years.)

(3) To finance payments for wiring modernization and improvement, electric equipment, and appliances by commercial consumers. (No note is to exceed $2,500 or extend for a period in excess of five years.)

The order states that the aggregate principal outstanding balance of all such obligations for purposes numbered (1) above to which Pacific, at any one time shall assume liability, shall not exceed $2,000,000. The aggregate principal balances of all obligations for purposes numbered (2) and (3) above with respect to which Pacific, at any one time may assume liability, may not exceed $1,000,000. New liabilities may be assumed only during the period of two years from the date of the order. The order also contains a provision that Pacific shall file within 30 days from the first anniversary date of the order a report of its ex-

perience under the authorization, setting forth, among other matters, the number of loans it has been requested to endorse as guarantor, the geographic distribution of such requests, the number of such requests it has rejected, together with the reasons for such rejection. Pacific has filed this requested information.

Pacific, on August 23, 1965, filed an amendment to its original application requesting the Commission to extend the authorization to continue to assume the liability beyond October 14, 1965, the expiration date of the Commission's order issued October 14, 1963; and to modify the Commission's order by requiring the report of Applicant's transactions be filed with the Commission after the close of each calendar year instead of on the anniversary date of the order as now provided.

Pacific reports the result of the program cumulative to June 30, 1965, as follows: Total cumulative amount of notes guaranteed to commercial banks was $275,287.51. During this period Pacific has purchased from banks seven notes totalling $1,936.20. Regarding the delinquent notes purchased, Pacific reports $85.97 collected, $95.72 written off and the collection process is active with the balance of $1,754.51.

The Commission orders:

(A) The authorization granted in the Commission's order issued October 14, 1963, for a period of two years terminating October 14, 1965, is hereby extended for a period of five years terminating October 14, 1970.

(B) The Commission's order is further modified by requiring that the report specified in Paragraph (D) shall be filed on or before February 15 after the close of the calendar year beginning with the calendar year 1965.

(C) All other terms and conditions as set forth in the aforesaid Commission order issued October 14, 1963, shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., David S. Black and Carl E. Bagge.

EDWARD O. BOSHELL, DOCKET NO. ID–1107

ORDER TO SHOW CAUSE

(Issued October 18, 1965)

By order issued April 29, 1952, 11 FPC 956, Edward O. Boshell (Applicant) was authorized, pursuant to Section 305(b) of the Federal Power Act to hold the following positions:

Director Chairman of the Executive Committee	Duquesne Light Company.
Director	Westinghouse Electric Corporation.

In the order, the Commission reserved the right to require Applicant to make further showing that neither public nor private interests would be adversely affected by continuing to hold the above positions.

At that time Applicant was President and Chairman of The Board of Standard Gas and Electric Company, the parent holding company of Duquesne Light Company. In the order the Commission commented on this situation as follows:

> As a practical matter, furthermore, Mr. Boshell is now Director and Chairman of the Executive and Finance Committee of Duquesne by virtue of his

relationship to Standard Gas and Electric, a holding company solely within the jurisdiction of the Securities and Exchange Commission and presently in the process of dissolution under the aegis of that Commission. As such he is admittedly in a position to dominate the Duquesne board, either directly or through nominations, and will continue in that position, regardless of our action herein, at least until the process of dissolution under Securities and Exchange Commission supervision has been concluded.

Since then, Standard Gas and Electric Company has been liquidated and the situation referred to in the Commission's order of exercising control of Duquesne through the holding company no longer exists.

Westinghouse Electric Company is a primary supplier of electrical equipment to Duquesne and the holding of such interlocking positions as referred to above, in these two companies would appear to create a conflict of interest which would or could be adverse to public or private interests. Under similar circumstances the Commission has denied authorization to hold such interlocking positions. (See *Leland F. Sillin, Jr.*, Docket No. ID–1473, order of May 13, 1965, 33 FPC 1006).

In view of the foregoing, it is necessary and appropriate for the purposes of administering the Federal Power Act that Applicant show cause, if any there be, why the Commission should not terminate the present authority to hold the interlocking positions referred to above.

The Commission orders:

Edward O. Boshell shall show cause, if any there be, within 30 days from the issuance of this order, why the Commission should not find and determine that the continued authorization to hold the following interlocking positions:

Director Chairman of the Executive Committee	Duquesne Light Company.
Director	Westinghouse Electric Corporation.

would be adverse to public or private interests and should be terminated.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., David S. Black and Carl E. Bagge.

GAS GATHERING CORPORATION, G–20118 AND RP65–11; HUMBLE OIL & REFINING COMPANY, G–9287, ET AL.; SOCONY MOBIL OIL COMPANY, INC., G–12201 AND G–17526; THE ATLANTIC REFINING COMPANY, G–17741; TRANSCONTINENTAL GAS PIPE LINE CORPORATION, RP65–31

ORDER AMENDING ORDERS

(Issued October 18, 1965)

On June 10 [unreported] July 12 and August 9, 1965, 34 FPC 30, 441, we issued orders in the above-docketed proceedings in which, *inter alia*, we ordered Transcontinental Gas Pipe Line Corporation (Transco) to retain any monies that might otherwise flow through to The Manufacturers Light and Heat Company by reason of Transco receiving refunds because of our approval of settlement proposals in those orders. In the orders we gave Transco the election to commingle the retained refunds with its general assets and use them for its corporate purposes at an interest rate of 6% per annum to the date on which they are to be paid over to the person ultimately determined to be entitled thereto in a final order

of the Commission. Transco has advised the Commission, in each instance, that it elected so to do.

On September 10, 1965, Transco filed motions asking that each of the orders be amended to provide that the rate of interest on the retained refunds be 4.5% per annum in accordance with Opinion No. 468, Area Rate Proceeding, Docket No. AR61–1, *et al.*, 34 FPC 159, (issued August 5, 1965). Good cause exists to grant Transco's motions.

The Commission orders:

(A) The motions filed by Transco on September 10, 1965, are each granted.

(B) Ordering Paragraph (H) of the order issued June 10, 1965, in Docket No. G–20118, *et al.*, Ordering Paragraph (G) of the order issued July 12, 1965, in Docket No. G–12201, *et al.*, and Ordering Paragraph (C) of the order issued August 9, 1965, in Docket No. G–17741, *et al.*, are each amended so as to provide for an interest rate of 4.5% per annum in lieu of 6% per annum set forth in each of said ordering paragraphs, to the date on which the retained refunds are paid over to the person ultimately determined to be entitled thereto in a final order of the Commission.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

NATURAL GAS PIPELINE COMPANY OF AMERICA.
DOCKET NO. CP66–39

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued October 18, 1965)

On August 2, 1965, Natural Gas Pipeline Company of America (Applicant), filed in Docket No. CP66–39 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain facilities and the sale and delivery of natural gas, all as more fully set forth in the application.

Applicant seeks authorization to construct and operate approximately 120 feet of 2-inch lateral, a meter station and other appurtenant facilities in LaSalle County, Illinois, for the sale and delivery of natural gas to Northern Illinois Gas Company (Northern) for resale to the Wallace Township School which is located north of Ottawa, LaSalle County, Illinois.

The required state and local authorizations have been obtained. Total estimated cost of Natural's proposed facilities is $3,900 which will be financed with funds on hand. Gas requirements are estimated as follows:

Year of service	1st	2d	3d
Peak day—Mcf	40	40	40
Annual—Mcf	1,600	1,600	1,600

Northern, an existing customer of Applicant, proposes to serve the school from quantities of natural gas which Applicant has heretofore been authorized to sell and deliver to Northern. Northern's presently effective contract quantity is 564,190 Mcf under Applicant's Schedule CD–1 and 308,035 Mcf maximum daily quantity of storage withdrawal service under Applicant's Rate Schedule S–1. Applicant does not propose any increase in the Daily Contract Quantity or the Maximum Daily Quantity of storage withdrawal.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on October 14, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought, and upon consideration of the record,

The Commission finds:

(1) Applicant, Natural Gas Pipeline Company of America, a Delaware corporation having its principal place of business in Chicago, Illinois, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of November 7, 1958, in Docket No. G-9966 (20 FPC 694).

(2) The proposed construction and operation of facilities and the sale and delivery of natural gas by Applicant as hereinbefore described, and as more fully described in the application, in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed construction and operation of facilities and the sale and delivery of natural gas are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Applicant, Natural Gas Pipeline Company of America, authorizing the construction and operation of facilities and the sale and delivery of natural gas to Northern Illinois Gas Company as hereinbefore described and as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities authorized shall be completed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the aforesaid Regulations within 3 months of the date on which this order issues.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

UNION ELECTRIC COMPANY, PROJECT NO. 2277

ORDER GRANTING REHEARING FOR FURTHER CONSIDERATION

(Issued October 18, 1965)

On September 27, 1965, the Union Electric Company (Applicant) filed an application for rehearing of the order dated August 26, 1965, 34 FPC 598, issuing

a license under Section 4(e) of the Federal Power Act for Project No. 2277, known as the Taum Sauk project, located on the East Fork of the Black River at its confluence with Taum Sauk Creek in Reynolds, Iron, Washington and St. Francois Counties, Missouri in the vicinity of Lesterville, Missouri.

In addition to alleging that the license order contains certain errors in the description of the project, Applicant contends that:

(a) *Article 31*, insofar as it requires Applicant to make water releases from the lower pool at such rate or in such volume as the Commission may prescribe, is unnecessary and undesirable because other license provisions deal adequately with this matter.

(b) *Article 32*, insofar as it requires that the natural inflow into the lower pool be measured, is impractical and unnecessary since Applicant's present practice accomplishes the apparent objective of this requirement.

(c) *Article 34*, insofar as it requires that seepage flows be measured daily is unworkable, and Applicant's present practice provides all necessary information.

It appears appropriate to allow time in which the Commission staff may make further investigation of the engineering aspects involved and confer with representatives of the Company in an effort to achieve a resolution of the technical problems.

The Commission finds:

It is appropriate and in the public interest in administering Part I of the Federal Power Act (16 USC 791–823) that the aforesaid application of the Union Electric Company for rehearing of the order, dated August 26, 1965, issuing a license for Project No. 2277 be granted for the purpose of further consideration.

The Commission orders:

The aforesaid application of the Union Electric Company for rehearing is hereby granted for the purposes of further consideration of the matters presented therein.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

UNITED FUEL GAS COMPANY, DOCKET NO. CP65–207

ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued October 18, 1965)

On August 23, 1965, United Fuel Gas Company (Applicant) filed in Docket No. CP65–207 an application to amend the order of the Commission issued in said docket on March 8, 1965, 33 FPC 424, authorizing the Applicant to (1) construct and operate measuring and regulating facilities on its 10-inch transmission line in Boyd County, Kentucky and (2) to sell natural gas to Columbia Gas of Kentucky, Inc. (Columbia), an affiliated wholesale customer of Applicant, for resale to The International Nickel Company, Inc. (International Nickel). Applicant seeks an amendment of said order so as to delete from Ordering Paragraph (A) thereof authorization to construct and operate facilities, all as more fully set forth in the said application to amend.

Applicant states that upon finalization of Columbia's construction program to connect its lateral pipeline to Applicant's existing 10-inch transmission line, an agreement was consummated between Columbia and International Nickel, whereby the latter provided a site on its premises for a measuring and regulating facility to meter the gas from Columbia to International Nickel. In view of this agreement the facilities proposed by Applicant became unnecessary.

Due notice of the filing of the application to amend and opportunity for hearing thereon have been given by publication in the Federal Register on September 4, 1965 (30 F.R. 11359). No protest, petition to intervene or notice of intervention has been filed in the proceeding concerning this amendment.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued March 8, 1965, in Docket No. CP65–207 be amended as hereinafter ordered.

The Commission orders:

(A) The Commission's said order issued in Docket No. CP65–207 is amended so as to delete from Ordering Paragraph (A) thereof authorization to construct and operate facilities.

(B) In all other respects said order shall remain in full force and effect.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

UNITED GAS PIPE LINE COMPANY, DOCKET NO. CP66–66

FINDINGS AND ORDER AFTER STATUTORY HEARING PERMITTING AND APPROVING ABANDONMENT

(Issued October 18, 1965)

On August 30, 1965, United Gas Pipe Line Company (Applicant) filed in Docket No. CP66–66 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon certain natural gas facilities originally constructed to serve Continental Can Company, Inc., in Jefferson County, Texas (Docket No. CP63–50, 29 FPC 235), all as more fully set forth in the application.

Applicant seeks permission and approval to abandon facilities consisting of a positive meter station located at a point on the 2-inch line serving the U.S. Steel Corporation in Jefferson County, Texas. By letter agreement dated July 13, 1965, Applicant and Continental Can Company agreed to a cancellation of the contract under which deliveries of gas were made for the reason that the plant has been shut down and gas is no longer needed.

After due notice, no petition to intervene, notice of intervention, or protest to the granting of the application has been filed.

At a hearing held on October 14, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought, and upon consideration of the record,

The Commission finds:

(1) Applicant, United Gas Pipe Line Company, a Delaware corporation having its principal place of business in Shreveport, Louisiana, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order issued November 10, 1943, in Docket No. G–232 (3 FPC 863).

(2) The facilities proposed to be abandoned, as hereinbefore described and as more fully described in the application herein, are used in the transportation

of natural gas in interstate commerce subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(3) The proposed abandonment of the aforesaid facilities and the service rendered thereby is permitted by the public convenience and necessity and approval thereof should be granted as hereinafter ordered.

The Commission orders:

(A) Permission for and approval of the abandonment of the facilities hereinbefore described, as more fully described in the application in this proceeding, and the service rendered are granted to Applicant, United Gas Pipe Line Company.

(B) Applicant shall advise the Commission of the date of abandonment of the facilities as authorized in paragraph (A) above within 10 days of such abandonment.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

TRANSCONTINENTAL GAS PIPE LINE CORPORATION, CP64-270; SOUTHERN NATURAL GAS COMPANY, CP64-259, CP64-314; EAST TENNESSEE NATURAL GAS COMPANY, CP65-66; TENNESSEE GAS TRANSMISSION COMPANY, CP64-165; CITY OF BUFORD, GEORGIA, CP65-11, CP65-20; CITY OF SUGAR HILL, GEORGIA, CP65-10, CP65-19; CITY OF AUSTELL, GEORGIA, CP65-74

ORDER ISSUING TEMPORARY CERTIFICATE TO OPERATE FACILITIES

(Issued October 19, 1965)

By our orders of April 13, 1965, 33 FPC 729 and August 30, 1965, 34 FPC 655, Southern Natural Gas Company (Southern) was granted temporary certificates to construct specified facilities for which it is seeking permanent certificate in Docket No. CP64-314. The facilities provide an increase of 57,824 Mcf in Southern's daily delivery capacity, part of which is allocated for additional firm service to Atlanta Gas Light Company (Atlanta) and the Water, Light and Sinking Fund Commission of Dalton, (Dalton) existing customers of Southern in the State of Georgia. On September 2, 1965, Southern filed a request for temporary certificate to operate the facilities installed under the two previous temporary certificates.

Answers to the request for temporary certificate to operate the facilities were filed by East Tennessee Natural Gas Company and Transcontinental Gas Pipe Line Corporation (Transco). Neither opposes granting the request. Transco, the only applicant competing for increased service to Dalton and Atlanta, requests that certain conditions be imposed in the event that Southern subsequently fails to receive permanent authorization for rendering said service. Southern has acquiesced and we shall so condition the instant authorization. Should the Commission deny permanent certificates for the facilities authorized to be constructed under both temporary certificates, cost associated with the construction of said facilities shall not be included in Southern's rate base.

The Commission orders:

(A) The application of Southern Natural Gas Company in Docket No. CP64-314 for temporary certificate to operate and use the facilities heretofore authorized to be constructed under two previous temporary certificates is granted as hereinafter conditioned.

(B) The grant of the instant temporary certificate is without prejudice to such final determination of the applications in the proceeding in Transcontinental Gas Pipe Line Corporation, *et al.*, Docket No. CP64-270, *et al.*, as the record may require.

(C) The temporary certificate issued herein and the rights granted hereunder are conditioned upon Southern's compliance with all Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraph (c)(3) of Section 157.20 of such Regulations. Should the Commission deny a permanent certificate to Southern in Docket No. CP64-314, the contract demands of Atlanta and Dalton at the Rome, Georgia delivery point shall be decreased by 2,342 Mcfd and 3,050 Mcfd, respectively. Furthermore, the subject facilities, under the instant temporary certificate, shall not be utilized to deliver to Atlanta increased contract demand volumes for the "Atlanta area" in excess of those volumes set forth on page 7 of Exhibit 1 in Southern's application for a temporary certificate in Docket No. CP64-314, filed February 23, 1965.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

VANCEBURG ELECTRIC LIGHT, HEAT AND POWER SYSTEM v. KENTUCKY POWER COMPANY AND AMERICAN ELECTRIC POWER COMPANY, DOCKET NO. E-7184

ORDER ACCEPTING RATE SCHEDULES FOR FILING EFFECTING RATE REDUCTIONS, GRANTING WAIVER OF NOTICE REQUIREMENTS AND TERMINATING PROCEEDING

(Issued October 19, 1965)

Complainant, Vanceburg Electric Light, Heat and Power System (Vanceburg), Vanceburg, Kentucky, and respondent, Kentucky Power Company (Kentucky Power), propose a settlement of issues in this proceeding on the basis of a $19,000 annual rate reduction to the City all as reflected in an offer of settlement which was submitted to the presiding examiner on September 20, 1965, and subsequently certified to the Commission.

Fleming-Mason Rural Electric Cooperative Corporation (Fleming-Mason), sole intervenor in the proceeding, states that it has no objection to termination of the proceeding on the basis of the settlement proposal. Commission staff and the presiding examiner recommend acceptance of the settlement proposal.

This order terminates the above-entitled proceeding, as requested, resulting in the above reduction to Vanceburg and an $8,300 annual rate reduction by Kentucky Power to the City of Olive Hill, Kentucky (Olive Hill). Both cities are all requirements electric customers of Company.

Vanceburg initiated this matter upon complaint filed October 1, 1964, seeking a rate reduction in respondent's wholesale rates and charges to the City, or, in the alternative, substitute wholesale electric service from Fleming-Mason. Substantive and jurisdictional questions raised in the answer of Kentucky Power were set for hearing by order of the Commission issued March 4, 1965, reconsideration denied March 29, 1965, 33 FPC 406, 654. In addition to rate level and service questions as raised in the complaint and answer, the Commission ordered an investigation and hearing as to its jurisdiction over respondent's other wholesale sales or services and the lawfulness of respondent's rates and charges therefor. In addition to Vanceburg and Olive Hill, Kentucky Power undertakes to furnish wholesale and wheeling services pursuant to an interconnection and coordination arrangement with East Kentucky Rural Electric

Cooperative Corporation, a generating and transmission cooperative with its principal place of business at Winchester, Kentucky (EKRECC).[1]

Under the settlement proposal, Kentucky Power proffers rate schedules for filing with the Commission for all three customers, subject to Company's reservation of the right to contest Commission jurisdiction thereover.

Hearings were commenced before a presiding examiner of the Commission on April 15, 1965. To date, prepared testimony of witnesses for Vanceburg and Fleming-Mason[2] has been served and cost of service data have been exchanged informally among the parties and staff for settlement purposes. Pending several settlement conferences, further formal hearings were delayed by agreement of all parties and the presiding examiner.

As indicated above, under the terms of the settlement proposal, Kentucky Power would reduce its rates to Vanceburg by 23% ($19,000) and to Olive Hill by 13% ($8,300) based upon 1964 data.[3] Both rate reductions would be effective August 1, 1965. Additionally, Vanceburg's present 20-year electric service contract with Kentucky Power (expiring July 16, 1976) would be modified to permit termination by either party upon three years written notice given at any time after August 1, 1967. We find such revision acceptable for settlement purposes.

As reported by the presiding examiner, the settlement proposal follows numerous meetings between the parties and Commission staff, in the course of which cost of service data of staff and respondent were exchanged and discussed. In the course of these negotiations, substantial differences developed on matters of cost classification, allocations procedures and items of allowable cost with the result that the settlement proposal presents specific rates and charges for service to Vanceburg and Olive Hill rather than any agreed upon costs of service to the two Cities. The demand and energy portions of those rates are as follows:

Vanceburg

Primary Portion: For each kw of monthly billing demand as determined below ---------- $2.60

The Customer shall be allowed 250 kw for each kw of monthly billing demand billed hereunder.

Secondary Portion: For energy in excess of 250 kwh per kw of monthly billing demand---------- $.00512 per kwh

Reactive Demand Charge: For each kvar of lagging reactive demand in excess of 50% of the kw of monthly billing demand---------- $.25 per kvar[4]

Olive Hill

Primary Portion: For each kw of monthly billing demand as determined below---------- $2.85

The Customer shall be allowed 250 kw for each kw of monthly billing demand billed hereunder.

Secondary Portion: For energy in excess of 250 kwh per kw of monthly billing demand---------- $.00512 per kwh.

Reactive Demand Charge: For each kvar of lagging reactive demand in excess of 50% of the kw of monthly billing demand---------- $.25 per kvar[4]

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[1] At the time Vanceburg filed its complaint, Kentucky Power also supplied the power and energy requirements of two rural electric distribution cooperatives, Big Sandy Rural Electric Cooperative Corporation and Grayson Rural Electric Cooperative Corporation. Kentucky Power's services to those cooperatives ceased in February, 1965, upon commencement of service from EKRECC.

[2] Neither Olive Hill nor EKRECC sought to intervene in this proceeding.

[3] Olive Hill was given an earlier rate reduction by Kentucky Power in 1964.

[4] Both rates subject to fuel adjustment, minimum charge, billing demand and contract capacity clauses.

The difference in the demand charges to the two Cities represents a $.25 per kw substation discount to Vanceburg, for providing its own substation and transformation facilities. Kentucky Power provides the substations and transformation facilities for service to Olive Hill at 4 kv. Vanceburg takes service at 34.5 kv.

Based upon 1964 conditions the proposed charges to Vanceburg would total $64,521 and those to Olive Hill would amount to $55,633. Kentucky Power's actual charges to Vanceburg amounted to $83,480 during 1964. Charges to Olive Hill reflecting reduced rates effective July 1, 1964, are computed at $63,935 based upon 1964 conditions.

As reported to the Commission, available cost data indicate the lack of need for further cost of service analysis at this time regarding Kentucky Power's services to EKRECC under their interconnection and coordination agreement. That agreement provides for mutual emergency support by the two systems, coordination of maintenance schedules, exchange of economy energy and wheeling services.

Rate questions relative to the two cities will be disposed of through acceptance of the rate schedule as set forth in the proffered settlement proposal. These schedules result in substantial and immediate reductions in charges to both Vanceburg and Olive Hill. The differences between Kentucky Power and staff cost of service data define a perimeter within which cost of service differences may, and do, occur by reason of the numerous judgement factors involved in the rate making process. And, although the parties to this proceeding do not agree upon a compromise cost of service applicable to each City, the dollar effect of the offer of settlement is that of a compromise of the Company's differences with staff cost of service data. So considered, the settlement proposal presents an acceptable resolution of contested issues.

By accepting the proffered rate schedules we do not determine what would be the fair rate of return for Kentucky Power to earn upon its wholesale electric business,[5] nor the basis for disposition of disputed items in the respective cost of service data exchanged by Kentucky Power and staff, as would be done were this proceeding terminated following a complete trial of all issues. Our rate making authority is a continuing process and disposition of this proceeding on the indicated basis in no way limits our ability to re-examine Kentucky Power's wholesale rates and charges at any time hereafter. In disposing of this case upon the basis of the proffered rate schedules and resulting revenues, we take note of the immediate rate relief which will be afforded thereby. Also, we note that the effective date of the proposed schedules will be August 1, 1965.

The Commission finds:

(1) Good cause has been shown that the 30-day notice period provided in Section 35.3 of the Commission's Regulations under the Federal Power Act be waived with respect to Kentucky Power's rate schedule filings as referred to above and designated in Appendix A, and that such rate schedules be accepted for filing and allowed to take effect as of August 1, 1965.

(2) It is necessary and appropriate for the purposes of the Federal Power Act that the above-entitled proceeding be terminated in the manner hereinafter ordered.

The Commission orders:

(A) The 30-day notice period provided in Section 35.3 of the Commission's Regulations under the Federal Power Act is waived with respect to the proposed

[5] As for example 6% per annum which Kentucky Power and staff reflected in their respective cost analyses but without agreement as to the propriety thereof; counsel for the various parties and staff reserving arguments supporting greater and lesser amounts.

rate schedules as referred to above and designated in Appendix A hereto and they are accepted for filing and allowed to take effect as of August 1, 1965.

(B) The issuance of this order shall constitute full notice of the filing and publication of the rate schedules in question insofar as their effective dates are concerned.

(C) Acceptance of Kentucky Power's rate schedules as herein provided is without prejudice to any findings or orders which have been or may hereafter be made by this Commission in any proceeding by or against Kentucky Power. Moreover, nothing in this order shall be construed as waiver in any other respect of the requirements of Section 205 of the Federal Power Act or Section 35.11 of the Commission's Regulations under the Federal Power Act; nor shall this order be construed as constituting approval by this Commission of any service, rate, charge, classification, or any rule, regulation, contract, or practice affecting such service or rate provided for in the rate schedules referred to above and designated in Appendix A; nor shall this order be deemed as recognizing any claimed contractual right or obligation affecting or relating to such service or rates.

(D) The above-entitled proceeding, Docket No. E-7184, is terminated.

APPENDIX A

Kentucky Power Company

Rate Schedule Designations

Designation	Other party	Instrument
(1) Rate Schedule FPC No. 12 (Supersedes Rate Schedule FPC No. 5).	City of Vanceburg, Ky.	Service Agreement dated 7-16-56.
(2) Supplement No. 1 to Rate Schedule FPC No. 12.	City of Vanceburg, Ky.	Undated "Supplement No. 1 to Vanceburg Rate Schedule,"
(3) Rate Schedule FPC No. 13 (Supersedes Rate Schedule FPC No. 4).	City of Olive Hill, Ky	Service Agreement dated 6-25-64.
(4) Supplement No. 1 to Rate Schedule FPC No. 13.	City of Olive Hill, Ky	Undated "Supplement No. 1 to Olive Hill Rate Schedule."
(5) Rate Schedule FPC No. 14	East Kentucky Rural Electric Cooperative Corp.	Interconnection Agreement dated 5-14-63.
(6) Supplement No. 1 to Rate Schedule FPC No. 14.	East Kentucky Rural Electric Cooperative Corp.	Service Schedule A under Agreement dated 5-14-62.
(7) Supplement No. 2 to Rate Schedule FPC No. 14.	East Kentucky Rural Electric Cooperative Corp.	Service Schedule B under Agreement dated 5-14-63.
(8) Supplement No. 3 to Rate Schedule FPC No. 14.	East Kentucky Rural Electric Cooperative Corp.	Service Schedule C under Agreement dated 5-14-63.
(9) Supplement No. 4 to Rate Schedule FPC No. 14.	East Kentucky Rural Electric Cooperative Corp.	Service Schedule D under Agreement dated 5-14-63.
(10) Supplement No. 5 to Rate Schedule FPC No. 14.	East Kentucky Rural Electric Cooperative Corp.	Service Schedule E under Agreement dated 5-14-63.
(11) Supplement No. 6 to Rate Schedule FPC No. 14.	East Kentucky Rural Electric Cooperative Corp.	Service Schedule F under Agreement dated 5-14-63.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

ORGANIZATION OF THE COMMISSION, DOCKET NO. R-287

ORDER NO. 307

AMENDING STATEMENT OF ORGANIZATION

(Issued October 20, 1965)*

Since the issuance of the Commission's revised Statement of Organization (Order No. 245, 27 FPC 887, 27 F.R. 4276, 18 CFR 3.4(e)) its staff has been

*Published in the Federal Register on October 28, 1965 (30 F.R. 13693).

reorganized in numerous respects. Consequently, and in accordance with section 3(a)(1) of the Administrative Procedure Act, we are amending those portions of the organization statement so as to accurately describe our current organization.

The Commission finds:

The amendment to its general rules adopted hereby involves matters of agency organization and procedure which do not require compliance with the notice and effective date provisions of section 4 of the Administrative Procedure Act.

The Commission, acting pursuant to authority granted by section 309 of the Federal Power Act and section 16 of the Natural Gas Act (16 U.S.C. 825h; 15 U.S.C. 717o) and in accordance with section 3 of the Administrative Procedure Act (5 U.S.C. 1002), orders:

(A) Part 3, Subchapter A, Chapter I of Title 18 of the Code of Federal Regulations, is amended by amending the opening sentence and subparagraphs (1), (2), (3), (8), (9), (10) and (12) of § 3.4(e) to read as follows:

"§ 3.4 Organization.

* * * * * * *

(e) *The staff.* The Commission's staff is comprised of the following bureaus and offices:

(1) The Bureau of Natural Gas, responsible for all staff functions pertaining to the natural gas industry, including work related to cost of service studies, cost allocations, rate design, engineering feasibility determinations, service discrimination studies, economic feasibility determinations, gas reserve and deliverability studies, and rate, contract, and tariff analyses and related statistical matters; except responsibility for the legal aspects of the foregoing, the Uniform System of Accounts, original cost and reclassification studies, financial and related statistical matters, rate-of-return studies, and other matters responsibility for which has been assigned to other elements of the staff. The Bureau consists of the Office of the Chief, the Pipeline Division, the Producer Division, the Area Rate Division, and the Analysis and Procedures Division.

(2) The Bureau of Power, responsible for all staff activities pertaining to water resources, hydroelectric power, and the electric power industry; except legal aspects of the foregoing, accounting, financial and related statistical matters, and other matters responsibility for which has been assigned to other elements of the staff. The Chief of the Bureau is also the Chief Engineer of the Commission and is personally responsible for furnishing advice, assistance and counsel on such engineering matters as the Commission may require, and in addition is responsible for the substantive and administrative aspects of the Commission's civil and defense mobilization activities. The Bureau is divided into a headquarters office at Washington, D.C. and five regional offices. The headquarters office consists of the Office of the Chief of the Bureau, a Division of Electric Resources and Requirements, a Division of Licensed Projects, a Division of Rates and Corporate Regulation, and a Division of River Basins. The regional offices at Atlanta, Chicago, Fort Worth, New York, and San Francisco are responsible within their respective geographic areas for Bureau functions which can be done most effectively and efficiently in the field, including field investigations and studies, consultations and inspections.

(3) The Office of Accounting and Finance, responsible for all staff activities pertaining to accounting, financial and related statistical matters including rate-of-return studies and work related to licensed project initial costs, net investment and depreciation and amortization reserve determinations; audit and examina-

tion of accounting procedures of licensees, public utilities and natural gas companies for compliance with prescribed System of Accounts; development and interpretation of Uniform System of Accounts; financial analysis of applications for securities or acquisition of property; and collection, preparation and publication of accounting and financial statistics; except legal aspects of the foregoing, accounting investigations relative to rates and charges for electric power and natural gas, and other matters responsibility for which is assigned to other elements of the staff. The office consists of the Office of the Chief, a Division of Audits, a Division of Systems, and a Division of Finance and Statistics. The Division of Audits includes a field unit with offices in San Francisco, California. The Chief Accountant, in addition to his duties as head of the Office, has personal responsibility for the over-all correlation and adequacy of the accounting and related functions of all bureaus and offices of the staff.

* * * * * * *

(8) The Office of Economics, responsible for advisory and research activities pertaining to economic policy aspects of the Commission's administration of the Federal Power Act and the Natural Gas Act, and for coordinating the Commission's statistical programs. The Office consists of the Office of the Chief, a Division of Econometric Analysis, a Division of Economic Studies, and a Division of Reports and Statistical Analysis.

(9) The Office of Administrative Operations, responsible for providing contracting and procurement, travel and transportation, records, dockets, and files, all types of office services, and data processing machine services.

(10) The Office of Management and Manpower Utilization, responsible for the functions of management analysis, automatic data processing systems analysis and programming services, the conduct of management and manpower utilization surveys, and the suggestion awards aspect of the Commission's incentive awards program.

* * * * * * *

(12) The Office of Program, Budget and Financial Services, responsible for development and implementation of the Commission's financial management system including program, budget and administrative accounting, and provision of payroll services. The Chief of the Office is also the Budget Officer and has the personal responsibility for the over-all correlation and adequacy of the budgeting and related functions of the staff."

[Sec. 16, 52 Stat. 830, 15 U.S.C. 717o; sec. 309, 49 Stat. 858, 16 U.S.C. 825h; Sec. 3, 60 Stat. 238, 5 U.S.C. 1002]

(B) The amendments prescribed herein will be effective upon the issuance of this order.

(C) The Secretary shall cause prompt publication of this order to be made in the Federal Register.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

TEXAS EASTERN TRANSMISSION CORPORATION, DOCKET NO. RP66-12

ORDER EXTENDING TIME FOR FILING

(Issued October 20, 1965)

The Commission on October 4, 1965, issued an order in the above docket, entitled "Order Setting Hearing on Refunds", *supra*, p. 1099. Among other things, that order requires that Texas Eastern Transmission Corporation (Texas Eastern), within 45 days from the date of issuance of the order, file a special report as therein described.

On or about October 14, 1965, "Motion to Stay Proceedings Before the Federal Power Commission in Order to Protect Jurisdiction Over Pending Appeal", was filed by Texas Eastern in the United States Court of Appeals for the Fifth Circuit. That motion urges the Court to stay the requirements of our order issued October 4, 1965, alleging, *inter alia*, that such action by the Court is necessary in order to protect its jurisdiction in the proceedings heretofore filed by Texas Eastern for court review of Commission orders (31 FPC 1180, 32 FPC 687 and 32 FPC 879, Opinion Nos. 428, 428-A and 428-B, Docket No. RP63-1, May 14, 1964, September 2, 1964 and September 30, 1964; 32 FPC 1515, 1559, Docket Nos. RP61-18, RP63-1 and RP65-1, issued December 23, rehearing denied, December 31, 1964; and Docket No. G-9287, *et al.*, issued April 21, 1965, rehearing denied, June 14, 1965 33 FPC 830, 1263). Together with its Motion, Texas Eastern urges that the Court set its request for stay down for oral argument. The Commission's motion to dismiss Nos. 22041 and 22462, CA5, for want of jurisdiction in the Court has been carried with the case without being decided after having been orally argued, and briefing and argument of the cases on the merits has been expedited, so that the jurisdictional question is expected to be argued again along with the merits on December 7, 1965. The Commission also expects that the Court's decision on that motion will be controlling as to No. 22870.

Even if the Commission were in error as to the Court's lack of jurisdiction over those petitions, the Commission deems the petition for stay defective both as to jurisdiction of the Court to entertain it and as to the lawfulness and reasonableness of the Commission's order of October 4, 1965.

However, the Commission feels constrained to recognize that the Court, having in effect deferred ruling on the question of its jurisdiction in Nos. 22041 and 22462 until after the argument of the merits, should not be expected to pass upon the further questions raised by the motion for stay of the October 4 order before the December 7 argument. The Commission feels that, regardless of its views as to the jurisdictional and substantive merits, *vel non*, of the motion for stay, it should postpone the date set for filing the report originally ordered to be filed on November 19, 1965, for a further 46 days, to January 3, 1966, to afford the Court the same opportunity to pass on the questions with respect to the requested stay as the Court deemed appropriate for the motion to dismiss, without the necessity for two hearings that would be substantially duplicated and overlapping.

The Commission orders:

The time within which Texas Eastern shall file the special report required by Paragraph (B) of the order issued October 4, 1965, hereby is enlarged to expire January 3, 1966.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

AREA RATE PROCEEDING, ET AL. (HUGOTON-ANADARKO AREA), DOCKET NO. AR64-1; AREA RATE PROCEEDING, ET AL. (TEXAS GULF COAST AREA), DOCKET NO. AR64-2

ORDER DENYING RECONSIDERATION OF THE DENIAL OF AN APPEAL

(Issued October 21, 1965)

By order issued August 27, 1965, 34 FPC 609, the Commission denied an appeal by a group of parties [1] including a number of Hunt interests (Appellants), from a ruling of the Presiding Examiners, refusing to require a breakdown of the data already received by us in response to our all-area questionnaire. Specifically Appellants want lease production expenses and costs from leases where all the wells were completed after December 31, 1954, and all production during 1962 originated at depths below 10,000 feet. They want investment costs, operating expenses, depletion, depreciation, and amortization, and related production volumes as reported in the questionnaire for Continental U. S., Texas Railroad Commission District Nos. 2, 3, 4, and 10, and the Oklahoma Panhandle, Oklahoma Anadarko and Kansas areas.

On September 23, 1965, Appellants filed a petition for rehearing of our order denying the appeal.[2] Their "purpose, as stated, is to show increasing cost with depth and time, the impropriety of using the relative cost method for allocating production costs and the impropriety of fixing rates on the basis of average cost."

There is no end to the data which might prove interesting to these matters. However, we must weigh the possible materiality of the data in light of the burden of gathering and presenting the data in evidence and against the damage to the public in the accompanying delay in the completion of these proceedings. In our recent Opinion No. 468, 34 FPC 159, we have recognized the costs of new gas at whatever depth it is found in fixing a higher price for new gas in the Permian Basin Area on the basis of abundant cost data in this regard. Appellants now want a more narrow investigation of a special time period and a special depth bracket, ignoring for these purposes consideration of leases with shallower gas and leases with both deep and shallow gas. While it is theoretically possible to subdivide the composite costs in the area into "deep" and "shallow" categories we believe the record contains ample cost data to enable us to give full recognition to the costs of deeper drilling without the additional data requested by Hunt.

The suggested data also would not help decide the special question of whether gas from newly productive deeper zones in previously committed acreage deserves a new gas price. See Opinion No. 468-A, *supra*, p. 1068 at pp. 1071, 1072. This question does not require any separate showing of the costs of gas from deeper formations but rather concerns the question whether "the new gas-well gas ceiling is needed in the public interest for gas from committed acreage." Appellants' request would not illuminate this matter because it concerns the different question of the proper price for gas from deep reservoirs regardless of prior dedications. The petition for reconsideration should therefore be denied.

Commissioner Ross *not participating.*

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[1] Hassie Hunt Trust—H. L. Hunt; Alinda Hunt Hill Trust—Caroline Hunt Sands; William Herbert Hunt Trust Estate—Lamar Hunt; Lamar Hunt Trust Estate—N. B. Hunt; A. G. Hill—W. H. Hunt; Caroline Hunt Trust Estate, Nelson Bunker Hunt Trust Estate—Hidalgo Gas Production Corporation; Hunt Oil Company—Placid Oil Company.

[2] The order in question is interlocutory and is not subject to an application for rehearing. The pleading is therefore treated as a petition for reconsideration.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

CASCADE NATURAL GAS CORPORATION (SUCCESSOR TO GARFIELD GAS GATHERING COMPANY), DOCKET NO. CP64–220

ORDER AMENDING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued October 21, 1965)

On September 16, 1965, Cascade Natural Gas Corporation (Petitioner) filed in Docket No. CP64–220 a petition to amend the order of the Commission issued in said docket on July 31, 1964, 32 FPC 476, which order authorized Garfield Gas Gathering Company (Garfield) to construct and operate certain facilities and to sell natural gas in interstate commerce for resale to Mountain Fuel Supply Company (Mountain Fuel) at an average initial daily rate of 25,000 Mcf increasing to an average daily rate of 50,000 Mcf, as more fully set forth in the petition to amend.

By the instant filing, Petitioner requests that it be substituted for Garfield as the certificate holder in Docket No. CP64–220; that Garfield's FPC Gas Rate Schedule No. 2 covering Garfield's proposed sale to Mountain Fuel be cancelled; and that Petitioner's FPC Gas Rate Schedule No. 1, tendered concurrently with the subject petition, be accepted for filing by the Commission. Petitioner's FPC Rate Schedule No. 1 is an agreement with Mountain Fuel dated September 3, 1965, which provides for the sale and delivery of natural gas to Mountain Fuel under the same general terms and conditions as heretofore proposed by Garfield.

Petitioner, presently an intrastate gas company, acquired 100 percent of all the issued and outstanding common stock of Garfield on July 2, 1965. Garfield was then dissolved as a corporation under the laws of the State of Delaware on August 23, 1965. Petitioner will be subject to the provisions of the Natural Gas Act upon the issuance of this order.

Garfield had commenced the construction of the facilities authorized by the Commission's order of July 31, 1964, and had substantially completed the construction project prior to the corporate dissolution of August 23, 1965. The proposed date of completion of the construction had been October 15, 1965.

The construction of the facilities has been initially financed through $6,500,000 of 5½ percent short-term bank credits. Prior to March 31, 1966, Petitioner proposes to refinance the short-term arrangement by issuing 20-year 5½ percent First Mortgage Bonds to some or all of its present First Mortgage Bondholders.

Due notice of the filing of the petition to amend was published in the Federal Register on October 1, 1965 (30 F.R. 12558).

On October 15, 1965, Rocky Mountain Natural Gas Company, Inc. (Rocky Mountain) filed a petition for leave to intervene in this matter stating that, prior to its withdrawal as an intervenor in the original certificate proceeding in Docket No. CP64–220, Rocky Mountain and Garfield entered into an "Emergency Gas Purchase Agreement" dated July 17, 1964, which agreement was filed as Supplement No. 2 to Garfield's FPC Gas Rate Schedule No. 2 and is a presently effective Garfield rate schedule. Rocky Mountain does not oppose the arrangement between Petitioner and Mountain Fuel and does not oppose Petitioner's request to be substituted as a certificate holder in Docket No. CP64–220. Rocky Mountain's petition is for the principal purpose of preserving its position and status under the said emergency service agreement between it and Garfield.

Subject to a certain letter filing by Petitioner, described below, Rocky Mountain offers no opposition to the petition to amend and does not oppose its disposition under the shortened procedure. In the event Petitioner's petition to amend,

as broadened by its letter filing, is not opposed by others and no formal hearing is required, Rocky Mountain does not desire to participate.

On October 14, 1965, Petitioner filed a letter requesting that Petitioner be authorized to sell natural gas to Rocky Mountain, pursuant to the said agreement between Rocky Mountain and Garfield dated July 17, 1964. Petitioner further requests that Supplement No. 2 to Garfield's FPC Gas Rate Schedule No. 2 be redesignated as Petitioner's FPC Gas Rate Schedule No. 2.

No other petitions to intervene, protests or notices of intervention have been filed in this proceeding.

The Commission finds:

(1) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the certificate of public convenience and necessity issued in Docket No. CP64–220 on July 31, 1964, be amended as hereinafter ordered.

(2) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the form requirements of the Commission's Regulations under the Natural Gas Act regarding pipeline company tariff filings be waived to permit Petitioner's FPC Gas Rate Schedule No. 1 to be accepted for filing in the form required of producers and gatherers of natural gas which are also natural gas companies.

(3) Public convenience and necessity require that in all other respects Petitioner conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

The Commission orders:

(A) The certificate of public convenience and necessity issued to Garfield Gas Gathering Company in Docket No. CP64–220 on July 31, 1964, is amended by substituting Cascade Natural Gas Corporation for Garfield Gas Gathering Company as the holder of the certificate of public convenience and necessity issued by said order.

(B) Cascade Natural Gas Corporation is authorized to render the emergency gas service to Rocky Mountain Natural Gas Company, Inc., as such service was heretofore authorized by the Commission to be rendered by Garfield Gas Gathering Company in the order of July 31, 1964, as more fully set forth in the petition for leave to intervene filed by Rocky Mountain Natural Gas Company, Inc., on October 15, 1965, and the letter filed on behalf of Cascade Natural Gas Corporation on October 14, 1965, Docket No. CP64–220.

(C) Cascade Natural Gas Corporation FPC Gas Rate Schedule No. 1, covering the proposed sale to Mountain Fuel Supply Company, is accepted for filing.

(D) Supplement No. 2 to Garfield Gas Gathering Company FPC Gas Rate Schedule No. 2 is redesignated as Cascade Natural Gas Corporation FPC Gas Rate Schedule No. 2.

(E) For the filing accepted by paragraph (B) herein, the form requirements of the Commission's Regulations under the Natural Gas Act regarding pipeline company tariff filings are waived to permit said rate schedule to be accepted for filing in the form required of producers and gatherers of natural gas which are also gas companies.

(F) In all other respects Cascade Natural Gas Company shall conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(G) Garfield Gas Gathering Company FPC Gas Rate Schedule No. 2 covering the proposed sale to Mountain Fuel Supply Company is cancelled.

(H) In all other respects said certificate of public convenience and necessity shall remain in full force and effect.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

CENTRAL GAS COMPANY, DOCKET NO. CP66-81

DECLARATION OF EXEMPTION

(Issued October 21, 1965)

Central Gas Company (Applicant) filed an application on September 20, 1965, for exemption from the provisions of the Natural Gas Act, pursuant to Section 1(c) thereof.

Applicant, an Alabama corporation with its principal place of business in Florence, Alabama, is engaged in the transportation and sale of natural gas in the State of Alabama. Pursuant to certificate authorization Tennessee Gas Transmission Company (Tennessee) sells and delivers natural gas to Applicant for transportation and sale for resale in the State of Alabama (Docket No. CP65-342, 34 FPC 452).

Applicant serves its market by means of approximately 18 miles of 3-inch and 4-inch pipeline, all of which facilities are located in Lauderdale County, Alabama, extending from a point of connection on Tennessee's Delta-Portland pipeline in an easterly direction to a point near the corporate limits of the community of Killen, Alabama. At the latter point Applicant will sell and deliver natural gas to East Lauderdale County Gas District. Applicant proposes to distribute natural gas in various small communities in Lauderdale County, Alabama.

All natural gas received by Applicant for transportation, sale and distribution through its system is and will be consumed ultimately within the State of Alabama, and all of its facilities are located within said State.

The Alabama Public Service Commission has certified to the Federal Power Commission that it has regulatory jurisdiction over the rates and services and facilities of the Applicant and is exercising such jurisdiction.

Wherefore, the Commission declares, by reason of the foregoing:

Central Gas Company is exempt from the provisions of the Natural Gas Act, and the orders, rules and regulations of the Commission issued thereunder.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

CITIES SERVICE GAS COMPANY, DOCKET NO. CP65-34

ORDER AMENDING ORDER AUTHORIZING ABANDONMENT OF FACILITIES

(Issued October 21, 1965)

On August 30, 1965, Cities Service Gas Company (Applicant) filed in Docket No. CP65-34 an application to amend the order of the Commission issued in said docket on October 28, 1964, 32 FPC 1225, authorizing the abandonment of certain segments of Applicant's transmission pipeline in Cowley and Crawford Counties, Kansas, Logan County, Oklahoma and Carroll County, Missouri, all as more fully set forth in the application to amend.

The order of the Commission issued October 28, 1964, among other things, authorized Applicant to abandon 3 miles of its Rainbow Bend 6-inch pipeline in Cowley County, Kansas, which was previously used to deliver and sell gas to Sunray DX Oil Company (Sunray) for use in its lease pumping operations

in the area. Due to the development of gas production in the area and Applicant's contracting with producers for the purchase of gas Applicant does not now desire to abandon approximately 16,069 feet of its Rainbow Bend 6-inch pipeline in Cowley County, Kansas.

Due notice of the filing of the application to amend and opportunity for hearing thereon has been given by publication in the Federal Register on September 11, 1965 (30 F.R. 11701). No protest, petition to intervene or notice of intervention has been filed in the proceeding concerning this amendment.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act, and the public convenience and necessity require that the order of the Commission issued on October 28, 1964, in Docket No. CP65–34 be amended so as to rescind authorization to abandon approximately 16,069 feet of Applicant's Rainbow Bend 6-inch pipeline in Cowley County, Kansas, previously used to deliver gas to Sunray DX Oil Company for use in its lease pumping operations in the area.

The Commission orders:

(A) The order of the Commission issued on October 28, 1964, in Docket No. CP65–34 is amended so as to rescind authorization to abandon approximately 16,069 feet of Applicant's Rainbow Bend 6-inch pipeline in Cowley County, Kansas, previously used to deliver gas to Sunray DX Oil Company for use in its lease pumping operations in the area.

(B) In all other respects said order shall remain in full force and effect.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

FLORIDA GAS TRANSMISSION COMPANY, DOCKET NOS. CP65–393 AND RP66–4

ORDER DENYING MOTION TO CONSOLIDATE PROCEEDINGS

(Issued October 21, 1965)

Sun Oil Company (Sun), on September 10, 1965, filed a motion to consolidate the above-docketed proceedings for purposes of hearing and determination. Answers objecting to Sun's motion were filed by the Commission Staff on September 21, 1965, and by Florida Gas Transmission Company (Florida Gas) on September 22, 1965.[1]

Docket No. RP66–4 involves a filing by Florida Gas for an increase in its existing transportation rates of 3.4 cents per MMBTU. Rate Schedule T–1 provides for transportation of gas from Louisiana to Florida for the account of Florida Power Corporation, while Rate Schedule T–2 provides for transportation service from Texas to Florida for the account of Florida Power & Light Company. The proposed T–1 rate of 17.9 cents per MMBTU and the proposed T–2 rate of 21.9 cents for MMBTU have been suspended until November 1, 1965.[2] The proposed rate increases would result in additional revenues of $1,732,000 annually, based on data submitted by Florida Gas for the twelve months ended May 31, 1965.

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[1] A reply to the answers of Staff and Florida Gas was filed by Sun on September 28, 1965. This reply must be rejected, as there is no provision for such replies in the Commission's Rules of Practice and Procedure.

[2] Docket No. RP66–4, order issued September 30, 1965, 34 FPC 995.

Docket No. CP65–393 involves an application by Florida Gas for certification of an expansion of its pipeline system which would increase its annual average day capacity by 200,000 MMBTU. This additional capacity would be used to transport gas from Louisiana to Florida for the account of Florida Power & Light Company under a new Rate Schedule T–3. Florida Gas requests authorization to have 100,000 MMBTU of the additional capacity in service during 1967 and the balance in service during 1968.

In its motion to consolidate these proceedings, Sun argues that they involve common questions of law and fact. The only reason which Sun advances for this contention in its motion is its assertion that the proposed rate increase is designed to finance the proposed expansion, and that since Sun will have to absorb a major portion of the proposed rate increase,[3] "The additional transportation service proposed in Docket No. CP65–393 would be required to be subsidized essentially in its entirety by Sun."[4]

As Staff and Florida Gas point out, Sun's attempt to relate the costs of the expansion proposed in Docket No. CP65–393 to the proposed rate increase in Docket No. RP66–4 is without merit. The data submitted in support of the proposed rate increase reflect the costs of Florida Gas' system as it existed during the test year ended May 31, 1965. Thus, costs of constructing and operating the proposed pipeline expansion are not reflected in that data. There is no basis, therefore, for Sun's allegation that the expansion requested in Docket No. CP65–393 is the cause of the rate increase proposed in Docket No. RP66–4.

Sun has not supported its contention that these proceedings involve common questions of fact and law, and it is our view that there is no basis for consolidation. Sun's motion to consolidate these proceedings should, therefore, be denied.

The Commission orders:

The motion by Sun to consolidate the above-docketed proceedings is denied.

Commissioner Ross *dissenting.*

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

INDIANA NATURAL GAS CORPORATION AND TEXAS GAS TRANSMISSION CORPORATION, DOCKET NO. CP65–376

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued October 21, 1965)

On May 27, 1965, Indiana Natural Gas Corporation (Applicant) filed in Docket No. CP65–376 an application, as supplemented on July 8 and August 2, 1965, pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Texas Gas Transmission Corporation (Respondent) to establish physical connection of its transmission facilities in Crawford County, Indiana, with the proposed facilities of Applicant and to sell natural gas to Applicant for resale and distribution in the Towns of English, Marengo and Milltown, Indiana, and vicinity, all as more fully set forth in the application, as supplemented.

[3] Under the terms of the contracts whereby Sun sells gas to Florida Power Corporation and Florida Power & Light Company, the price received in the field by Sun is adjusted to reflect changes in the transportation rate charged by Florida Gas.

[4] Sun's motion, page 4.

Applicant proposes to construct and operate approximately 10.2 miles of 2 and 3-inch transmission lines from the proposed interconnection with Respondent to the three towns to be served; Applicant will also construct the necessary distribution facilities for said communities.

The estimated third year peak day and annual natural gas requirements for Applicant's proposed project are 1370 Mcf and 100,530 Mcf, respectively.

The total estimated cost of the proposed facilities through the third year is $309,842, which cost will be financed by the sale of common stock and bonds and by a small bank loan. Exhibit L of the application indicates that in the third year of service a 7.4 percent return will be realized on the project. The project is feasible.

The application indicates that Applicant has obtained the necessary state and local authorizations for the proposed project.

On June 29, 1965, Respondent filed an answer to the instant application stating that it has no objection to rendering the requested service, provided, among other things, service to Applicant does not commence until the facilities that Respondent is now constructing under authorization granted to Respondent in Docket No. CP64–107 are completed and ready for operation. Respondent states that such facilities will be completed and ready for operation no later than November 1, 1965.

Due notice of the filing of the application and opportunity for hearing thereon has been given by publication in the Federal Register on June 11, 1965, (30 F.R. 7625). No protest or petition to intervene has been filed in this proceeding.

The Commission finds:

(1) Respondent, Texas Gas Transmission Corporation, a Delaware corporation having its principal place of business in Owensboro, Kentucky, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of March 30, 1949, in Docket No. G–859 (8 FPC 190).

(2) Applicant, Indiana Natural Gas Corporation, is a corporation duly organized and existing under the laws of the State of Indiana and is authorized to engage in the business of distributing and selling natural gas within said State.

(3) It is necessary and desirable in the public interest that Respondent be directed to establish physical connection of its natural gas transmission system with the proposed facilities of Applicant and to sell and deliver up to 1,370 Mcf (14.73 psia) of natural gas per day to Applicant, as set forth in the application, as supplemented, and as hereinafter ordered and conditioned.

(4) Natural gas service to Applicant, as hereinafter ordered, should not commence prior to November 1, 1965.

(5) This order should be conditioned upon Applicant being prepared to receive gas from Respondent, as proposed, within one year from the date on which this order issues and upon the execution of a service agreement between Applicant and Respondent in accordance with the Commission's Regulations under the Natural Gas Act.

(6) The requirement that Respondent serve Applicant, as proposed, will not place any undue burden upon Respondent nor impair its ability to render adequate service to its existing customers.

The Commission orders:

(A) Texas Gas Transmission Corporation is directed to establish physical connection of its natural gas transmission system with the proposed facilities of Applicant and to sell and deliver up to 1,370 Mcf (14.73 psia) of natural gas

per day to Applicant, all as hereinbefore described and as more fully set forth in the application, as supplemented.

(B) The natural gas service to Applicant ordered by paragraph (A) above shall not commence prior to November 1, 1965.

(C) This order is conditioned upon Applicant being prepared to receive natural gas from Respondent, as proposed, within one year from the date on which this order issues and upon the execution of a service agreement between Applicant and Respondent in accordance with the Commission's Regulations under the Natural Gas Act.

(D) Respondent shall report to the Commission in writing the date of commencement of service to Applicant within ten days thereof.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

LONE STAR GAS COMPANY, DOCKET NO. CP66-22

FINDINGS AND ORDER AFTER STATUTORY HEARING PERMITTING AND APPROVING ABANDONMENT

(Issued October 21, 1965)

On July 20, 1965, Lone Star Gas Company (Applicant), filed in Docket No. CP66-22 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon the operation of certain facilities as hereinafter described and as more fully set forth in the application which is on file with the Commission

Applicant seeks permission and approval to abandon 31.59 miles of its 10-inch Navy Line between the Bowie Gate in Montague County, Texas, and the Decatur Gate in Wise County, Texas, now utilized for the transportation of gas in interstate commerce. The 10-inch Navy Line and 16-inch Line B, which parallel one another, extend from Petrolia, Texas, to the City of Fort Worth, Texas, where Applicant distributes natural gas at retail.

The abandonment will be accomplished by installing a blind plate in the Navy Line at a point near Bowie and by rearranging and closing the valves in all of the cross-over interconnections with 16-inch Line B between the Bowie and Decatur Gates. Applicant proposes to construct minor facilities to tie two lateral intrastate supply lines (BL and BK) into the Navy Line instead of Line B and install a field compressor unit on Line BG to raise line pressure so as to deliver into the isolated segment of line wet gas produced from the adjacent Boedecker South, Gifford, Osage, Sunset, Alvord and Boonesville Fields and to deliver this gas to Applicant's Springtown Gasoline Plant for processing and dehydration.

Applicant states that by isolating the 31.59 miles of Navy Line from the portions located north of Bowie and south of Decatur and from line B, it can be used as a trunk gathering facility to handle the intrastate gas received from the sources named above, and delivery to the Springtown Gasoline Plant can be made through existing intrastate pipeline facilities. The gas after processing and dehydration at the Springtown Plant will be transported to Applicant's Fort Worth area distribution systems which now receives this gas without processing and dehydration.

The proposed abandonment will not adversely affect customers by any reduction in heating value since the Springtown Plant residue gas averaged 1106

Btu for the 12-month period through May, 1965, and the additional volumes involved in the proposal contain approximately 1218 Btu per cubic foot and approximately 7 percent of Lone Star's total annual deliveries in the Fort Worth area. Line B will continue to be interconnected with the Navy Line both north and south of the segment to be isolated and has sufficient capacity to handle interstate gas moving south from Petrolia. The proposed abandonment will not result in the abandonment or any diminution of any service.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on October 20, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorizations sought and upon consideration of the record,

The Commission finds:

(1) Applicant, Lone Star Gas Company a Texas corporation having its principal place of business in Dallas, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of April 11, 1944, in Docket No. G–442 (4 FPC 565).

(2) The facilities proposed to be abandoned, as hereinbefore described and as more fully described in the application herein, are used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and such abandonment is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(3) The proposed abandonment of the aforesaid facilities is permitted by the public convenience and necessity and approval thereof should be granted as hereinafter ordered.

The Commission orders:

(A) Permission for and approval of the abandonment of the facilities hereinbefore described, as more fully described in the application in this proceeding, are granted to Applicant.

(B) Applicant shall advise the Commission of the date of abandonment of the facilities as authorized in paragraph (A) above within 10 days of such abandonment.

OPINION NO. 471–A

MICHIGAN WISCONSIN PIPE LINE COMPANY, DOCKET NO. RP60–9

OPINION AND ORDER DENYING REHEARING AND STAY

(Issued October 21, 1965)

Syllabus

1. Pipeline's customers and the public are entitled to a statement of its lateral line extension policies. P. 1189.
2. Specific ruling on each exception is not required if Commission conclusions and reasons therefor are clear. P. 1190.
3. Competitive conditions are taken into account in designing rates since rate design may seriously affect economic feasibility of pipeline; this is very different from shifting costs from one region to another in order to affect local economic conditions. P. 1190.
4. There must be some end to briefing process; similarly, oral argument is not a matter of right—it is a matter of Commission discretion and will be permitted when deemed helpful in decisional process. P. 1190.

5. Commission *denies* applications for rehearing and stay.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

BLACK, *Commissioner:*

Applications for rehearing of our Opinion No. 471 and order issued August 30, 1965, 34 FPC 621, have been filed by Michigan Wisconsin Pipe Line Company (Mich Wisc) and the Iowa-Missouri Group of customers, with the Iowa State Commerce Commission (Iowa Missouri).[1] Our opinion denied the request of Iowa-Missouri to establish rate zones on Mich Wisc's system and required Mich Wisc to file in its tariff a statement of its 10-cent rule for the extension of lateral lines 40 miles or less in length. Additionally, Mich Wisc has asked for a stay of the Commission's order regarding the filing of the 10-cent rule, until the completion of the rulemaking proceeding which was proposed therein. In the alternative Mich Wisc requests a stay pending judicial review.

Mich Wisc's request that we stay our order until completion of the rulemaking proceeding is based on a misunderstanding. We required Mich Wisc to file a statement of its 10-cent rule as part of its tariff because we found that such a consistent practice was required to be included in the tariff by the filing requirements of the Natural Gas Act and our Regulations. Recognizing the industry-wide application of this decision, we proposed to initiate "a rulemaking proceeding with a view towards requiring all natural-gas pipeline companies to include a statement of their lateral line policies in their tariffs." In this rulemaking proceeding we do not intend to reopen the question as to whether a statement of the policy must be included in the tariff. The rulemaking proceeding will rather be concerned with the type of lateral line policies that should be followed taking into consideration the many differences between pipelines and their markets.

We here require Mich Wisc to file a statement of its line extension policies. Its customers and the public are entitled to such a statement. Mich Wisc can show no injury during the pendency of this proposed rulemaking proceeding. It will, of course, be free to modify its statement to conform to the results of this rule. In the interim the public will be protected as well.

The Iowa-Missouri Group contends that the Commission did not adequately review the record alleging four substantial factual errors in our opinion. They correctly point out that the opinion is in error in contending that gas flowing southwesterly to Station 10 on peak days from the storage field and the American Louisiana connection is used to serve Illinois customers. This error, however, does not affect our conclusions. As we emphasized in our original opinion, all customers south of Station 10 benefit from such gas by displacement. The remaining allegations of error are unsupported by the record, or constitute a misrepresentation of our position, and warrant no additional comment herein.

The Iowa-Missouri Group next contends the Commission has failed to explain its decision with simplicity and clarity. Our Opinion No. 471 clearly holds that zone rates should be established whenever system wide rates are discriminatory and unfair; that the burden of proving such discrimination is upon the parties alleging it; and, that the Iowa-Missouri Group has failed to sustain its burden of proof. In addition, we compared the physical and economic basis relied on by the Commission in approving the establishment of zone rates for other pipelines.

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[1] Allerton Gas Company, American Gas Company, Associated Natural Gas Company, Chevron Chemical Company, City of Bethany, Missouri, City of Bloomfield, Iowa, City of Lamoni, Iowa, City of Stanberry, Missouri, Iowa Electric Light & Power Co., Iowa Southern Utilities Company, Keokuk Gas Service Company, New London Gas Company, North Central Public Company, St. Joseph Light & Power Company, Wapello Light Company.

We concluded that these precedents were inappropriate for application to Mich Wisc. In contrast, we found all of Mich Wisc customers benefited from the more efficient use of the pipeline, and the greater availability of gas on this system, which result from Michigan Storage fields and the receipt of gas at points near each end of the system.

The Iowa-Missouri Group further contends that we have failed to rule explicitly on its principal exceptions. Specific ruling on each exception is, of course, not required if our conclusions and the reasons for the conclusions are clear. *N.L.R.B.* v. *Wichita Television Corp.*, 277 F. 2d 579 (CA10), certiorari denied, 364 U.S. 871; compare *Radio Station KFH Co.* v. *F.C.C.*, 247 F. 2d 570 (CADC).

The Iowa-Missouri Group also argues that in *Southern Natural Gas Co.*, 29 FPC 323, we made an allocation of system costs between zones based on a transmission component of the cost of purchased gas and that if we meant to overrule that case we should do so explicitly. In *Southern Natural*, however, the Commission was dealing with the method of allocation between zones previously established. It did not concern itself with a determination regarding the necessity of zoning. Consequently, *Southern Natural* is not applicable.

The Iowa-Missouri Group further objects to our not expressly ruling on the examiner's exclusion of evidence of economic ills in the Iowa-Missouri area. Our opinion states that such evidence was not a valid consideration in determining rates. As we there stated, rates must distribute costs equitably among the customers of a pipeline. Competitive conditions are taken into account in designing rates since rate design may seriously affect the economic feasibility of a proposed pipeline. This is very different from shifting costs from one region to another in order to affect local economic conditions.

The Iowa-Missouri Group also argues that since it has the burden of proof we should have granted its request for oral argument so that it could respond to the briefs opposing exceptions filed by the Wisconsin Interveners. The Wisconsin Interveners filed their brief opposing exceptions in accordance with Section 1.31(a) of our Rules which provides that "No further response will be entertained unless the Commission, upon motion or its own initiative, so orders." We find no necessity for so ordering. If Iowa-Missouri thought it would be justified in asking for permission to reply to the Wisconsin Interveners, it could have made timely application, but it has not done so. There must be an end to the briefing process. Similarly, oral argument is not a matter of right. This is a matter of Commission discretion, and will be permitted when the Commission deems it helpful in its decisional process.

The Commission further finds:

(1) The assignment of error and grounds for rehearing set forth in the applications for rehearing filed in this proceeding present no facts or legal principles which would warrant any change or modification in the Commisssion's Opinion No. 471 or order except as specified herein.

(2) The application for stay filed by Mich Wisc should be denied.

The Commission orders:

(A) The applications for rehearing filed by the Iowa-Missouri Group and Mich Wisc are denied.

(B) Mich Wisc's application for stay pending the rulemaking proceeding or, alternatively, pending judicial review are denied, except that the time for filing the statement required by Paragraph (B) of our order issued August 30, 1965, is extended for 30 days from the date of this Opinion No. 471–A and order.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

MISSISSIPPI RIVER CORPORATION (FORMERLY MISSISSIPPI RIVER FUEL CORPORATION), DOCKET NO. G-7376, ET AL.

ORDER AMENDING ORDERS ISSUING CERTIFICATES, REDESIGNATING PROCEEDING, AND REDESIGNATING FPC GAS RATE SCHEDULES

(Issued October 21, 1965)

On September 17, 1965, Mississippi River Corporation, formerly Mississippi River Fuel Corporation, filed a petition to amend orders issuing certificates, to redesignate pending proceedings and to redesignate FPC gas rate schedules to reflect the change of name of the company as of the close of business on May 28, 1965.

The Commission orders:

(A) The orders issuing certificates in the dockets listed below are amended by changing the name of the certificate holder from Mississippi River Fuel Corporation to Mississippi River Corporation, and in all other respects said orders shall remain in full force and effect. The related rate schedules are redesignated accordingly.

Certificate docket No.	Mississippi River Fuel Corporation FPC Gas Rate Schedule No.	Mississippi River Corporation FPC Gas Rate Schedule No.
G-10422	7	7
G-10466	8	8
G-10467	9	9
G-10820	10	10
G-15039 [1]	11	11
G-15292	12	12
G-18214	13	13
G-17413	14	14
G-7376	15	15
G-7376	16	16
CP61-62	18	18
CP61-233	19	19
CP61-141	20	20
CP61-141	21	21
CP64-133	23	23

[1] Includes an application to amend filed October 29, 1964, and temporary certificate for the proposed service issued November 24, 1964, pursuant to Supplement No. 1 to FPC Gas Rate Schedule No. 11.

(B) The name of the respondent in the proceeding pending in Docket No. G-20239 is changed from Mississippi River Fuel Corporation to Mississippi River Corporation and the proceeding is redesignated accordingly.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

MISSISSIPPI RIVER TRANSMISSION CORPORATION, DOCKET NO. CP66-59

FINDINGS AND ORDER AFTER STATUTORY HEARING PERMITTING AND APPROVING ABANDONMENT OF FACILITIES AND SERVICE AND ACCEPTING TARIFF SHEET FOR FILING

(Issued October 21, 1965)

On August 23, 1965, Mississippi River Transmission Corporation (Applicant) filed in Docket No. CP66-59 an application pursuant to Section 7(b) of the

Natural Gas Act for permission and approval to abandon standby service to Arkansas Louisiana Gas Company (Arkansas Louisiana) and the related facilities necessary for such service, all as more fully set forth in the application in this proceeding.

The subject standby service is rendered near Pine Bluff, Arkansas, and is pursuant to Applicant's FPC Gas Rate Schedule S–1. Applicant states that there have been no deliveries to Arkansas Louisiana in 1963, 1964 and so far in 1965, and that Arkansas Louisiana by letter dated July 28, 1965, requested termination of said service. Applicant will abandon metering, regulating and appurtenant facilities at the delivery point near Pine Bluff.

The facilities to be abandoned are fully depreciated, have no salvage value and will be abandoned in place.

Concurrently with the filing of the subject application, Applicant tendered for filing, as its notice of cancellation of Rate Schedule S–1, First Revised Sheet No. 12 to its FPC Gas Tariff, First Revised Volume No. 1. Rate Schedule S–1 is contained in Original Sheet Nos. 12 and 13 of Applicant's FPC Gas Tariff, First Revised Volume No. 1.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on October 20, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Mississippi River Transmission Corporation, a Delaware Corporation having its principal place of business in St. Louis, Missouri, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of November 29, 1960, in Docket No. CP60–95 (24 FPC 1020).

(2) The facilities and service to be abandoned in this proceeding, as hereinbefore described, are subject to the jurisdiction of the Commission, and the abandonment of such facilities and service is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(3) Such abandonment by Applicant, as hereinbefore described, is permitted by the public convenience and necessity and should be approved as hereinafter ordered.

(4) Applicant's First Revised Sheet No. 12 to its FPC Gas Tariff, First Revised Volume No. 1, should be accepted for filing to become effective on the day this order issues.

The Commission orders:

(A) Permission for and approval of the abandonment by Applicant of the facilities and service hereinbefore described, all as more fully described in the application in this proceeding, are granted.

(B) Applicant shall advise the Commission of the date of the abandonment within 10 days of the date thereof.

(C) Applicant's First Revised Sheet No. 12 to its FPC Gas Tariff, First Revised Volume No. 1, is accepted for filing to become effective on the day this order issues.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

NORTHERN NATURAL GAS COMPANY, DOCKET NO. CP66-71

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND PERMITTING AND APPROVING ABANDONMENT

(Issued October 21, 1965)

On September 13, 1965, Northern Natural Gas Company (Applicant), filed in Docket No. CP66-71 an application as supplemented on October 11, 1965, pursuant to Sections 7(b) and 7(c) of the Natural Gas Act for permission and approval to abandon certain natural gas facilities and a certificate of public convenience and necessity authorizing the construction and operation of other facilities, all as more fully set forth in the application.

Applicant proposes (1) to (a) abandon and remove the town border station (TBS), located near St. Peter, Minnesota (St. Peter), (b) abandon in place 7.31 miles and remove .02 mile of the 6-inch branchline serving St. Peter, (2) to construct and operate a new town border station and tap at a point on its 16-inch Portland Avenue line which extends from the Welcome Compressor Station to Minneapolis, Minnesota, and (3) to construct and operate 3.1 miles of new 4-inch line over a new route.

Applicant states that the St. Peter, Minnesota (St. Peter) town border station (TBS) and a portion of the 7.3 mile 6-inch St. Peter branchline are located on land subjected to serious flooding conditions. Applicant further states that the line has deteriorated to such an extent that replacement of approximately 2000 feet per year would be required to keep this branchline in service. The new facilities will be located on higher ground and will remedy the flooding problem.

Applicant's Peoples Division (Peoples) is presently serving nine (9) right-of-way easement grantors from farm tap settings located on that section of branchline proposed to be abandoned. Due to the poor condition of the line and the high maintenance costs incident thereto, the continued operation for the limited purpose described above cannot be justified. Pursuant to the terms of the contracts, Applicant proposes that Peoples serve contract cancellation notices on each customer at least thirty (30) days prior to discontinuance of service.

Applicant anticipates that the farm tap customers will convert to propane or oil at an estimated average cost of $300 each. Peoples proposes to make a cash settlement with these customers approximating the cost of converting to another fuel.

Applicant estimates the cost of constructing the proposed facilities to be $70,000, which amount will be financed from cash on hand.

After due notice, no petition to intervene, notice of intervention, or protest to the granting of the application has been filed.

At a hearing held on October 20, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought, and upon consideration of the record,

The Commission finds:

(1) Applicant, Northern Natural Gas Company a Delaware corporation having its principal place of business in Omaha, Nebraska, is a "natural-gas com-

pany" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of April 6, 1943, Docket No. G-280 (3 FPC 967).

(2) The facilities proposed to be abandoned by Applicant, as hereinbefore described and as more fully described in the application filed in this proceeding, are used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and such abandonment is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(3) The proposed abandonment of the aforesaid facilities is permitted by the public convenience and necessity and permission and approval therefor should be granted as hereinafter ordered.

(4) The proposed construction and operation of facilities as hereinbefore described and as more fully described in the application filed in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(5) The aforesaid proposed construction and operation of facilities are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(6) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(7) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) Permission for and approval of the abandonment by Applicant, Northern Natural Gas Company, of the facilities hereinbefore described, as more fully described in the application, supplement and exhibits filed in this proceeding, are granted.

(B) A certificate of public convenience and necessity is issued to Applicant, Northern Natural Gas Company, authorizing the construction and operation of facilities, all as more fully described in the application, upon the terms and conditions of this order.

(C) The certificate issued by paragraph (B) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(D) Applicant shall advise the Commission of the date of abandonment of the facilities as authorized in paragraph (A) above within ten days of such abandonment.

(E) The facilities hereby authorized shall be constructed and placed in actual operation, and the transportation of gas authorized in paragraph (B) above shall commence as provided in paragraph (b) of Section 157.20 of the aforesaid Regulations within 12 months of the date on which this order issues.

Commissioner Ross *not participating.*

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

SUN OIL COMPANY

ORDER DENYING APPLICATION FOR REHEARING

(Issued October 21, 1965)

Sun Oil Company on September 24, 1965 filed an application for rehearing of the Commission's letter-order issued August 25, 1965, which rejected a notice of change in rate tendered by Sun proposing an increase in rate from 16¢ to 20.5¢ per Mcf for sales of gas under its FPC Gas Rate Schedule No. 124 to Transwestern Pipeline Company (Transwestern) from Kermit Field, Winkler County, Texas. In its letter-order the Commission refused to waive the condition in Sun's temporary certificate issued November 3, 1960, in Docket No. CI61–372 which prohibits the filing of any rate increase above the authorized initial rate of 16¢ per Mcf for sales under Sun's FPC Gas Base Rate Schedule No. 124. Waiver was not granted because the rate proposed by Sun was in excess of the applicable just and reasonable rate ceiling determined in Opinion No. 468, 34 FPC 159, for sales in the Permian Basin where Sun's sale is made.

Sun in its application for rehearing contends that (1) the Commission's decision in Opinion No. 468 is not applicable to Sun's price increase for the reasons set forth in its application for rehearing of that opinion, and (2) the Commission abused its discretion by refusing to follow its stated policy of waiving rate filing conditions if a permanent certificate has not been issued within three years of initial delivery, as is the situation here.

In Opinion 468–A issued October 4, 1965, *supra*, p. 1068, we acted on all applications for rehearing filed with respect to Opinion No 468, including the one filed by Sun. There is thus no need here to discuss the contentions made by Sun in its application for rehearing in that case. We need only note that Opinion No. 468 determined the just and reasonable rate to be charged by Sun a respondent in the Permian proceeding, and proscribed the filing of the rate increase here in question. In fact the moratorium on rate increase filings above the just and reasonable rate ceilings fixed in Opinion No. 468 prevents the filing of such rate increases by respondents therein for any sales in the area, whether operating under temporary or even permanent certificates.

We have in the past in a number of cases granted waiver of a rate filing condition in a temporary certificate,[1] but these cases did not involve a proposed rate filing in excess of the applicable just and reasonable rate determined by the Commission. Obviously a sale under a temporary, which even in the past required an express waiver before an increase can be filed, cannot now be permitted to pierce the ceiling price which even permanently certificated sales cannot exceed.

Sun's application for rehearing presents no new facts or principles of law which were not fully considered by the Commission in its August 25 order, or which, having now been considered, warrant any modification of that order.

The Commission orders:

For the reasons set forth above, the application for rehearing filed herein on September 24, 1965, by Sun is denied.

[1] See *Shell Oil Company*, Docket No. RI65–596, Order issued April 20, 1965; *Shell Oil Company*, Docket No. RI65–652, order issued July 1, 1965, and *Socony Mobil Oil Company, Inc.*, Docket No. RI66–21, *et al.*, order issued July 21, 1965.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

VILLAGE OF GRESHAM, WISCONSIN, PROJECT NO. 2464

ORDER APPROVING PROJECT EXHIBIT L DRAWINGS

(Issued October 25, 1965)

On August 9, 1965, the Village of Gresham, Wisconsin, licensee for Project No. 2464, filed for Commission approval Exhibit L drawings pursuant to Article 21 of the license for the proposed Weed Dam project.

While the drawings show no major changes in the project structures, they do show that a small generating unit rated at 10 kw has been added to the proposed project to supply initially a continuous flow of not less than 7 cubic feet per second of water for the benefit of fish in the by-passed 700-foot stretch of river between the Weed dam and the end of the tailrace, in compliance with Article 28 of the license. According to the licensee, the cost of the unit is estimated to be about $4,000, and the average annual energy generation is estimated to be 87,600 kwh which would otherwise be lost and would have to be purchased from Wisconsin Power & Light Company at an average annual cost considerably higher than the average annual cost of the unit which is estimated to be $200.

The Commission finds:

The following described Exhibit L drawings conform to the Commission's rules and regulations and should be approved as part of the license for the project, and the exhibits described in the finding as being superseded should be eliminated from the license for the project:

Exhibit	Approved Exhibits FPC No. 2464	Superseded Exhibits FPC No. 2464	Showing
L-1	6	3	Project layout.
L-2	7	4	General plan.
L-3	8	5	Spillway and walls.

The Commission orders:

The Exhibit L drawings described in the above finding as conforming to the Commission's rules and regulations are hereby approved as part of the license for Project No. 2464, and the exhibits described in the same finding as being superseded are hereby eliminated from the license for the project.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

PACIFIC POWER & LIGHT COMPANY, DOCKET NO. E-7236

ORDERS AUTHORIZING ACQUISITION, MERGER OR CONSOLIDATION OF FACILITIES

(Issued October 25, 1965)

Pacific Power & Light Company (Pacific) filed an application on August 3, 1965 with the Federal Power Commission for an order, pursuant to Section 203 of the Federal Power Act, authorizing the acquisition of certain electric facilities from Riverton Valley Electric Association, Inc. (Riverton Valley).

Pacific is a corporation organized in Maine and qualified to do business in the States of California, Idaho, Montana, Oregon, Washington, and Wyoming. It is engaged primarily in the business of generating, purchasing, transmitting, selling, and distributing electric energy.

Riverton Valley is an REA financed distribution cooperative system engaged in the transmission and distribution of electric energy to its members in Fremont County, Wyoming.

According to the application, the facilities to be acquired by Applicant from Riverton Valley consist of distribution facilities located in Fremont County, Wyoming which serve generally residential and commercial customers located in the area, including poles, conductors and appurtenances used in rendering the service affected. Pacific states that approximately 175 customers are served by these facilities and that it will continue to operate these facilities in the same manner as they are presently operated. Pacific further states that the consideration to be paid for the facilities is the sum of $73,674.12. As part of the transaction Riverton Valley will acquire from Pacific distribution lines and related facilities for which it has agreed to pay the sum of $22,842.08.

According to Pacific the transaction will conclude a dispute between it and Riverton Valley which arose because both Riverton Valley and Mountain States Power Co. (predecessor in interest to Applicant) were granted Certificates of Convenience and Necessity by the Public Service Commission of Wyoming to serve the same area in the vicinity of the community of Lander in Fremont County. Upon application of the parties, the Public Service Commission arbitrated the dispute and assigned specific service areas to each of the parties, under the authority of § 37–12, W.S. 1957. The arbitration award, made on August 2, 1961, was upheld by the Supreme Court of Wyoming. *Riverton Valley Electric Ass'n* v. *Pacific Power & Light Co.*, 391 P. 2d 489 (1964). Subsequently, Applicant and Riverton Valley entered into an agreement in accordance with the arbitration award. The agreement was approved by the Public Service Commission of Wyoming on June 28, 1965.

The acquisition will not result in the creation of an acquisition adjustment on the books of Pacific and the sale will not result in a gain or loss on Pacific's books.

The exchange of facilities is expected to have the following effect on rates: (a) 105 residential customers of Riverton Valley to be served by Pacific (not having water heaters)—no change in rates; (b) 45 residential customers of Riverton Valley to be served by Pacific (having water heaters)—estimated monthly rate decrease of $3.13; (c) 28 residential customers of Pacific to be served by Riverton Valley (having water heaters—estimated monthly rate increase of $4.01; (d) 29 commercial customers of Pacific to be served by Riverton Valley—estimated monthly rate decrease of $9.09; and (e) 4 small industrial customers of Pacific to be served by Riverton Valley—no change in rates.

Written notice of the application has been given to the Public Service Commission of Wyoming and to the Governor of that State. Notice has also been given by publication in the Federal Register on August 21, 1965 (30 F.R. 10923), stating that any person desiring to be heard or to make any protest with reference to the application should file a petition or protest on or before September 8, 1965, with the Federal Power Commission, Washington, D.C. 20426. No protest or petition or request to be heard in opposition to the granting of the application has been received. The proposed exchange of facilities has been approved by the Public Service Commission of Wyoming, in an order dated June 28, 1965.

The Commission finds:

(1) Pacific, a corporation, is a public utility within the meaning of Section 203 of the Federal Power Act, subject to the jurisdiction of the Commission as here-

tofore described and set forth in the Commission's order issued March 28, 1962, *Pacific Power & Light Company*, (27 FPC 620).

(2) By the proposed transaction, Pacific will merge or consolidate its facilities subject to the jurisdiction of the Commission with those of Riverton Valley, another person, within the meaning and subject to the requirements of Section 203 of the Federal Power Act.

(3) The proposed acquisition of facilities by Pacific, as described above, upon the terms and conditions set forth in the application, and subject to the provisions of this order will be consistent with the public interest as expressed in Section 203 of the Federal Power Act.

The Commission orders:

(A) The proposed acquisition by Pacific of the aforementioned electric facilities, all as described above, is authorized and approved upon the terms and conditions and for the purposes set forth in the application subject to the provisions of this order.

(B) Pacific shall record the proposed transaction herein authorized and the facilities and properties referred to above as provided in the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees.

(C) This authorization shall expire unless the transaction herein authorized and approved is consummated within 90 days from the date of issuance of this order.

(D) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations of cost, or any matter whatsoever now pending or which may come before this Commission or any other regulatory body and nothing herein shall be construed as an acquiescence by this Commission in any estimate or determination of cost or any valuation of property claimed or asserted.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

AREA RATE PROCEEDING, DOCKET NO. AR61-1; CLAUDE E. AIKMAN, ET AL., G-18466, ET AL.; NORTH CENTRAL OIL CORPORATION (OPERATOR), ET AL., CI60-435, ET AL.

ORDER AMENDING OPINION NO. 468 AND ORDER

(Issued October 29, 1965)

Concurrent with the issuance of Opinion No. 468, 34 FPC 159, and related orders in the above-designated proceedings, the Commission issued in Docket No. R-279, 34 FPC 434, a notice of proposed rule-making pertaining to miscellaneous amendments to the Regulations Under the Natural Gas Act which would give relief of rate and certificate filings by small independent producers. After receipt of comments, on this date we have issued Order No. 308, *infra*, p. 1202, in Docket No. R-279 which adopts with some modifications the amendments to the Regulations set out in the rule-making notice. In view of the fact that certain sections of Opinion No. 468 refer to the notice of proposed amendments to the Regulations and not to the adopted changes, we deem it necessary and proper that Opinion No. 468 be modified as hereinafter ordered.

The Commission orders:

(A) In that part of Opinion No. 468 entitled "SMALL PRODUCER PROBLEM," pages 234 to 236 inclusive, each and every reference to the notice of proposed rule-

making, or specific provisions thereof, issued in Docket No. R–279 shall be considered to refer to Order No. 308, or specific provisions adopted therein, issued this date in Docket No. R–279.

(B) Subparagraph 3 of Paragraph (F) of the order issued together with Opinion No. 468 shall be amended to read as follows:

(3) Any respondent listed in Part I or Part III to Appendix A is exempt from filing the statement required by subparagraph (1) hereof for any sales which are "small producer sales" as defined in Section 157.40(a)(3) of the Regulations Under the Natural Gas Act, if by November 30, 1965, such respondent files the information required by the form set out in Section 250.10 of the Regulations. If the Commission subsequently finds that such a producer does not qualify as a small producer such applicant shall be required to file the statement required by subparagraph (1) hereof within 90 days after any Commission finding.

Commissioner Bagge *not participating.*

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

CONTINENTAL OIL COMPANY AND CONTINENTAL GAS PRODUCING COMPANY, DOCKET NO. G–2737; CITIES SERVICE GAS COMPANY, ET AL., DOCKET NO. RP64–9, ET AL.

ORDER GRANTING MOTIONS TO CONSOLIDATE PROCEEDINGS AND TO JOIN ADDITIONAL PARTY AND ESTABLISHING PROCEDURE FOR HEARING

(Issued October 29, 1965)

Continental Oil Company (Continental), on June 25, 1965, filed an application in Docket No. G–2737 pursuant to Section 7(c) of the Natural Gas Act requesting the Commission to amend the certificate issued in that proceeding to reflect Continental as the holder of that certificate. On November 30, 1954, a certificate was issued to Cities Service Gas Producing Company in Docket No. G–2737. By order issued May 18, 1964, that certificate was amended to reflect a change in name of the holder of that certificate to Continental Gas Producing Company. In its application here, Continental alleges that Continental Gas Producing Company, its wholly owned subsidiary, was dissolved and that all of the assets of Continental Gas Producing Company passed to Continental as sole stockholder in liquidation.

The proceedings in Docket No. RP64–9, *et al.* involve a proposed rate increase filed by Cities Service Gas Company (Gas Company), wherein a settlement was approved by Commission order issued June 28, 1965, 33 FPC 1292. The settlement as approved reserved for future hearing and determination, among other things, the issue of the proper allowance to be included in Gas Company's cost of service for purchases of gas from Continental Gas Producing Company. Testimony and exhibits have been filed in Docket No. RP64–9, *et al.*, on that issue and cross-examination is scheduled to commence on November 2, 1965.

Gas Company "spun-off" its producing properties in 1953 to Cities Service Gas Producing Company and in return therefor received 100 percent of the stock of that company. Following a series of intercorporate transactions within the Cities Service system, the stock of Cities Service Gas Producing Company was sold on May 8, 1963, by Cities Service Company—the parent corporation, to Continental Oil Company.

On July 29, 1965, City Group Gas Defense Association (City Group) filed a petition to consolidate the proceeding in Docket No. G–2737 with the proceedings in Docket No. RP64–9, *et al.* On September 9, 1965, City Group also filed a motion in Docket No. G–2737 to join Gas Company as an additional party in that proceeding. On September 10, 1965, City Group filed, in Docket No. RP64–9, *et al.*, a motion to join Continental as an additional party in those proceedings and to consolidate those proceedings with the proceedings in Docket No. G–2737.

In its several motions, City Group states that its position on the reserved issue in Docket No. RP64–9, *et al.*, is that the proper amount to be included in Gas Company's cost of service is the cost incurred by Continental Gas Producing Company to produce the volumes of gas delivered to Gas Company because, among other things, the purported "spin-off" of these properties should not be permitted to adversely affect the rates Gas Company's customers should pay for the gas. City Group contends that the attempted "spin-off" is a scheme designed to unnecessarily increase Gas Company's allowable purchased gas costs and to allow Gas Company, or its parent, to reap the benefits from such increased cost in the form of part of the consideration received from the sale of the stock, all to the detriment of Gas Company's consumers and the public interest. City Group further alleges that a decision in the certificate case would prejudge the reserved issue in the pending rate case and tend to render impractical a decision in that rate case on the basis contended by City Group. Additionally, City Group contends that the acquisition of the assets by Continental is an unauthorized abandonment of services by Continental Gas Producing Company and an unauthorized acquisition of facilities by Continental and that the Commission has jurisdiction over this transaction. City Group also argues that the joinder of parties and consolidation of the proceedings requested by it is necessary to accord it the full relief that it requests and is entitled to receive.

Answers to these motions were filed by Continental on August 9, 1965, and September 20, 1965; by Gas Company on September 20, 1965; and by the Commission's Staff on September 21, 1965. Each of the answering parties request denial of the motions filed by City Group. Continental alleges that the only issue involved in the certificate case is the identity of the holder of the certificate and a decision on that issue will not affect Gas Company's purchased gas cost. Continental also contends that the sale of stock is not a transaction requiring Commission approval and that the return of this stock, urged by City Group is beyond this Commission's power. Additionally, Continental alleges that, when affiliation has ended, as here, the rates of the producer, in a pipeline rate case, are not in issue. Continental further states that the rates from this property are presently in the process of determination in a pending area rate proceeding, Docket No. AR64–1, which proceeding also involves the issue respecting the regulation of pipeline and pipeline affiliate production. Continental also urges that the rates paid by Gas Comany from these properties will not be changed inasmuch as the purchases will be made under the same contract and the rates thereunder have been approved by the Commission and are not subject to change in the certificate proceeding. Continental also claims that the "spin-off" occurred and was recognized by the Commission 12 years ago, when Continental had no interest therein. Gas Company alleges that the motion to consolidate the proceedings would enlarge the reserved issue in the rate proceeding in violation of the settlement agreement approved by the parties and the Commission and was not timely filed. The Staff contends that the issue in each proceeding is dissimilar, that Continental is not an indispensible party to the rate proceeding, and that ownership of the properties should not control the cost to be included in Gas Company's cost of service for gas received from reserves heretofore owned by its affiliated production company.

The application filed by Continental in Docket No. G–2737 states that Continental Gas Producing Company was dissolved and its assets, upon dissolution, were passed on to Continental as sole stockholder in liquidation. It appears, therefore, that in addition to a stock transaction, it is now asserted that an acquisition of assets has been effectuated. Such acquisition of assets is subject to the jurisdiction of this Commission under Section 7 of the Natural Gas Act. *California* v. *F.P.C.*, 369 U.S. 482, 489. The City Group motion thus raises at least a threshold question whether by successive applications filed by Continental's subsidiary and Continental itself there has been an effective transfer of facilities from within the Cities Service system to non-affiliated parties which, if permitted to become effective (assuming without deciding that we have authority to prevent such effectuation), might foreclose City Group from fully developing its theory of the case on the reserved issue in the rate proceeding. We believe that complete and comprehensive evidence regarding the ownership and operation of the assets and facilities involved in Docket No. G–2737 and the effect and relationship, if any, of such evidence on the reversed issue in Docket No. RP64–9 can more appropriately be developed in a consolidated proceeding. Accordingly, it is our view that the motions for consolidation and the joining of an additional party should be granted. We need hardly state that nothing in this action should be taken as indicating any Commission approval or disapproval of the merits of City Group's contentions.

Our decision to consolidate also requires that we establish a hearing procedure for the consolidated proceedings and that the hearing presently set for November 2, 1965, in Docket No. RP64–9, *et al.* be recessed as hereinafter ordered.

The Commission orders:

(A) The motions filed by City Group for consolidation of the above-entitled proceedings and for joining additional party are hereby granted.

(B) The hearing presently scheduled to convene on November 2, 1965, in Docket No. RP64–9, *et al.*, is hereby recessed.

(C) The reversed issue in Docket No. RP64–9, *et al.* discussed hereinabove and the proceeding in Docket No. G–2737 are hereby consolidated for purposes of hearing and decision.

(D) Pursuant to Section 1.18 of the Commission's Rules of Practice and Procedure, a pre-hearing conference before the Presiding Examiner shall commence at 10:00 a.m. (EST) on November 9, 1965, in a hearing room of the Federal Power Commission, 441 G Street, N.W., Washington, D.C., for the purpose of reaching such agreements as will expedite the determination of the issues involved herein, including, but not limited to, stipulation of facts, narrowing and defining issues, and establishment of dates for the service of evidence by all parties and for the cross-examination of all testimony.

(E) The cross-examination, when commenced, shall be continuous unless the Presiding Examiner finds that extraordinary circumstances preclude such procedure.

(F) Presiding Examiner Robert Weston, or any other officer designated by the Chief Examiner for that purpose (See, Delegation of Authority, 18 CFR 3.5(d)), shall prescribe other relevant procedural matters not herein provided, shall preside at the prehearing conferences and at the hearing in these matters, and shall control these proceedings until the completed record is certified to the Commission, pursuant to the Commission's Rules of Practice and Procedure.

312–270—69——79

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

RATE AND CERTIFICATE FILINGS BY SMALL INDEPENDENT PRODUCERS, DOCKET NO. R-279

ORDER NO. 308

RELIEF FROM FILING REQUIREMENTS UNDER THE NATURAL GAS ACT FOR SMALL PRODUCER SALES

(Issued October 29, 1965)*

This order amends the regulations under the Natural Gas Act to grant relief from certificate and rate filing requirements in the case of small producer sales in the Permian Basin area. By notice of August 5, 1965 (30 F.R. 10058), 34 FPC 434, issued the same day as the Commission's decision in the Permian Basin area rate case (Docket No. AR61-1), the Commission proposed to relieve small producers of the necessity for filing detailed certificate and rate documents for each sale. Instead, a small producer would operate under a general certificate authorizing one or more sales in the area and would file a single annual rate statement of compliance with the appropriate area price restrictions. Our Permian decision provided that sales made pursuant to a small producer certificate should at no time exceed the base price determined as just and reasonable, but would not be subject to the further detailed quality adjustments.

Pursuant to the notice of rulemaking, eleven parties have filed comments with the Commission.[1] Amerada, Cockrell, Hunt and Sun generally oppose the rulemaking proposal. Thus, Amerada contends that the rule constitutes unwarranted discrimination in favor of small producers. The distinguishing characteristics justifying special relief for small producers were set forth in our Permian decision (Opinion No. 468, 34 FPC 159). Moreover, such procedural relief in favor of small producers compensates for some advantages that only large producers enjoy as a practical matter. Thus, "producer warranty-type" sales which have become prevalent in recent years[2] offer many advantages to pipeline purchases, but require a degree of reserves support which small producers cannot provide. Our rule helps to correct the imbalance. Moreover, the comments filed by Associated Gas Distributors, OIPA, and TIPRO observe that the rule would improve the marketing of natural gas, simplify the administration of the Act, and benefit both gas consumers and small producers.

Hunt Oil Company, *et al.* argue that the 10 million Mcf cutoff between large and small producers is arbitrary and unwarranted. Hunt suggests that evidence it offered in another proceeding would justify a higher cutoff. As TIPRO has observed, the 10 million Mcf cutoff evolved out of Commission experience. A line must be drawn at some point; we believe 10 million Mcf is here justified. *Addison* v. *Holly Hill Products, Inc.*, 322 U.S. 607, 611.

OIPA urges that the proposed rule be extended immediately to pricing areas outside the Permian Basin. There are no just and reasonable rate determina-

*Published in the Federal Register on November 5, 1965 (30 F.R. 14099).

[1] Amerada Petroleum Corp., Associated Gas Distributors, E. Cockrell, Jr., El Paso Natural Gas Company, Hunt Oil Company, *et al.*, Independent Petroleum Association of America, Oklahoma Independent Petroleum Association, Southern Natural Gas Company, Sun Oil Company, Texas Independent Producers & Royalty Owners Association, and United Gas Pipe Line Company.

[2] *Pan American Petroleum Corp.*, 34 FPC 852, order issued September 15, 1965, in Docket No. CI65-584.

tions for the other areas at this time. OIPA would have us use the guideline certificate price under our general policy statement (18 CFR 2.56) as the basis for issuing small producer certificates. However, the appropriate initial price is often subject to controversy and resolution in particular hearings; both producer and consumer interests sometimes contend that the appropriate "in-line" price differs from our guideline. In any event we believe that our procedural innovation should be tested fully in the Permian Basin area before we consider a separate rulemaking proceeding to extend similar relief to small producer sales elsewhere.

A number of comments question in the intent of the proposed rule in situations where two or more producers have an interest in a single sale. We shall clarify the rule to extend relief to every interest of a qualifying small producer; this will include situations in which a small producer's interest is sold under his own contract, or under a large producer's contract, or under another small producer's contract. Where several small producers have interests in a single contract, we shall permit them to be covered by a single small producer certificate. Moreover, where large producer interests in a small producer contract amount to 12½% or less, we shall permit the small producer certificate to cover these fractional interests as well as small producer interests. Hunt, *et al.* urge that the rule be amended to cover large producer interests greater than 12½% under a small producer certificate. Hunt points out that large producers often farm out leases to small producers retaining an overriding royalty interest in the property (which is sometimes convertible on certain contingencies to a working interest). Hunt says that it "is not uncommon for this overriding royalty interest to exceed 12½%". Hunt does not contend, however, that overrides in excess of 12½% are common in the Permian Basin area and our attention has not been called to any such instances in this area. On the other hand, the Commission's files reflect a number of farm out agreements in which large producers in the Permian Basin area have retained less than a 12½% overriding royalty interest (*e.g.* ⅞'s of ⅛ interest).[3] On the basis of the information and experience now available, we do not believe that any further modification of the rule is warranted.

In order to permit large producers whose interests are covered by small producer rate schedules to file rate schedules of their own, we shall amend the Regulations to permit such filings, even if the large producer is not a signatory to the gas purchase contract. In such cases, the large producer's rate schedule will consist of a copy of the small producer's contract and a document indicating the large producer's ownership interest. As matters now stand, exercise of this rule will be quite rare.

A number of comments (by Hunt, *et al.*, IPAA and TIPRO) criticize the proposed provision creating a presumption that producers who are related are under common control and therefore should be treated as one for purposes of determining whether they are small producers. We shall clarify the intent of the rule by providing that relationship may be the basis of common control without creating a formal presumption that such is the case in every instance.

El Paso has suggested that pipeline companies be excluded from the definition of "affiliated producers" under the common control test. We do not adopt this suggestion and make clear, to the contrary, that a company which is affiliated with a pipeline company is not eligible for the "small producer" classification, even though its jurisdictional sales be small. The rationale underlying the special relief afforded small producers applies only to fully-independent entities and not to companies which have the advantage of a pipeline affiliation.

[3] There are a few instances in the Permian Basin in which a large producer has a working interest exceeding 12½% in a small producer contract.

El Paso further suggests a clarification to provide that joint operating agreements between two or more producers will not, standing alone, be deemed to indicate common control. This we adopt.

We also adopt El Paso's suggestion that the volumetric test of a small producer, 10 million Mcf a year, be applied on a calendar year basis.

El Paso suggests that where a small producer becomes a large producer, he should be required to make new certificate and rate schedule filings for his previously authorized contracts. We see no reason to impose this burden upon the producer who expands his operation and we do not adopt the suggestion.

Sun Oil Company suggests that the rule would be more specific if the 10 million Mcf cutoff were tied to a particular pressure base. We shall adopt this suggestion, and select the pressure base of 14.65 psia utilized in Opinion No. 468. Sun further criticizes as vague a provision permitting revocation of a small producer certificate for "other good cause". We agree and shall substitute a provision for revocation in case of violation of the Natural Gas Act, regulations or terms of the certificate.

Sun also expresses the fear that the wording of our rule may subject small producer sales to detailed quality differential adjustments, contrary to the holding in the Permian decision. In order that our rule may be explicit and self-contained, we shall spell out the prices governing sales under a small producer certificate in the language of the Permian decision. If a small producer seeks a different price for a particular sale, he would do so by applying for a separate certificate for that sale.

TIPRO suggests that the application for a small producer certificate list owners of 10% or more of the applicant, rather than 5% or more as proposed by the notice. TIPRO asserts that this change would substantially reduce the administrative burdens upon applicants. As a matter of administrative convenience we shall adopt TIPRO's proposal.

Southern Natural and El Paso request service of applications for small producer certificates and copies of the Commission's order upon all existing purchasers. Commission practice provides for such service of Commission orders and will continue in effect. We shall adopt the suggestion as to service of the applications.

United Gas Pipe Line Company asserts that the proposed reporting by purchasers from holders of small producer certificates would be unduly burdensome and urges that any reports be filed by the small producers. We do not consider the proposed amendment to the Form 2 to be unduly burdensome. However, the notice proposed reporting in the Forms 2 and 2A annual reports only. Since these reports are made only by pipeline companies, the notice did not extend to reporting by independent producers who purchase gas from small producers. The Commission desires to adopt a reporting procedure applicable to all purchasers from small producers and will, to that end, issue a further notice of proposed rulemaking in this docket limited to the matter of reporting.

The Commission finds:

The amendments herein adopted are necessary and appropriate for the purposes of the administration of the Natural Gas Act.

The Commission, acting pursuant to the authority granted by the Natural Gas Act, as amended, particularly sections 4, 7 and 16 thereof (52 Stat. 822, 824, 830; 56 Stat. 83; 76 Stat. 72; 15 U.S.C. 717c, 717f, 717o) *orders:*

(A) Parts 154 and 157 of Subchapter E and Part 250 of Subchapter G, Chapter I, Title 18 of the Code of Federal Regulations, are amended as follows:

1. Part 157 is amended by adding a new § 157.40 as follows:

"§ 157.40 Small producer certificates of public convenience and necessity.

(a) *Definitions*

(1) A 'Small Producer' is an independent producer of natural gas as defined in § 154.91 of this chapter, who is not affiliated with a natural gas pipeline company and whose total jurisdictional sales on a nationwide basis, together with such sales of 'affiliated producers' are not in excess of 10,000,000 Mcf at 14.65 psia during any calendar year. As used in this section, the term 'jurisdictional sales' includes volumes of gas paid for but not taken under prepayment clauses or otherwise, and volumes of gas sold under other independent producer rate schedules in the proportion that the independent producer seeking to come within this section has an interest in such sales, but does not include sales made pursuant to percentage sales contracts.

(2) 'Affiliated producers' are persons who, directly or indirectly, control, or are controlled by, or are under common control with, the applicant producer. Such control exists if the producer has the power to direct or cause the direction of, or as a matter of actual practice does direct, the management and policies of a person, whether such power is exercised alone or through one or more intermediary companies, or pursuant to an agreement, and whether such power or practice is established through a majority or minority ownership or voting of securities, common directors, officers or stockholders, voting trusts, holding trusts, associated companies, relationship of blood or marriage, or any other direct or indirect means. For the further purposes of this section, the term 'agreement' shall not include any agreement for the operation of a natural gas producing property or a plant processing natural gas unless such agreement otherwise establishes the power to direct or cause the direction of the management and policy of a person.

(3) 'Small producer sales' are (i) sales by a small producer of his own interests under his own contracts; (ii) sales of all interests under a small producer's contract if producers not qualifying as small producers have interests which in the aggregate are no greater than 12½ percent; and (iii) sales of a small producer's interests under another producer's contract.

(b) *Requirements for the small producer certificate.* Upon the approval of appropriate applications made pursuant to the provisions of this section, Small Producers will be granted 'Small Producer Certificates' authorizing 'small producer sales' of natural gas in interstate commerce at prices no higher than the applicable just and reasonable area ceiling for such gas, without further certification from the Commission.

(1) Small Producer Certificates are initially available only to Small Producers operating in the Permian Basin and are applicable only to their small producer sales in that area and will authorize sales at prices no higher than:

(i) For new gas-well gas sold and to be sold pursuant to contracts executed on or after January 1, 1961, and any residue gas derived therefrom:

(*a*) In Texas Railroad Districts No. 7–c and 8—*16.5 cents per Mcf* (at 14.65 psia).

(*b*) In Lea, Eddy and Chaves Counties in New Mexico—*15.5 cents per Mcf* (at 14.65 psia) plus the applicable state and local production taxes in effect on September 1, 1965.

(ii) For gas-well gas, sold and to be sold pursuant to contracts executed before January 1, 1961, and any residue gas derived therefrom, and for all casinghead gas and any residue gas derived therefrom and to be sold:

(*a*) In Texas Railroad Districts No. 7–c and 8—*14.5 cents per Mcf* (at 14.65 psia).

(b) In Lea, Eddy and Chaves Counties in New Mexico—*13.5 cents per Mcf* (at 14.65 psia) plus the applicable state and local production taxes in effect on September 1, 1965.

(iii) "Gas-well gas" means gas from dry gas reservoirs and gas condensate reservoirs, and gas from gas-cap wells. Such certificates will apply to the production in other areas and the producers therein located upon the fixing of just and reasonable rates for such areas by the Commission.

(2) Small Producers may apply for a small producer certificate to cover all previous and all future jurisdictional sales in the Permian Basin, which do not raise the producer's total jurisdictional sales on a nationwide basis above 10,000,000 Mcf during any calendar year. Applications by these producers shall include the following information: (i) total jurisdictional sales on a nationwide basis for the year preceding the application; (ii) a list of outstanding certificates and rate schedules together with names and percentage of interest of other interest owners under such rate schedules; (iii) a list of outstanding rate schedules of others in which applicant owns an interest together with applicant's percentage of interest; and (iv) the names of all owners (stockholders, partners, joint venturers, etc.) of the applicant with an interest of 10 percent or more, their percentage of ownership in the applicant and in any other natural gas company, and any positions such owners may hold with another natural gas company.

(3) An applicant for small producer certificates who has no outstanding certificate issued by, or rate schedule filed with, this Commission for the sale of natural gas shall include the following information in his application:

(i) a list of all contracts to sell natural gas in interstate commerce,

(ii) source of production, total rate and the annual volume delivery obligations of the producer under each such contract, together with names and percentage of interest of other interest owners under each such contract, and

(iii) a list of owners of the applicant with an interest of 10 percent or more, their percentage of ownership in the applicant and in any other natural gas company and any position such owners may hold with another natural gas company.

(4) The application shall contain the information required by the form set out in § 250.10 of this chapter. A conformed copy shall be served upon each of the applicant's purchasers without regard to the area from which the gas is produced.

(c) *Duration of the small producer certificate.* A small producer certificate issued hereunder shall remain in effect for small producer sales until the Commission on its own motion or on application terminates such certificate because the producer no longer qualifies as a small producer or fails to comply with the requirements of the Natural Gas Act, the regulations thereunder, or the terms of the certificate. Upon such termination the producer will be required to file separate certificate applications and individual rate schedules for future sales but the small producer certificate will still be effective as to those past sales already certificated thereunder."

2. Part 154 is amended by adding a new paragraph (f) to § 154.91; by redesigning § 154.103 as § 154.10 and amending it; and by adding a new § 154.104, as follows:

"§ 154.91 Applicability.

* * * * * * *

(f) *Filing by certain non-signatories.* Where the operator and the signatory co-owners in a particular sale have secured a small producer certificate pursuant to § 157.40 covering the sale, and where any non-signatory co-owner's interests are not covered by the small producer certificate, such co-owner may file rate

schedules, rate changes, or certificate applications with respect to such interests notwithstanding the provisions of paragraph (d) of this section.

* * * * * * *

§ 154.103 (Vacated and reserved).

§ 154.104 Annual statements by small producers.

Annual statements certifying to the matters enumerated in the form set out in § 250.11 of this chapter shall be filed by all producers, either individually or by groups, to whom small producers certificates have been issued. The statements shall be submitted by February 15 of each year for the preceding calendar year.

* * * * * * *

§ 154.110 Applicability of §§ 154.92 through 154.102.

Sections 154.92 through 154.102 shall apply only to those persons specified in § 154.91 and shall not apply to small producer sales made under small producer certificates issued pursuant to § 157.40 of this chapter."

3. Part 157 is further amended by redesignating § 157.31 as § 157.39 and amending it as follows:

"§ 157.21 (Vacated and reserved)

§ 157.39 Applicability of §§ 157.23 through 157.30.

Sections 157.23 through 157.30 shall be applicable to independent producers as defined in § 154.91 of this Chapter, with the exception of those independent producers who are subject to § 157.40."

4. Part 250 is amended by adding two new sections, set out in the attachments hereto* and entitled, respectively, as follows:

"§ 250.10 Application for small producer certificate of public convenience and necessity.

§ 250.11 Annual statement for independent producers holding small producer certificates."

* * * * * * *

[Secs. 4, 7, 16; 52 Stat. 822, 824, 830; 56 Stat. 83; 76 Stat. 72; 15 U.S.C. 717c, 717f, 717o]

(B) The amendments prescribed herein shall become effective upon the issuance of this order.

(C) The Secretary shall cause prompt publication of this order to be made in the Federal Register.

*Omitted in printing.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

ATLANTA GAS LIGHT COMPANY AND SOUTHERN NATURAL GAS COMPANY, DOCKET NO. CP66-51

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued November 1, 1965)

On August 13, 1965, Atlanta Gas Light Company (Applicant) filed in Docket No. CP66-51 an application pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Southern Natural Gas Company (Respondent) to establish physical connection of its natural gas transmission facilities with the distribution facilities to be installed by Applicant in the Town of Blythe, Georgia, and its environs, and to sell natural gas to Applicant for resale through such distribution facilities, as more fully set forth in the application.

The proposed connection will be the initial connection with Respondent's pipeline for service to Blythe, although Applicant's distribution systems in other areas of Georgia are connected to Respondent's lines at various delivery points.

Applicant proposes that Respondent construct a meter and regulating station at its tap on the main line north of Blythe, from which Applicant will install 1.6 miles of 2-inch low pressure distribution line and appurtenant facilities.

Applicant estimates the natural gas requirements for the proposed area to be as follows:

	1st year	2d year	3d year
Annual (Mcf)	5,072	6,283	7,817
Peak day (Mcf)	78	90	106

The distribution facilities which Applicant proposes to construct in Blythe are expected to cost $25,223, and they will be financed from current construction funds. Applicant's anticipated third year net income from the project is $1,412, resulting in a 6.17 percent incremental rate of return. The project appears economically feasible.

By its letter filed on September 13, 1965, Respondent stated that it has no objections to the proposal, subject to the approval of its application for a temporary certificate of public convenience and necessity authorizing the operation of the facilities heretofore authorized to be constructed in Docket No. CP64-314. The temporary certificate for said operation was issued by the Commission on October 19, 1965.

Due notice of the filing of the application and opportunity for hearing thereon was published in the Federal Register on August 31, 1965 (30 F.R. 11184). No protest, petition to intervene or notice of intervention has been filed.

The Commission finds:

(1) Southern Natural Gas Company, a Delaware corporation having its principal place of business in Birmingham, Alabama, is a "natural-gas com-

pany" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of October 6, 1942, in Docket No. G–296 (3 FPC 822).

(2) Applicant is a public utility company in the State of Georgia and is authorized to construct and operate facilities to distribute and sell natural gas to inhabitants of the communities along its system.

(3) It is necessary and desirable in the public interest that Respondent be directed to establish physical connection of its transportation facilities with the facilities proposed to be constructed by Applicant and to render natural gas service to Applicant for distribution and resale, as hereinbefore described and as more fully set forth in the application, as hereinafter ordered and conditioned.

(4) The requirement that Respondent serve Applicant, as requested, will not place an undue burden upon Respondent nor impair its ability to render adequate service to existing customers.

The Commission orders:

(A) Respondent is directed to establish a physical connection of its natural gas transmission system with the facilities to be constructed by Applicant and render natural gas service to Applicant for distribution and resale, all as hereinbefore described and as more fully described in the application.

(B) Applicant shall be prepared to receive natural gas from Respondent at the proposed new connection within one year from the date of this order.

(C) Respondent shall notify the Commission of the commencement of service within 10 days thereof.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

CITIES SERVICE GAS COMPANY, DOCKET NO. CP63–188 (PHASE II)

ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND GRANTING FURTHER EXTENSION OF TIME

(Issued November 1, 1965)

On September 7, 1965, Cities Service Gas Company (Applicant) filed in Docket No. CP63–188 (Phase II) an application to amend * the Commission's order issued December 30, 1963, 30 FPC 1612, in said docket to authorize the construction and operation of a new 2,400 horsepower compressor station in its Webb Storage Field, Grant County, Oklahoma, all as more fully set forth in the application to amend.

The order of December 30, 1963, authorized Applicant to construct, operate and acquire certain facilities in order to develop and operate the Webb Storage Field. More specifically Applicant proposed to plug the old wells in the Webb field and drill, equip and connect some 40 new wells for storage injection and withdrawal. Applicant was also authorized to construct and operate a gathering system, a dehydration plant and a 26-inch pipeline to connect the proposed storage field to its Blackwell Compressor Station, which station Applicant intended to utilize for the input and withdrawal operations.

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* Applicant filed herein an application for a certificate of public convenience and necessity; however, said filing is being considered herein as an application to amend the Commission's order issued December 30, 1963, in Docket No. CP63–188 (Phase II).

Applicant now states that the horsepower which it had anticipated would become available at its Blackwell Compressor Station due to a decline of available volumes of gas requiring compression at Blackwell has not materialized and that the herein proposed compressor station is required in order to compress the volumes now scheduled to be injected and withdrawn from its new storage reservoir. Applicant further states that by installing the proposed compressor unit in the storage field area certain construction costs will be saved since it can utilize lighter weight pipe for the 26-inch injection and withdrawal line heretofore authorized in Docket No. CP63-188 (Phase II).

The application to amend shows that the total estimated cost of the proposed compressor station is $815,000; however, the use of lighter weight pipe for the 26-inch line will save Applicant $205,000 in estimated costs. Therefore, the estimated net cost of the proposed facilities is $610,000.

Applicant also requests that it be granted an extension of time to April 30, 1966, in which to complete the construction and acquisition heretofore authorized in Phase II of this docket and the construction of the facilities requested herein and to place all facilities in actual operation. The order of December 30, 1963, allowed Applicant until December 30, 1964, to complete its authorized construction and acquisition and to commence operations. Because of the difficulty in acquiring leasehold interests and storage rights, Applicant by order of October 15, 1964, was granted an extension of time to December 31, 1965. Applicant states that with the additional construction of the herein proposed compressor station, it anticipates that the Webb Storage project facilities will be completed and operations will commence by April 30, 1966. Accordingly, Applicant requests further extension of time to that date.

Due notice of the filing of the application to amend and opportunity for hearing thereon has been given by publication in the Federal Register on September 21, 1965, (30 F.R. 12052). No protest or petition to intervene has been filed in this proceeding.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued December 30, 1963, in Docket No. CP63-188 (Phase II) be amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order issued December 30, 1963, in Docket No. CP63-188 (Phase II) is amended as follows:

(1) To authorize the construction and operation of a new 2,400 horsepower compressor station in Applicant's Webb Storage Field; and,

(2) To extend to April 30, 1966, the time within which Applicant shall complete construction and acquisition of facilities and interests and place the subject storage project in operation.

(B) In all other respects said order shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

THE COLORADO RIVER WATER CONSERVATION DISTRICT, PROJECT NO. 2511

ORDER DENYING INTERVENTIONS

(Issued November 1, 1965)

Petitions to intervene in the above-entitled proceeding were filed on July 19, July 20, and July 27, 1965, respectively, by the City of Colorado Springs, Colorado, The City of Aurora, Colorado, and The New Jersey Zinc Company, a New Jersey Corporation. The first two petitions were supplemented by a joint additional filing of August 19, 1965, pursuant to the Commission's Acting Secretary's notice of extension of time within which to do so. An answer to the first two petitions was filed by The Colorado River Water Conservation District. The third petition was filed pursuant to the Commission's Secretary's notice of an extension of time within which to do so.

The first two petitioners assert, among other things, that Project No. 2511 purports to use water from Homestead Creek and the said use may interfere with or affect senior rights and claims of the petitioners. The third petitioner asserts, among other things, that it does not oppose the application for preliminary permit, but petitioner holds a Commission license for minor Project No. 1553 which enables petitioner to utilize water from Fall Creek, a stream which would be affected by Project No. 2511.

The above-entitled proceeding involves an application for preliminary permit filed on March 31, 1965, by The Colorado River Water Conservation District for preliminary permit for proposed Project No. 2511, to be known as the Red Cliff Project, to be located on the Eagle River and its tributaries, Homestake Creek, Peterson Creek and Fall Creek in Eagle County, Colorado, and will affect lands of the United States within the White River National Forest.

No construction is authorized under a preliminary permit. Such a permit gives the permittee the right of priority of application for license over other non-Federal entities, while the permittee undertakes the necessary studies and examinations required by Section 9 of the Federal Power Act in order to determine the economic feasibility of the proposed project, the means of securing the necessary financial arrangements for construction, the market for power, and all other information necessary for inclusion in an application for license, should one be applied for under the permit.

A preliminary permit under the Federal Power Act does not authorize the Permittee to interfere with any vested water rights of the Petitioners.

The Commission finds:

Petitioners have not shown good cause for the granting of their respective petitions.

The Commission orders:

The foregoing petitions seeking leave to intervene in this proceeding are hereby denied without prejudice to the right of the petitioners to again petition to intervene should an application for license for Project No. 2511 be filed.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

EMPIRE GAS AND FUEL COMPANY, DOCKET NO. CP66-31; CONSOLIDATED GAS SUPPLY CORPORATION, DOCKET NO. CP66-45

FINDINGS AND ORDER AFTER STATUTORY HEARING PERMITTING AND APPROVING ABANDONMENT, CANCELLING RATE SCHEDULE AND ACCEPTING SERVICE AGREEMENT FOR FILING

(Issued November 1, 1965)

On July 28, 1965, Empire Gas and Fuel Company (Empire), filed in Docket No. CP66-31 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon certain service to Iroquois Gas Corporation (Iroquois),[1] all as more fully set forth in the application on file with the Commission.

On August 10, 1965, Consolidated Gas Supply Corporation (Consolidated) filed in Docket No. CP66-45 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon its Kibbeville Measuring and Regulating facilities in Potter County, Pennsylvania, and its service to Empire, all as more fully set forth in the application.

Empire purchases natural gas from Consolidated,[2] pursuant to a service agreement dated June 8, 1955, and produces limited quantities of gas in northern Pennsylvania. The total supplies of natural gas available to Empire are delivered to Iroquois pursuant to a service agreement dated December 28, 1943, for the purchased gas, and pursuant to a contract dated December 9, 1932, for the produced gas. These sales for resale are made under Rate Schedules P-1 and L-1, respectively, to Empire's FPC Gas Tariff, Original Volume No. 1.

Iroquois and Consolidated have entered into a new service agreement dated April 23, 1965, which provides for the same service, among other things, as the service agreement of June 8, 1955, between Consolidated and Applicant.

Empire proposes to abandon its service to Iroquois incident to its Rate Schedule P-1 at the same time as Consolidated commences deliveries to Iroquois under the agreement of April 23, 1965. Empire states that no change in its facility operations is proposed.

Consolidated sells and delivers natural gas to Empire at the Kibbeville connection pursuant to a service agreement dated June 8, 1955. The gas is resold by Empire to Iroquois for distribution to consumers. Consolidated also renders natural gas service to Iroquois under three service agreements dated June 15, 1953, April 17, 1961, and March 9, 1962.

Empire and Iroquois have advised Consolidated of their desire to have Consolidated deliver the gas which it is now delivering to Empire at the Kibbeville connection directly to Iroquois at existing delivery points in the State of New York, primarily at the Donovan Connection in Allegany County, New York.

On August 24, 1965, Consolidated filed with the Commission a new Service Agreement with Iroquois dated April 23, 1965, which supersedes the existing service agreements between them wherein the sales and service now being rendered directly to Iroquois under three Service Agreements and indirectly

[1] Formerly Empire Gas and Fuel Company, Limited.
[2] Formerly New York State Natural Gas Corporation.

under the Empire Agreement will, upon receiving authorization for the subject applications, be rendered under one Service Agreement, thereby making available to Iroquois conjunctive billing under a block rate. The net effect of such billing, assuming that the new service had been in effect for the twelve months ending September 1965, would be a net reduction in cost to Iroquois of $39,154.

Consolidated requests all necessary waivers of the Rules in order that the new Service Agreement be made effective concurrently with its abandonment of service to Empire, and with Empire's abandonment of service to Iroquois as proposed in the subject applications.

The proposed shift in delivery of up to 4,166 Mcf per day has no significant operational effect.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the applications have been filed.

At a hearing held on October 28, 1965, the Commission on its own motion received and made a part of the record in these proceedings all evidence including the applications and exhibits, submitted in support of the authorizations sought, and upon consideration of the record,

The Commission finds:

(1) Applicant, Empire Gas and Fuel Company, a Pennsylvania corporation having its principal place of business in Buffalo, New York, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of June 1, 1943, in Docket No. G-300 (3 FPC 1013).

(2) Applicant, Consolidated Gas Supply Corporation, a West Virginia corporation with its principal place of business in Clarksburg, West Virginia, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order issued February 2, 1965, (33 FPC 150).

(3) The service in Docket No. CP66-31 and facilities and service in Docket No. CP66-45 proposed to be abandoned, as hereinbefore described and as more fully described in the applications herein, are subject to the jurisdiction of the Commission, and such abandonments are subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(4) The proposed abandonment of service and of the aforesaid facilities are permitted by the public convenience and necessity and approval therefor should be granted as hereinafter ordered.

(5) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require (a) that Consolidated's Service Agreement with Iroquois dated April 23, 1965, be accepted for filing and (b) Empire's Rate Schedule P-1 be cancelled, and that the said acceptance and cancellation be effective on the date of the issuance of this order.

The Commission orders:

(A) Permission for and approval of the abandonment of service as requested by Empire in Docket No. CP66-31 and of facilities and service as requested by Consolidated in Docket No. CP66-45, hereinbefore described and as more fully described in the respective applications filed in these proceedings, are granted.

(B) Empire and Consolidated shall advise the Commission of the date of abandonment of service and of facilities as authorized in paragraph (A) above within ten days of such abandonment.

(C) The Service Agreement between Consolidated and Iroquois dated April 23, 1965, be accepted for filing, and Empire's Rate Schedule P-1 be cancelled, effective on the date of the issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

KANSAS-NEBRASKA NATURAL GAS COMPANY, INC., DOCKET NO. CP66-57

FINDINGS AND ORDER AFTER STATUTORY HEARING PERMITTING AND APPROVING ABANDONMENT OF FACILITIES

(Issued November 1, 1965)

On August 23, 1965, Kansas-Nebraska Natural Gas Company, Inc., (Applicant) filed in Docket No. CP66-57 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon six small compressor units totaling 1,710 horsepower at its Casper, Wyoming, Compressor Station, as more fully set forth in the application.

Applicant acquired ownership of the six units by merger with North Central Gas Company, as authorized by the Commission in its order of December 20, 1962, 28 FPC 1079, in Docket No. CP63-89. Applicant subsequently installed three 1,000 horsepower compressor units, two of which were authorized by our order issued November 17, 1964 ,in Docket No. CP64-315, 32 FPC 1324, and a third by our order issued July 2, 1963, in Docket No. CP63-265, 30 FPC 17. The installation of these units, coupled with an increase in the inlet pressure, caused the discharge pressure to rise to 800 psig. The six small units have a maximum discharge limitation of 400 psig and therefore cannot be utilized at the higher operating pressures.

Applicant states that the six small units have not been considered as available horsepower for system operations, and it is impractical to recylinder them. It is therefore more efficient and economical to remove and salvage the units, thereby enabling utilization of the buildings and space for necessary parts and material storage.

Due notice of the filing of the application was published in the Federal Register on September 4, 1965 (30 F.R. 11358). No petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on October 28, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Kansas-Nebraska Natural Gas Company, Inc., a Kansas corporation having its principal place of business in Hastings, Nebraska, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of April 6, 1943, in Docket No. G-259 (3 FPC 966).

(2) The facilities to be abandoned, as hereinbefore described and as more fully described in the application in this proceeding, are subject to the jurisdiction of the Commission and abandonment of such facilities by Applicant is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(3) Such abandonment, as hereinbefore described and as more fully described in the application in this proceeding, is permitted by the public convenience and necessity and an order approving same should be issued as hereinafter ordered.

The Commission orders:

(A) Permission for and approval of the abandonment by Kansas-Nebraska Natural Gas Company, Inc., of the facilities hereinbefore described, as more fully described in the application in this proceeding, are granted.

(B) Applicant shall advise the Commission of the date of abandonment of the facilities within 10 days thereafter.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

SIERRA PACIFIC POWER COMPANY, PROJECT NOS. 743, 958, 959, 978, 982 AND 1037

ORDER ACCEPTING SURRENDER OF LICENSES (TRANSMISSION LINE)

(Issued November 1, 1965)

On June 25, 1965, Sierra Pacific Power Company, licensee for the above-designated transmission line projects, filed under Section 6 of the Federal Power Act for surrender of its licenses for these projects occupying lands of the United States within the States of California and Nevada.

This application was filed pursuant to the Commission's March 29, 1965, 33 FPC 652, order approving transfer of some ten transmission line licenses, including the six licenses involved herein, from the Sierra Pacific Power Company to Sierra Nevada Power Company, the latter presently being known as Sierra Pacific Power Company. In its order of March 29, 1965, the Commission stated that according to a staff study all the transmission lines designated in the order are distribution lines, not primary lines or parts of a "project" as defined in Section 3(11) of the Federal Power Act, and that its approval of transfer of the licenses was subject to the requirement that the transferee obtain authority from the appropriate Government agency having supervision of the Government lands involved, and then apply for surrender of its licenses for the lines herein involved.

The Land Office, Bureau of Land Management, Department of the Interior, Reno, Nevada, is the supervisor of lands of the United States occupied by the lines and has advised that the permits for the continued occupancy of Government lands by these lines will be issued as of the date of surrender of the licenses.

The Commission finds:

(1) The subject transmission lines are neither primary lines nor part of a "project" as defined in Section 3(11) of the Federal Power Act.

(2) Public notice of the application has been waived in each of the licenses.

The Commission orders:

Surrender of the licenses for transmission line Project Nos. 743, 958, 959, 978, 982, and 1037 are accepted, effective as of June 30, 1965, subject to the payment of annual charges within 30 days from the date of issuance of this

order in the amount of $110.98 for the period January 1, 1965, through June 30, 1965, as follows:

Project No. 743:	
Land charges	$53.30
Administrative charge	2.48
	55.78
Project No. 958—Land charges	2.48
Project No. 959—Land charges	4.04
Project No. 978—Land charges	27.75
Project No. 982—Land charges	6.40
Project No. 1037—Land charges	14.53
Total charge	110.98

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

T. L. JAMES & COMPANY, INC., ET AL., DOCKET NO. G–16492, ET AL.; AUSTRAL OIL COMPANY INCORPORATED, DOCKET NO. G–20289

ORDER DENYING MOTION TO SEVER AND TO DEFER FURTHER ACTION

(Issued November 1, 1965)

Austral Oil Company Incorporated (Austral) by motion filed herein on September 27, 1965, requests that the Commission sever Docket No. G–20289[1] from the consolidated proceedings in Docket No. G–16492, *et al.*, and defer taking further action with respect to the proceedings in said Docket No. G–20289 pending the outcome of an action filed by Austral in the Civil District Court for Orleans Parish, Louisiana, in case docket No. 440–193.

In support of its motion, Austral states (1) that the said civil action, filed September 1965, was instituted to resolve the tax reimbursement controversy with its purchaser, Trunkline Gas Company (Trunkline), which is the subject of the Commission's proceeding; (2) cites the Commission's order issued October 9, 1964 in *Pan American Petroleum Corporation, et al.*, Docket No. RI63–481, *et al.*, 32 FPC 966, which deferred action pending a state court determination of the controversy concerning the New Mexico Oil & Gas Emergency Tax, and *Leiter Minerals, Inc.* v. *U.S.*, 352 U.S. 220; (3) and suggests that the Commission also defer action in *Nicklos Oil & Gas Company (Operator), et al.*, Docket No. G–20290, and *Pan American Petroleum Corporation*, Docket No. G–20288, which likewise involve tax reimbursement controversies with Trunkline under contracts, of approximately the same date, containing tax reimbursement clauses which are identical to the tax reimbursement clause in Austral's contract.

An answer in opposition to Austral's motion was timely filed by Trunkline on October 8, 1965. In its answer, Trunkline states that Austral waited almost six years since the rate schedule involved in Docket No. G–20289 was suspended, because of questionable interpretation of the contract provision, to

[1] Austral's FPC Gas Rate Schedule No. 13, containing its contract dated July 18, 1958 with Trunkline, which is the document involved in the tax reimbursement controversy, was suspended in Docket No. G–20289 by Commission order issued December 23, 1959.

bring a suit in a state court of Louisiana. Trunkline points out that the subject state suit was initiated after a prehearing conference set by this Commission to determine the same matters which Austral presented to the state court. Austral filed its reply on October 18, 1965.

Referring to the aforementioned citations of Austral, Trunkline contends that such citations are inapposite to the motion for deferral as they involve proceedings in which the construction of a state statute was involved and a pending proceeding was delayed to permit the parties to secure a state interpretation of the applicable state statutes, whereas Trunkline states that it agrees with Austral's recitation and summarization of the pertinent Louisiana statutes. Trunkline further contends, among other things, that it is clear the controversy in this proceeding arises, not from differing interpretations of the Louisiana statutes, but rather from differing interpretations of the contract between the parties.

In our order issued October 9, 1964 deferring action in the aforementioned *Pan American* case, Docket No. RI63-481, *et al.*, we indicated the timely action taken in seeking resolution of the tax problems in a state court in that proceeding; and, although noting our power to decide the contractual question presented, we exercised our discretionary power by deferring action in the said docketed matter pending the state court action. However, in our order issued July 22, 1965 setting for hearing the instant proceedings in Docket No. G-16492, *et al.*, we noted that no legal action in either state or federal courts had been instituted.

We believe that it not be appropriate at this late date to defer action herein in view of the unreasonable lapse in time between the commencement of this proceeding and the institution of court action by Austral.

The Commission finds:

For the aforegoing reasons, good cause exist for denying Austral's motion filed here on September 27, 1965.

The Commission orders:

Austral's motion filed herein on September 27, 1965 is denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

COLUMBIA RIVER BASIN, HEADWATER BENEFITS INVESTIGATION, DOCKET NO. E-6384

ORDER DISMISSING PARTY ON REHEARING

(Issued November 2, 1965)

On April 30, 1965, 33 FPC 907, the Commission issued an order under Section 10(f) of the Federal Power Act (16 U.S.C. 803(f)) determining payments to the United States as a result of benefits provided by Federal headwater improvements in the Columbia River basin to non-Federal downstream hydroelectric developments during the period of January 1, 1957, through August 31, 1961. The order required that Public Utility District No. 1 of Chelan County (Chelan) pay $145,000 as a result of benefits received at its Rock Island development, Project No. 943, from the United States' Hungry Horse, Albeni Falls, and Grand Coulee headwater improvements.[1] The order also

[1] Chelan was required to pay $600 for the cost of the determination.

required four other owners of downstream projects to pay a total of $632,300 as a result of headwater benefits. These payments were fixed according to Section 11.27(b) of the Regulations under the Federal Power Act.

The Secretary of the Interior on May 28, 1965, filed an application for rehearing and a request for hearing, and the Commission on June 22, 1965, granted the application. He seeks on rehearing to establish that the payments should be fixed according to Section 11.27(a) of the Regulations because the owners of the downstream projects had additional generating capabilities based on assured release of Federal storage. While the total payments to the United States computed under Section 11.27(a) would be greater than those determined in the order of April 30, 1965, the payments by Chelan would be less. Chelan, as well as the other owners of downstream projects, paid under protest the payments determined in the order of April 30, 1965.

Chelan filed a motion on September 20, 1965, to have the Commission enter a final order fixing its payments as prescribed in the order of April 30, 1965.[2] It requests that, if this motion is granted, it be dismissed from the proceeding on rehearing. Chelan states that the cost of participating in the proceeding would equal or exceed the reduction in payments by it which would result if the Secretary's contentions were established. By letter of October 11, 1965, the Department of the Interior stated that it does not oppose Chelan's motion.

The Commission further finds:

It is appropriate and in the public interest in administering Part I of the Federal Power Act that the order of April 30, 1965, be made final as to Public Utility District No. 1 of Chelan County and that the District be dismissed from the proceeding on rehearing of this order.

The Commission orders:

The order of April 30, 1965, is hereby made final as to Public Utility District No. 1 of Chelan County, and the District is hereby dismissed from the proceeding on rehearing of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

LACLEDE GAS COMPANY, DOCKET NO. CP66-11

DECLARATION OF EXEMPTION

(Issued November 2, 1965)

Laclede Gas Company (Applicant) filed on July 13, 1965, an application, as supplemented on August 30, 1965, for exemption, with respect to an anticipated sale of natural gas to St. Charles Gas Corp. (St. Charles) for resale, from the provisions of the Natural Gas Act, pursuant to Section 1(c) thereof.

Applicant is a Missouri corporation engaged in the sale and distribution of natural gas in the State of Missouri. Pursuant to certificate authorization granted by the Commission, Mississippi River Transmission Corporation (Transmission) (formerly Mississippi River Fuel Corporation) sells and delivers to Applicant natural gas for resale in Missouri.

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[2] The motion was joined in by Puget Sound Power & Light Company, which is licensee for a transmission line from Chelan's Rock Island project. Since this company does not provide downstream power benefits and the order of April 30, 1965, does not require it to make any headwater benefits payments, it is not a party to the proceeding.

Applicant has received authorization from The Public Service Commission of the State of Missouri to acquire from St. Charles approximately 20 miles of transmission pipeline located in St. Louis and St. Charles Counties, Missouri, and to sell natural gas by means of said line to St. Charles for resale and ultimate consumption within the State of Missouri. The sale of gas to St. Charles will commence upon the completion of the abandonments, authorized by this Commission in its order, issued November 2, 1965, *infra*, p. 1220, in Docket Nos. CP65-385 and CP65-388, and upon the initiation of the sale of gas by Transmission to Applicant for resale to St. Charles.

All natural gas received by Applicant for transportation, sale for resale and distribution through its system is or will be consumed ultimately within the State of Missouri, and all of its said facilities are or will be located within said State.

The Public Service Commission of the State of Missouri has certified to the Federal Power Commission that it has and will be exercising regulatory jurisdiction over the rates, service and facilities of Applicant.

Wherefore, the Commission declares, by reason of the foregoing:

Laclede Gas Company, is exempt from the provisions of the Natural Gas Act, and the orders, rules and regulations of this Commission issued thereunder.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

LANDS WITHDRAWN IN POWER SITE RESERVE NO. 268 AND PROJECT NO. 334, DOCKET NO. DA-1058-CALIFORNIA, SACRAMENTO STATE COLLEGE FOUNDATION

ORDER DENYING APPLICATION FOR DETERMINATION UNDER SECTION 24 OF THE FEDERAL POWER ACT

(Issued November 2, 1965)

Application (Sacramento 079322) was filed by Sacramento State College Foundation (Applicant), of Sacramento, California, for a determination under Section 24 of the Federal Power Act pertaining to the following described lands of the United States withdrawn for power purposes:

Mount Diablo Meridian, California

T. 12 N., R. 8 E., section 12, S½SW¼

Applicant desires to acquire the lands under the Act of June 14, 1926 (44 Stat. 791) for development as a field campus for use by various departments of Sacramento State College.

The lands were withdrawn on August 2, 1922 pursuant to the filing of an application for preliminary permit for Project No. 334. While the application was rejected by the Commission, the withdrawal pertaining to the lands (as shown on notice of land withdrawal dated October 18, 1922) remains outstanding. The SW¼SW¼, section 12, is also withdrawn in Power Site Reserve No. 268 of April 29, 1912.

The lands are located near the left bank of the North Fork of the American River south of its confluence with the Middle Fork in the vicinity of the Town of Auburn, California.

The lands are valuable for power development in that they will be used in connection with the construction by the Bureau of Reclamation of the proposed

multiple-purpose Auburn-Folsom South Unit project on the North Fork American River for power and other purposes, the dam of which will be located about two miles downstream from the lands. This project was authorized by Public Law 89-161 approved September 2, 1965.

The Commission finds:

The subject lands are valuable for power purposes.

The Commission orders:

The aforesaid application is hereby denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

MISSISSIPPI RIVER TRANSMISSION CORPORATION, DOCKET NO. CP65-385; ST. CHARLES GAS CORP., DOCKET NO. CP65-388

FINDINGS AND ORDER AFTER STATUTORY HEARING PERMITTING AND APPROVING ABANDONMENT OF FACILITIES AND SALE OF NATURAL GAS

(Issued November 2, 1965)

On June 2, 1965, Mississippi River Transmission Corporation (Transmission) and on June 3, 1965, as supplemented on August 3 and September 7, 1965, St. Charles Gas Corp. (St. Charles) filed in Docket Nos. CP65-385 and CP65-388, respectively, applications pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon certain natural gas service and facilities, all as more fully set forth in the respective applications in these proceedings.

Transmission currently sells a maximum volume of 4,271 Mcf of gas per day to St. Charles. In Docket No. CP65-385, Transmission proposes to abandon such sale and the metering, regulating and appurtenant facilities at a related delivery point in Hartford, Illinois. Transmission then proposes to sell and deliver up to 4,271 Mcf per day to Laclede Gas Company (Laclede) for resale to St. Charles. In effect Transmission is transferring the contract demand from St. Charles to Laclede.

In Docket No. CP65-388, St. Charles proposes to abandon in place the eastern portion of its pipeline which portion extends from Transmission's delivery point at Hartford, Illinois, under the Mississippi River, into the State of Missouri, terminating at Transmission's second delivery point, the East Line delivery point in St. Louis County, Missouri. St. Charles proposes to seal off this portion of its line and to separate it from the remainder of the line. The remainder of St. Charles' line, extending from the East Line delivery point to the City of St. Charles, will be sold to Laclede and will be utilized by the latter for the transportation and delivery of gas to St. Charles at a point in the City of St. Charles. Transmission will continue to utilize the East Line delivery point as an additional delivery point to Laclede.

Transmission, St. Charles and Laclede have entered into a tripartite agreement, dated May 19, 1965, providing for the subject proposals.

St. Charles states that its proposed abandonment will relieve it of the burden and expense of maintaining and operating a costly and unnecessary river crossing and transmission line, and, further that no increase in rates to St. Charles' customers will result from the proposal. Further, St. Charles states that the sale of its transmission line to Laclede and the attachment of such line to Laclede's distribution system will effectively convert the use

of such line from that of a straight, point-to-point transmission line to a potentially integral part of the Laclede distribution system, providing additional operating flexibility and efficiency on the Laclede system.

St. Charles states that it is engaged in the business of selling and distributing natural gas in the City of St. Charles, Missouri, and environs, and in the County of St. Charles, Missouri. St. Charles requests in Docket No. CP65-388 that, upon the completion of the proposed abandonment, it be declared exempt from the provisions of the Natural Gas Act. In Docket No. CP66-11, Laclede states that it distributes natural gas at retail solely within the State of Missouri and requests in said docket that it be declared exempt from the provisions of the Natural Gas Act insofar as the same may be deemed to apply to Laclede's expected sale of natural gas to St. Charles for resale. The requested declarations of exemption by separate orders will be issued simultaneously with the subject order.

By order issued July 30, 1965, the Public Service Commission of Missouri authorized the sale of St. Charles' pipeline and the sale of natural gas by Laclede to St. Charles.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the applications have been filed.

At a hearing held on October 28, 1965, the Commission on its own motion received and made a part of the record in these proceedings all evidence, including the applications, supplements and exhibits, submitted in support of the authorizations sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Mississippi River Transmission Corporation, a Delaware corporation having its principal place of business in St. Louis, Missouri, and Applicant, St. Charles Gas Corp., a Missouri corporation having its principal place of business in St. Charles, Missouri, each is a "natural-gas company" as heretofore found by the Commission.

(2) The facilities and sale of natural gas to be abandoned in these proceedings, as hereinbefore described, are subject to the jurisdiction of the Commission, and the abandonment of such facilities and sale is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(3) Such abandonment by Transmission and St. Charles, as hereinbefore described, is permitted by the public convenience and necessity and should be approved as hereinafter ordered.

The Commission orders:

(A) Permission for and approval of the abandonment of facilities and sale of natural gas by Transmission and of facilities by St. Charles hereinbefore described, all as more fully described in the applications, as supplemented, in these proceedings, are granted.

(B) Applicants shall advise the Commission of the date of the respective abandonments within 10 days of the date thereof.

(C) Transmission shall file with the Commission a notice of cancellation of its service agreement with St. Charles.

(D) Transmission shall tender for filing with the Commission a new service agreement with Laclede increasing the contract demand by 4,271 Mcf and providing for the new East Line delivery point for Laclede.

(E) Transmission shall tender for filing with the Commission a Revised Sheet No. 33 and a Revised Sheet No. 34 to its FPC Gas Tariff, First Revised Volume No. 1, reflecting the above changes.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

NATURAL GAS PIPELINE COMPANY OF AMERICA, DOCKET NO. CP66-74

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued November 2, 1965)

On September 15, 1965, Natural Gas Pipeline Company of America (Applicant), filed in Docket No. CP66-74 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale and delivery of an additional Daily Contract Quantity of 1,000 Mcf to Central Illinois Electric and Gas Company (Central Illinois), an existing customer of Applicant, all as more fully set forth in the application.

Central Illinois by letter dated August 23, 1965, requested Applicant to supply additional volumes of natural gas to meet its estimated peak day deficiency of 1,000 Mcf/D for the 1965-66 heating season. It appears Applicant has unallocated pipeline capacity in the amount of 30,171 Mcf. Central Illinois presently receives a Daily Contract Quantity of 84,500 Mcf/D under Rate Schedule CD-1 and a maximum day storage withdrawal volume of 28,897 Mcf under Rate Schedule S-1. The additional volumes proposed to be sold and delivered by Applicant to Central Illinois will be delivered at the existing Rockford meter station and used to serve its existing market area in Stephenson, Winnebago and Boone Counties, Illinois. No additional facilities will be required to make the proposed additional deliveries of natural gas.

After due notice no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on October 28, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought, and upon consideration of the record,

The Commission finds:

(1) Applicant, Natural Gas Pipeline Company of America, a Delaware corporation having its principal place of business in Chicago, Illinois, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of November 7, 1958, in Docket No. G-9966 (20 FPC 694).

(2) The proposed sale and delivery of natural gas by Applicant to Central Illinois Electric and Gas Company as hereinbefore described, and as more fully described in the application, in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed sale and delivery of natural gas is required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Applicant, Natural Gas Pipeline Company of America, authorizing the sale and delivery of natural gas to Central Illinois Electric and Gas Company, as hereinbefore described and as more fully described in the application in this proceeding, upon the terms and conditions of this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

(C) Applicant and Central Illinois Electric and Gas Company execute a superseding service agreement in accordance with the Commission's Regulations reflecting the increase in daily contract quantity of 1,000 Mcf, and file the same with the Commission within 30 days after the issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

PAN AMERICAN PETROLEUM CORPORATION (OPERATOR), ET AL., DOCKET NO. RI66-61 AND KERR-MCGEE OIL INDUSTRIES, INC., DOCKET NO. RI66-81

ORDER CONSOLIDATING PROCEEDINGS, PERMITTING INTERVENTION, AND SETTING CONTRACTUAL MATTERS FOR HEARING

(Issued November 2, 1965)

Pan American Petroleum Corporation (Operator), *et al.* (Pan American) on August 9, 1965, tendered for filing proposed revenue sharing increased rates of 11.7526¢ and 11.5961¢ per Mcf, which were designated as Supplement No. 21 to Pan American's FPC Gas Rate Schedule No. 57, for sales of gas to Phillips Petroleum Company (Phillips) from Texas Railroad Commission District No. 10 and the Oklahoma Panhandle area, respectively. By order issued September 8, 1965, in Docket No. RI66-61 the Commission suspended Pan American's proposed rates for one day from the proposed effective date of September 13, 1965, or for one day from the date that Phillips makes effective its related increased rate of 15.22¢, plus applicable tax reimbursement, which is suspended in Docket No. RI65-526,[1] whichever is later. The alternative suspension period was provided for because it appeared at the time that Pan American was not entitled as a contractual matter to place its proposed rates in effect until Phillips commenced collection of its suspended increased rate in Docket No. RI65-526.

Subsequent to the issuance of the suspension order herein, Phillips filed on September 10, 1965, a protest requesting that Pan American's proposed increased rates be rejected because under its interpretation of the contract there was no contractual basis for the filing made by Pan American. Pan American on September 27, 1965, filed an answer to Phillips' protest contesting Phillips' interpretation of the contract. Pan American contends that it is contractually entitled to the proposed rates because Phillips is "en-

[1] Phillips could make its increased rate in Docket No. RI65-526 effective but has not as yet seen fit to do so.

titled to receive" the higher rate suspended in Docket No. RI65–526 upon which Pan American's filing is based. Pan American therefore requests that the September 8 suspension order be revised to permit it to collect the proposed rates, subject to refund, as of September 14, 1965.

If we were to shorten the suspension period in Docket No. RI66–61, as Pan American has requested, Phillips would be forced either to place its increased rate of 15.22¢ per Mcf in effect subject to refund in Docket No. RI65–526 or to absorb Pan American's rate increase, which is estimated to amount to $266,621 annually. Under these circumstances, we conclude that Pan American's request for a shortened suspension period should be denied. However, in light of the interpretation placed on the contractual provisions by Pan American and Phillips' protest with respect thereto, it is appropriate to set these contractual matters for immediate hearing.

Phillips also protested on September 13, 1965, the proposed revenue sharing increased rate of 12.00273¢ designated as Supplement No. 20 to the Kerr-McGee Oil Industries Inc. (Kerr-McGee) FPC Gas Rate Schedule No. 12, for sales of gas by Kerr-McGee to Phillips from Texas Railroad Commission District No. 10.[2] The proposed rate was suspended by order issued September 29, 1965 in Docket No. RI66–81 for one day until Oct. 1, 1965, and thereafter until made effective as prescribed by the Natural Gas Act. Phillips contends that Kerr-McGee has improperly computed the rate to which it is entitled under the contract. Briefly, Kerr-McGee and Phillips differ as to which of Phillips' base prices for sales made to Michigan Wisconsin Pipe Line Company under its FPC Gas Rate Schedule No. 4 is applicable at this time in computing Kerr-McGee's contract rate. Kerr-McGee contends that Phillips' base rate of 8.84863¢ is applicable and that its base price should be increased by 165.72% which equals Phillips' increased rate 14.0635¢ (in effect subject to refund in Docket No. RI60–349) divided by Phillips' base price of 8.84863¢ X 100. Phillips contends that its base rate of 9.3796¢ is applicable to the computation and that Kerr-McGee's base price should be increased by 149.937% which equals Phillips' 14.0635¢ rate divided by Phillips' base price of 9.3796¢ X 100.

While the contractual disputes in Docket Nos. RI66–61 and RI66–81 are not the same, the two proceedings do involve the proper interpretation of similar contractual provisions. We therefore find it appropriate to consolidate these cases and to set the contractual matters involved here for immediate hearing, as hereinafter ordered. The justness and reasonableness of these rates, however, will be subject to determination in the appropriate area rate proceeding in the event and to the extent it is determined that there is contractual authorization for such filings.

Phillips in its protests also requested in the alternative that it be permitted to intervene in the above-entitled proceedings. Kerr-McGee does not object to Phillips' intervention, but Pan American asserts that such intervention is unnecessary. We conclude that the participation of Phillips in Docket Nos. RI66–61 and RI66–81 may be in the public interest.

It is not clear whether there might be some disagreement as to the facts involved here as well as to the proper legal interpretation of the facts. Accordingly, we shall provide for a prehearing conference at which the substantive matters to be resolved by formal hearing, if any, will be set forth, and all matters that can be resolved without formal trial will be eliminated from hearing and settled by stipulation.

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[2] On September 29, Kerr-McGee filed an answer to Phillips' protest.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly Sections 4, 5 and 16 thereof, the Commission's Rules of Practice and Procedure and the Regulations under the Natural Gas Act (18 CFR, Chapter I), the above-designated proceedings are consolidated for the purpose of hearing and a public hearing shall be held with respect to the contractual issues involved in these proceedings pursuant to the procedures prescribed herein.

(B) A presiding examiner to be hereinafter designated by the Chief Hearing Examiner shall preside at the prehearing conference and the hearing in the above-designated proceedings pursuant to the Commission's Rules of Practice and Procedure, and as further provided by this order.

(C) Pursuant to the provisions of Section 1.18 of the Commission's Rules of Practice and Procedure, a prehearing conference before the Presiding Examiner to be designated shall commence at 10:00 a.m. (EST) on November 16, 1965, in a hearing room of the Federal Power Commission, 441 G Street, N.W., Washington, D.C. for the purpose of effectuating the intent of the Commission as set forth in the body of this order.

(D) After the prehearing conference, the Presiding Examiner shall give notice of the date of hearing and shall prescribe such other procedures as he deems appropriate in the disposition of these matters.

(E) Phillips is permitted to intervene in the above-entitled proceedings, subject to the rules and regulations of the Commission: *Provided, however,* that the participation of Phillips shall be limited to matters affecting asserted rights and interests as specifically set forth in its petition to intervene; *and, Provided further,* that the admission of Phillips shall not be construed as recognition by the Commission that it might be aggrieved because of any order or orders of the Commission entered in these proceedings.

(F) Pan American's request for a shortened suspension period in Docket No. RI66-61 is denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

ST. CHARLES GAS CORP., DOCKET NO. CP65-388

DECLARATION OF EXEMPTION

(Issued November 2, 1965)

St. Charles Gas Corp. (Applicant) filed on June 3, 1965, an application, as supplemented on August 3 and September 7, 1965, for exemption from the provisions of the Natural Gas Act, pursuant to Section 1(c) thereof.

Applicant, a Missouri corporation, is engaged in the sale and distribution of natural gas in the State of Missouri and, pursuant to authorization of the Commission, has been transporting natural gas in interstate commerce between the States of Missouri and Illinois. Pursuant to certificate authorization granted by the Commission, Mississippi River Transmission Corporation (Transmission) (formerly Mississippi River Fuel Corporation) has been selling and delivering to Applicant natural gas for resale in Missouri.

Applicant has been and will continue to sell and distribute natural gas in the City of St. Charles, Missouri, and environs, and in the County of St. Charles, Missouri.

Upon the completion of the abandonment by Applicant of its pipeline between Illinois and Missouri and upon the abandonment by Transmission of

its sale of natural gas to Applicant, all authorized by Commission order, issued November 2, 1965, *supra*, p. 1220, in Docket Nos. CP65–385 and CP65–388, and upon the commencement of the sale of natural gas by Transmission to Laclede Gas Company (Laclede) for resale to Applicant, Applicant will receive all of its gas supply from Laclede in the State of Missouri and all of such gas will be received by Applicant for sale and distribution through its system for ultimate consumption within the State of Missouri and all of Applicant's facilities will be located within said state.

The Public Service Commission of the State of Missouri has certified to the Federal Power Commission that it has and will be exercising regulatory jurisdiction over the rates, service and facilities of Applicant.

Wherefore, the Commission declares, by reason of the foregoing:

St. Charles Gas Corp., upon the completion of the above-described abandonments and the commencement of the sale of natural gas by Transmission to Laclede for resale to Applicant, will be exempt from the provisions of the Natural Gas Act, and the orders, rules and regulations of this Commission issued thereunder.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

TRANSCONTINENTAL GAS PIPE LINE CORPORATION, DOCKET NO. CP66–67

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued November 2, 1965)

On August 30, 1965, Transcontinental Gas Pipe Line Corporation (Applicant) filed in Docket No. CP66–67 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities, as more fully set forth in the application.

Applicant proposes to construct and operate a sales meter station and appurtenant equipment to be located at mile post 1222.67 on its 36-inch main transmission line "B" near Cowpens, Cherokee County, South Carolina. The meter station will be utilized as an additional point of delivery for natural gas service to Piedmont Natural Gas Company, Inc. (Piedmont), Applicant's existing resale customer.

Piedmont has requested the proposed delivery point to enable it to serve the South Carolina communities of Cowpens and Chesnee as well as three interruptible industrial customers. The estimated firm peak day volume in the third year of proposed operation of the facilities is 249 Mcf and the total estimated third year annual volume is 1,088,620 Mcf. Volumes purchased by Piedmont from Applicant at this point would be out of allocations previously authorized by the Commission.

The estimated cost of construction of the proposed facilities is $23,000, which will be financed from Applicant's general funds.

Due notice of the filing of the application was published in the Federal Register on September 11, 1965 (30 F.R. 11701). No protest, petition to intervene, or notice of intervention has been filed in this proceeding.

At a hearing held on October 28, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, in-

cluding the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Transcontinental Gas Pipe Line Corporation, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of April 28, 1950, in Docket No. G–1277 (9 FPC 32).

(2) The facilities hereinbefore described and as more fully described in the application in this proceeding are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of said Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Applicant, Transcontinental Gas Pipe Line Corporation, authorizing the construction and operation of facilities as hereinbefore described and as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities authorized by this order shall be completed and placed in actual operation and the transportation of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within one year from the date of this order.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

ARIZONA PUBLIC SERVICE COMPANY, DOCKET NO. E–7225

ORDER AUTHORIZING TRANSMISSION OF ELECTRIC ENERGY TO MEXICO

(Issued November 3, 1965)

Arizona Public Service Company (Applicant), incorporated under the laws of the State of Arizona with its principal place of business at Phoenix, Ari-

zona, filed an application in the above docket on May 10, 1965, as supplemented and amended on June 9 and September 7, 1965, for authorization, pursuant to Section 202(e) of the Federal Power Act, to transmit electric energy from the United States to Mexico in an amount not to exceed 2,102,400 kwh per year at a rate of transmission not to exceed 400 kw. In addition, by a separate application filed in Docket No. E–7224 on May 10, 1965, as supplemented on June 9, 1965, Applicant requests permission, pursuant to Executive Order No. 10485, dated September 3, 1953, to construct, operate, maintain, and connect at the international border between the United States and Mexico certain facilities hereinafter described for the transmission of electric energy between the United States and Mexico, which permission is granted by a permit signed by the Acting Chairman of the Federal Power Commission on October 20, 1965 and issued as hereinafter provided.

The electric energy proposed to be transmitted to Mexico by Applicant will be sold by it to Comision Federal de Electricidad (Comision Federal), a department of the Republic of Mexico, for resale to consumers in the Town of Sonoyta, Sonora, Mexico, and vicinity. The energy purchased by Comision Federal from Applicant will supply all the electric requirements of the Town of Sonoyta. Applicant will charge Comision Federal for the energy purchased from Applicant the same rates as those charged to Applicant's electric service customers located in the United States in the area adjacent to the Town of Sonoyta. Such rates are set forth in Applicant's General Service Rate Schedule No. E–125, a copy of which was filed as an exhibit to the application in Docket No. E–7225. Applicant will deliver the exported energy to Comision Federal by means of a proposed three-phase open Y 12/21 kv transmission line consisting of three conductors of No. 4 copper wire crossing the International Boundary near Lot 4 of United States Customs Immigration Reserve at Lukeville, Arizona, which facilities are covered by and subject to a Permit signed by the Acting Chairman of the Federal Power Commission and referred to above.

Applicant will generate a portion of the electric energy which it proposes to export and will purchase the balance of such energy from Phelps Dodge Mining Company and United States Bureau of Reclamation, respectively.

Written notice of the application has been given to the Arizona Corporation Commission and to the Governor of that State. Notice of the application has also been given by publication in the Federal Register on May 25, 1965 (30 F.R. 7023), stating that any person desiring to be heard or to make any protest with reference to the application should, on or before June 4, 1965, file with the Federal Power Commission, Washington, D.C. 20426, a petition or protest in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). No petition or protest or request to be heard in opposition to the granting of the application has been received.

The Commission finds:

(1) The proposed transmission of electric energy from the United States to Mexico as limited herein and as hereinafter authorized will not impair the sufficiency of electric supply within the United States and will not impede or tend to impede the coordination in the public interest of facilities subject to the jurisdiction of the Commission.

(2) The period of public notice given in this matter is reasonable.

The Commission orders:

(A) Applicant is hereby authorized to transmit electric energy from the United States to Mexico in accordance with the terms and conditions set forth in the application and subject to the provisions of this order.

(B) The electric energy which applicant is hereby authorized to transmit from the United States to Mexico shall be in an amount not to exceed 2,102,400 kwh per year at a transmission rate not to exceed 400 kw; the energy to be transmitted over facilities specified in the aforementioned Permit signed by the Acting Chairman of the Federal Power Commission on October 20, 1965, in Docket No. E-7224.

(C) The authorization herein granted may be modified from time to time or terminated by further order of the Commission, but in no event shall such authorization extend beyond the date of the termination or expiration of the Permit signed by the Acting Chairman of the Federal Power Commission, referred to in Paragraph (B) above.

(D) Applicant shall conduct all operations pursuant to the authorization herein granted in accordance with the provisions of the Federal Power Act and pertinent rules, regulations or orders issued by the Commission.

(E) Applicant shall provide for the installation and maintenance of adequate metering equipment to measure the flow of all electric energy transmitted from the United States to Mexico pursuant to the authority herein granted; shall make, keep and preserve full and complete records with respect to the movement of such energy; and shall furnish, in triplicate, to the Commission, with respect to such transmission of electric energy, reports annually on or before February 15, showing the kwh of energy delivered, the maximum kw of transmission, and the consideration received therefor during each month of the preceding calendar year.

(F) This authorization to transmit electric energy from the United States to Mexico shall not be transferable or assignable, but in the event of the involuntary transfer of the facilities used for such transmission by operation of law (including such transfers to receivers, trustees, or purchasers under foreclosure or judicial sale) said authorization shall continue in effect temporarily for a reasonable time thereafter, pending the making of an application for permanent authorization and decision thereon, provided notice is promptly given in writing to the Commission accompanied by a statement that the physical facts relating to sufficiency of supply, rates, and nature of use remain substantially the same as before the transfer.

(G) This authorization shall be without prejudice to the authority of any State or State regulatory commission for the exercise of any lawful authority vested in the State or State regulatory commission over Applicant.

(H) This authorization is without prejudice to the authority of this Commission, or any other regulatory body, with respect to rates, service, accounts, valuation, estimates or determinations of cost, or any other matter whatsoever now pending or which may come before this Commission, or any other regulatory body, and nothing herein shall be construed as an acquiescence by this Commission in any estimate or determination of cost or any valuation of property claimed or asserted.

(I) Concurrently with the issuance of this order, the Permit signed by the Acting Chairman of the Federal Power Commission, referred to in Paragraph (B) above, shall be issued and a copy thereof transmitted by the Secretary to Applicant.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

EL PASO NATURAL GAS COMPANY, DOCKET NO. CP65-242

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued November 3, 1965)

On February 17, 1965, El Paso Natural Gas Company (Applicant) filed in Docket No. CP65-242 an application, as supplemented on February 24 and September 20, 1965, pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities and the sale and delivery of natural gas, on a firm and interruptible basis, to Northwest Natural Gas Company (Northwest Natural) for transportation to and resale and general distribution in the communities of Deer Island, Prescott, Rainier, Clatskanie, Wauna, Astoria, Gearhart and Seaside, Oregon, their respective environs and adjacent and intervening areas, all as more fully set forth in the application, as supplemented.

Specifically, Applicant proposes to construct and operate: (1) approximately 4.63 miles of combination 16-inch and 12¾-inch pipeline, and necessary appurtenances, extending from a point of connection with Applicant's 26-inch mainline in Cowlitz County, Washington, to a point of connection with Northwest Natural's proposed pipeline in Columbia County, Oregon, and (2) a dual 8⅝-inch orifice-type measuring and regulating station and necessary appurtenances. Applicant states that the .85 mile 16-inch portion of its proposed line will be a submerged crossing of the Columbia River.

The application shows that the total estimated third year annual and peak day requirements of Northwest Natural for its proposed project are 9,082,736 Mcf and 35,208 Mcf, respectively.

The total estimated cost of Applicant's facilities is $1,270,000, which cost will be financed from current working funds. Based on third year estimates shown in Exhibit N of the subject application, Applicant will receive annual revenues of $2,912,103 from the proposed sale to Northwest Natural. Incremental cost of service to Applicant, including return at 6.125 percent, is estimated at $1,614,978.

By letter, dated February 25, 1965, Applicant was issued a temporary certificate authorizing the proposed facilities and service. The facilities were constructed and the service is being rendered under such authorization.

The application indicates further that Northwest Natural will construct approximately 70 miles of 6 to 10-inch transmission pipeline from Applicant's proposed facilities in Oregon to the Oregon coast near Seaside and the necessary distribution systems for the proposed service.

On March 17, 1965, the Public Utility Commissioner of Oregon filed a notice of intervention in support of the subject application.

After due notice, no petition to intervene, other notice of intervention or protest to the granting of the application has been filed.

At a hearing held on October 28, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, supplements and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, El Paso Natural Gas Company, a Delaware corporation having its principal place of business in El Paso, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of January 11, 1944, in Docket No. G–288 (4 FPC 486).

(2) The facilities hereinbefore described, as more fully described in the application, as supplemented, in this proceeding, are to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the proposed transportation and sale of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the proposed transportation and sale of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is issued authorizing Applicant, El Paso Natural Gas Company, to construct and operate the proposed facilities and to sell and deliver natural gas as hereinbefore described, all as more fully described in the application, as supplemented, in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities authorized shall be constructed and placed in actual operation and the sale and delivery of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within six months from the date on which this order issues.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

HARRELL DRILLING COMPANY, DOCKET NO. G–17074

ORDER REJECTING OFFER OF SETTLEMENT

(Issued November 3, 1965)

On July 26, 1965, Harrell Drilling Company (Harrell) submitted an offer of settlement in this proceeding pursuant to Section 1.18(e) of the Com-

mission's Rules of Practice and Procedure. This proceeding involves a proposed increased rate from 13.49751¢ to 16.16974¢ per Mcf at 14.65 psia for the sale of natural gas by Harrell to the Tennessee Gas Transmission Company (TGT) in the Magnet-Withers Field, Wharton County, Texas (Texas Railroad Commission District No. 3) which was suspended by order of the Commission, and upon a duly filed motion was made effective by Harrell on July 6, 1959, and is presently being collected subject to refund. The sale is made under Harrell's FPC Gas Rate Schedule No. 1.

In its offer, Harrell proposes a settlement rate of 15.0¢ per Mcf of natural gas at 14.65 psia, and to eliminate the price redetermination and favored-nation clauses from the subject rate schedule. It reserves only the right to file for three-fourths reimbursement of any possible tax increase until the contract expires in August, 1975. However, in lieu of refunding monies collected subject to refund in excess of the proposed settlement rate, Harrell proposes to invest such monies in a drilling program to develop additional reserves on a presently undetermined site which, if possible, may be located near a TGT transmission line. Subject to TGT's approval, Harrell would enter into a joint venture with TGT in such a drilling program. TGT has filed no comment to Harrell's proposal. We do not find Harrell's proposal to be in the public interest. Therefore, we shall reject the offer of settlement filed by Harrell herein.

The Commission finds:

It is necessary and proper in carrying out the provisions of the Natural Gas Act and the Regulations thereunder to reject the offer of settlement filed by Harrell with the Commission on July 26, 1965, in this proceeding.

The Commission orders:

The offer of settlement filed by Harrell on July 26, 1965, in this proceeding is rejected.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

PHELPS DODGE CORPORATION, PROJECT NO. 2304

ORDER APPROVING REVISED PROJECT EXHIBITS

(Issued November 3, 1965)

On December 9, 1964, Phelps Dodge Corporation, licensee for Project No. 2304, filed for Commission approval revised Exhibits K, L and R drawings. The project, known as the Blue Ridge Project, is located on East Clear Creek, a tributary of Little Colorado River, and on East Verde River in Coconino and Gila Counties, Arizona, and affects lands of the United States within the Coconino and Tonto National Forests.

Revised Exhibits K and L drawings show a change in the pumping plant site with a resultant change in the pipeline and transmission line rights-of-way. The revised exhibits also show the Blue Ridge dam and spillway "as built" which differ only slightly than as originally contemplated. Revised Exhibit K (FPC No. 2304–16 and –17) shows the relocation of the project works, which are all on National Forest lands.

Inasmuch as Article 37 of the license does not require the licensee to file revised F and K exhibits showing the lands of the United States occupied by

the project until one year from the date of completion of the project, we are deferring until a later date a determination of National Forest lands occupied by the project and the amount of annual charges for such occupancy.

While revised Exhibit R (FPC No. 2304-24) shows the proposed recreational areas in relation to the location of the project works, the licensee has been requested to file supplemental information as a part of the exhibit. In the circumstances, we are deferring further consideration of the exhibit until a later date.

The Chief, Forest Service, acting for the Secretary of Agriculture, who has supervision over the Coconino and Tonto National Forests, has advised that Commission approval of the revised exhibits will not interfere or be inconsistent with the purposes for which the said National Forests were created or acquired.

The Commission finds:

The following described revised Exhibit K and L drawings conform to the Commission's rules and regulations and should be approved as part of the license for the project, and the exhibits described herein as being superseded should be eliminated from the license for the project:

Exhibit K—sheet 1 (FPC No. 2304-16) entitled "Detail Map of Project Area" superseding Exhibit K—sheet 1 (FPC No. 2304-3), sheet 2 (FPC No. 2304-17) entitled "Location of Pipeline".

Exhibit L—sheet 1 (FPC No. 2304-18) entitled "Arch Dam and Spillway, General Plan" superseding Exhibit L—sheet 1 (FPC No. 2304-13), sheet 3 (FPC No. 2304-19) entitled "Arch Dam and Buttresses, Typical Sections" superseding Exhibit L—sheet 3 (FPC No. 2304-14), sheet 5 (FPC No. 2304-20) entitled "Spillway from Reservoir" superseding Exhibit L sheet 5 (FPC No. 2304-15), sheet 6 (FPC No. 2304-21) entitled "Pumping Plant" superseding Exhibit L—sheet 6 (FPC No. 2304-10), sheet 7 (FPC No. 2304-22) entitled "Pipeline and Penstock Profile and Details" superseding Exhibit L—sheet 7 (FPC No. 2304-11), and sheet 8 (FPC No. 2304-23) entitled "Power Generation Station" superseding Exhibit L—sheet 8 (FPC No. 2304-12).

The Commission orders:

The revised Exhibit K and L drawings described in the above finding are hereby approved as part of the license for Project No. 2304, and the exhibits described in the same finding as being superseded are hereby eliminated from the license for the project.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

SHARPLES AND COMPANY PROPERTIES (OPERATOR), ET AL., DOCKET NO. G-14624[1]

ORDER ACCEPTING INCREASED RATE FILING, SEVERING AND TERMINATING PROCEEDING

(Issued November 3, 1965)

Sharples and Company Properties (Operator), *et al.*, (Sharples) a producer-respondent in the Permian Basin Opinion No. 468, 34 FPC 159, has filed a

[1] The above-designated proceeding was consolidated with the Area Rate Proceeding in Docket No. AR61-1, *et al.*

motion to place a suspended rate of 17.2295¢ per Mcf "partially into effect". Sharples wants the rate of 14.5¢ per Mcf (Permian Basin Area Rate) to be effective. The motion is being treated as a "fractured" rate increase from 10.096¢ to 14.5¢ per Mcf, amounting to $317 annually. The rate filing pertains to residue gas derived from casinghead gas sold to El Paso Natural Gas Company in the Permian Basin Area of Texas as set forth in Appendix "A" hereof.

On February 8, 1960, Sharples filed a renegotiated rate increase from 10.0¢ to 17.1632¢ per Mcf which was suspended in Docket No. G–14624. The renegotiated rate was subsequently corrected to 17.2295¢ per Mcf to reflect the proper amount of tax reimbursement. The suspended rate has not been placed into effect. The rate increase involved is applicable to a so-called Spraberry contract dated August 28, 1963, in which the casinghead gas is processed in buyer's Midkiff plant. The buyer pays Sharples a fixed rate for the residue gas, plus a percentage of the extracted liquids. Docket No. G–14624 is consolidated in the Permian Basin Opinion No. 468.

Since Sharples is limiting the increased rate so as not to exceed the applicable area rate of 14.5¢ per Mcf prescribed in Opinion Nos. 468 and 468–A, 34 FPC 1068, we believe it should be accepted for filing to be effective as of November 4, 1965, the date of expiration of the statutory notice, and Docket No. G–14624 should be severed from Part III of Appendix A of the Permian Basin Opinion No. 468 and the rate suspension proceeding therein terminated as hereinafter ordered.

The Commission finds:

(1) It is necessary and proper in carrying out the provisions of the Natural Gas Act and the Regulations thereunder to accept for filing the increased rate change listed in Appendix "A" hereof to become effective as of November 4, 1965, the date of expiration of the statutory notice .

(2) Docket No. G–14624 should be severed from Part III of Appendix A of the Permian Basin Opinion No. 468 and the related rate suspension proceeding therein terminated as hereinafter ordered.

The Commission orders:

(A) Sharples' rate filing, designated as Supplement No. 9 to Sharples' FPC Gas Rate Schedule No. 2, is accepted for filing to become effective as of November 4, 1965.

(B) The proceeding in Docket No. G–14624 is severed from Part III of Appendix A (AR61–1, *et al.*) of the Permian Basin Opinion No. 468 and is terminated.

APPENDIX A

Docket No.	Respondent	Rate schedule No.	Supplement No.	Purchaser and producing area	Amount of annual increase	Date filing tendered	Effective date	Cents per Mcf		Rate in effect subject to refund in docket Nos.
								Rate in effect	Proposed increased rate	
G-14624	Sharples & Co. Properties (Operator), *et al.*, Suite 1001, 1700 Broadway, Denver, Colo. 80202.	2	[4] 9	El Paso Natural Gas Co. (Spraberry Field, Reagan County, Tex.), (R.R. District No. 7-c), (Permian Basin area).	$317	10-4-65	11-4-65 [1] (accepted)	[4] 10.096	[2] [3] 14.5	----------

[1] The stated effective date is the 1st day after expiration of the required statutory notice.
[2] Fractured rate increase.
[3] Pressure base is 14.65 psia.
[4] Excludes acreage dedicated by supplements Nos. 7 and 8.
[5] Proposed rate of 17.2295 cents per Mcf was suspended in docket No. G-14624 (rate not placed into effect).

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

SOUTHERN NATURAL GAS COMPANY, DOCKET NO. CP66-38

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued November 3, 1965)

On August 2, 1965, Southern Natural Gas Company (Applicant) filed in Docket No. CP66-38 an application, as supplemented on September 7, 1965, pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities in Lee and Russell Counties, Alabama, all as more fully set forth in the application, as supplemented, in this proceeding.

Applicant proposes to construct and operate approximately 10 miles of 8⅝-inch pipeline extending from a point on Applicant's main South Line in Lee County to a point known as Columbus Junction on Applicant's Phenix City-Columbus branch line in Russell County.

The application shows that the Phenix City-Columbus branch line consists of a single line of acetylene-welded pipe installed over 35 years ago and is in need of repair and that such repairs cannot now be made without interrupting delivery of gas to downstream markets served by said line. Applicant states that the proposed pipeline will permit Applicant to make necessary repairs to the branch line, and, after construction of the proposed facilities, customers in the Phenix City-Columbus-Fort Benning area will have the added security of service resulting from an additional feed.

The total estimated cost of the proposed facilities is $404,620, which cost will be financed from cash on hand or from current operations.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on October 28, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, supplement and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Southern Natural Gas Company, a Delaware corporation having its principal place of business in Birmingham, Alabama, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of October 6, 1942, in Docket No. G-296 (3 FPC 822).

(2) The facilities hereinbefore described, as more fully described in the application, as supplemented, in this proceeding, are to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is issued authorizing Applicant, Southern Natural Gas Company, to construct and operate the proposed facilities for the transportation of natural gas as hereinbefore described, all as more fully described in the application, as supplemented, in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(1), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities authorized shall be constructed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 4 months from the date on which this order issues.

(D) The facilities which Applicant wishes to retain in service (*i.e.*, the Phenix City-Columbus branch line) shall be tested hydrostatically in accordance with the ASA Code B31.8 so as to insure the safe operation of the line at a pressure of 600 psig. Applicant shall report to the Commission the results of said testing program within 30 days after the completion thereof.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

ALABAMA POWER COMPANY, PROJECT NO. 2146

ORDER FURTHER AMENDING LICENSE AND APPROVING PROJECT EXHIBITS

(Issued November 4, 1965)

Application was filed on October 8, 1964, under Section 6 of the Federal Power Act (Act) by Alabama Power Company for further amendment of its license for major Project No. 2146, situated on the Coosa River, navigable waters of the United States, and affecting lands of the United States.

The application seeks approval of a revised plan for redevelopment of the Lay Dam and Powerhouse under which the licensee would retire and remove the six original generating units and, after suitably modifying the powerhouse, install six new hydraulic turbines, rated at 40,000 horsepower each, connected to six new generators, each of 29,500 kw capacity, together with necessary associated equipment. Installation of the six new units will provide the installation of the ultimate capacity in the existing powerhouse of the Lay development of 177,000 kw through the utilization of improvements in hydroelectric generating machinery not available when the plant was constructed. The replacement of the original units will not alter the presently authorized plan to raise the normal pool level of the reservoir about 14 feet. The licensee proposes to install 26 tainter gates on the crest of the dam in lieu of 26 wheeled gates as originally planned.

Following its study and analysis, our staff has concluded that the redesigned powerhouse and associated concrete structures are safe and adequate.

The Secretary of the Army and the Chief of Engineers have reported that subject to the Corps' final determination of the location for a proposed navigation lock, following additional foundation explorations and other studies, the proposed plan for redevelopment of the Lay Dam and its effect upon navigation is satisfactory. No additional terms and conditions in the interest of navigation were recommended for inclusion in the license.

The Department of the Interior has reported that the project changes described in the application for amendment will have no adverse effects upon fish and wildlife resources, and no additional provisions in the interests of such resources were recommended for inclusion in the license.

The Department of Health, Education, and Welfare, while invited to report on the application, made no comment thereon.

Our granting of the application will increase the authorized installed horsepower capacity of the project from 756,000 horsepower to 820,000 horsepower with a resultant increase in the amount of administrative annual charges payable under the license.

The Commission finds:

(1) Public notice of the application has been given. No protests or petitions to intervene have been received.

(2) The license, further amended as hereinafter provided, will not interfere or be inconsistent with any reservation or withdrawal of lands of the United States and is in the public interest.

(3) The authorized installed capacity of the project for the purpose of computing the capacity component of the administrative annual charge is 820,000 horsepower, and the increased annual charge for reimbursing the United States for the costs of administration of Part I of the Federal Power Act, based on such capacity, as hereinafter provided, is reasonable.

(4) The following described exhibits conform to the Commission's rules and regulations and should be approved as part of the license for the project to the extent herein indicated:

EXHIBIT L

Revised	FPC No.	Showing Coosa River development Lay Dam reconstruction
Sheet 15*	2146-216	Proposed plan and elevation.
Sheet 17	2146-217	Proposed powerhouse, section and elevation.
Sheet 18	2146-218	Proposed powerhouse addition.

*Except as it shows the location of the Corps' proposed lock and channel.
(These exhibits were filed on October 5, 1964. Sheets 15 and 17 were subsequently revised at staff request and refiled on January 11, 1965.)

Exhibit M (Revision No. 2) entitled "General Description of Mechanical and Transmission Equipment" filed with the Commission as part of the application for amendment.

(5) Exhibit L, sheets 15, 17 and 18 (FPC No. 2146-104, -106 and -107) and Exhibit M-Revised, filed with the Commission on August 21, 1958, have been superseded and should be eliminated from the license for the project.

The Commission orders:

(A) The license for Project No. 2146 is hereby further amended, effective as of October 1, 1965, to authorize the aforementioned reconstruction of the Lay Dam and Powerhouse.

(B) Article 28 of the license is further revised to show the authorized installed capacity of the project as being increased to 820,000 horsepower.

(C) The exhibits designated and described in finding (4) above are hereby approved as part of the license for the project to the extent therein indicated.

(D) The superseded exhibits designated and described in finding (5) above are hereby eliminated from the license for the project.

(E) This amendment in the manner set out above shall not operate to alter or amend the license in any other respect, and shall not in any way constitute a waiver of any other part, provision or condition of the license.

(F) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license amendment. In acknowledgment of the acceptance of this license amendment, it shall be signed for the licensee and returned to the Commission within 60 days from the day of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

CITIES SERVICE GAS COMPANY, CP65-140; EL PASO NATURAL GAS COMPANY, CP65-384; NORTHERN NATURAL GAS COMPANY, CP65-389; ASHLAND OIL & REFINING COMPANY (OPERATOR), ET AL., G-3912; SINCLAIR OIL & GAS COMPANY (OPERATOR), ET AL., CI65-1267, CI65-1271

ORDER DENYING INTERVENTION

(Issued November 4, 1965)

On September 23, 1965, Socony Mobil Oil Company, Inc. (Socony) filed a petition for leave to intervene in the above-entitled consolidated proceeding. In support of its petition Socony notes that the evidence filed by some of the applicants in the consolidated proceeding relates to the total natural-gas reserves committed to Cities Service Gas Company (Cities) by producers in the Kansas Hugoton Field and to Cities' ability to take the producers' gas in accordance with the Kansas State Corporation Commission's proration orders. Socony avers that it has reserves under 157 wells committed to Cities in the Kansas Hugoton Field and that Cities' underproduction from these wells is now approximately 43 billion cubic feet. Socony concludes from the foregoing facts that it has an interest in this proceeding which may be directly affected by the outcome of the proceeding and contends that this interest will not be adequately represented by existing parties to the proceeding.

On October 4, 1965, Cities filed an answer and objections to Socony's petition for leave to intervene. Cities contends that Socony's petition is patently untimely, having been filed on September 23, 1965, which was approximately 11 weeks after July 8, 1965, the last day prescribed by the Commission for the filing of petitions to intervene in this proceeding.[1] Cities also claims that granting Socony's petition to intervene would procedurally disrupt the hearing because complete revision of the dates heretofore fixed for the filing of testimony and commencement of the hearing would be required if Socony were now permitted to become a party.

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[1] See footnote 1 of order issued August 27, 1965, in *Cities Service Gas Company, et al.*, Docket No. CP65-140, *et al.*

On October 13, 1965, Socony filed a reply to Cities' "Answer" in which Cities had urged the Commission to deny Socony's petition to intervene. While the Commission's Rules of Practice and Procedure do not provide for the filing of replies to answers to petitions to intervene, Socony's reply has been accepted for filing in order to afford Socony a full opportunity to justify its filing of a petition to intervene 11 weeks after the last day fixed for the filing of such petitions. Among other things, Socony attributes its late filing of a petition to intervene to the fact that the order consolidating this proceeding was not issued until August 27, 1965, and that Socony did not have an opportunity to review the applications then consolidated until early September. Socony further alleges that it was not fully aware of the nature of this proceeding until it examined the direct evidence which the applicants filed on September 17, 1965, pursuant to the Commission's order of consolidation.

On page 3 of its reply to Cities' answer Socony alleges that it supports Cities' application in Docket No. CP65–140 wherein Cities seeks authorization to make a three-year, short-term sale to Panhandle Eastern Pipe Line Company (Panhandle). Socony also points out that Cities' contract with Panhandle in Docket No. CP65–140 refers to Socony's FPC Gas Rate Schedule No. 3 for the purpose of determining Cities' average cost of gas. Socony further contends that the evidence already presented in the proceeding shows that reserves and deliverability in the Kansas Hugoton Field as a whole are being discussed and that introduction of such evidence may result in findings which may be binding upon Socony. If it is permitted to intervene, Socony states that it will abide by all dates heretofore fixed for the filing of evidence and commencement of the hearing.

The reasons given by Socony as grounds for its untimely filing of its petition to intervene do not constitute the extraordinary circumstances which must be shown under Section 1.9(d) of the Commission's Rules of Practice and Procedure in order to justify the granting of an untimely petition to intervene. Socony claims to be supporting Cities' application in Docket No. CP65–140. Yet the notice of application in that docket was issued November 30, 1964; the notice was published in the *Federal Register* on December 5, 1964 (29 Fed. Reg. 16440), and provided that December 18, 1964, was the last day for the filing of petitions to intervene. That notice of application showed that Cities' underproduction in the Kansas Hugoton Field was involved, and each notice issued thereafter in the other dockets included in this consolidated proceeding indicated that the decision rendered as to any of the applications in this proceeding might have some bearing on the fact that Cities has failed to take all the gas from Kansas Hugoton Field which has been available to it under the Kansas Commission's proration orders. Moreover, it should be noted that the application in Docket No. CP65–140 had appended to it a copy of the Cities-Panhandle contract containing a reference to Socony's FPC Gas Rate Schedule No. 3 which Socony alleges is a special reason for its interest in the application in Docket No. CP65–140.

The Commission's policy of having notices of applications issued promptly would be of little value if parties who might have an interest in the applications were to wait until the issuance of an order providing for hearing on the applications before examining them to determine if they have an interest therein sufficient to merit the filing of petitions to intervene. One of the reasons for issuing notices promptly is to give potentially-interested parties an opportunity to examine applications so that protests or petitions to intervene can be filed early. Once the time for filing protests or petitions to intervene has expired, if applications have to be scheduled for formal hearings, the Commission can subsequently issue an order providing for the immediate

filing of testimony and exhibits, and the hearing can commence promptly thereafter, without the necessity of having to allow an additional time period for the filing of protests or petitions to intervene.

Socony may well be correct in contending that no other party to this consolidated proceeding will represent exactly the same interest it has in the several problems underlying the proceeding. Nevertheless, four of the major producers of gas in Kansas Hugoton Field are already parties to the proceeding inasmuch as Ashland Oil & Refining Company and Sinclair Oil & Gas Company are applicants, and Pan American Petroleum Corporation and Texaco Inc. are interveners, pursuant to the Commission's order consolidating proceedings and permitting intervention, issued herein on August 27, 1965. While the factual situations confronting those producers are not precisely identical with those of Socony, their presence in the proceeding as parties should augment accomplishment of the desirable effect which Socony claims that its intervention would produce, *viz.*, the "* * * development of a record upon which the Commission will be able to make truly accurate and correct findings." Moreover, Socony remains free to bring to the attention of the Commission staff or any other party pertinent information it believes should be adduced in the record. Finally it is clear that particularly to the extent that Socony enjoys a unique factual situation in the Hugoton Anadarko field, it cannot be bound by any determination herein in any subsequent proceeding directly involving Socony.

The Commission finds:

Good cause has not been shown for granting the untimely petition to intervene filed by Socony Mobil Oil Company, Inc.

The Commission orders:

The petition to intervene in this consolidated proceeding, filed September 23, 1965, by Socony Mobil Oil Company, Inc., is denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

PACIFIC GAS & ELECTRIC COMPANY, PROJECT NO. 2107

ORDER APPROVING NEW PROJECT EXHIBIT K AND ADJUSTING ANNUAL CHARGES

(Issued November 4, 1965)

On April 27, 1965, Pacific Gas & Electric Company, licensee for major Project No. 2107, filed for Commission approval a new Exhibit K map to reflect modifications of the project made during construction. The project is located on the North Fork of Feather River in Butte County, California, and affects lands of the United States within the Plumas National Forest.

The new exhibit shows the changes in the alignment of the tunnel location, the increased area of the powerhouse site, the roads needed for project purposes, and the routes of the two project transmission line taps to the junction with the licensee's interconnected transmission system.

The principal effect of our approval of the new exhibit will be to show in the license an increase in the National Forest lands occupied by the project of 19.78 acres, with a resultant increase in the amount of annual charges for such occupancy.

The Chief, Forest Service, acting for the Secretary of Agriculture, who has supervision over the Plumas National Forest, has advised that Commission

approval of the new exhibit will not interfere or be inconsistent with the purposes for which the Plumas National Forest was created or acquired.

The Commission finds:

(1) New Exhibit K–2A (FPC No. 2107–7) entitled "Plan and Profile of Dam, Intake, Conduits, and Powerhouse—Poe Project—Pacific Gas & Electric Co.", signed on March 16, 1965, for Pacific Gas & Electric Company by S. L. Sibley, President, conforms to the Commission's rules and regulations and should be approved as part of the license for the project.

(2) The increased amount of annual charges for recompensing the United States for the occupancy of its lands by the project is reasonable as hereinafter fixed and specified.

The Commission orders:

(A) The new exhibit described in finding (1) above is hereby approved as part of the license for Project No. 2107, and Exhibit K–2 (FPC No. 2107–3), now part of the license and which has been superseded, is hereby eliminated from the license for the project.

(B) Subparagraph (ii) of Article 31 of the license is hereby modified to read as follows:

> (ii) For the purpose of recompensing the United States for the use, occupancy, and enjoyment of its lands $294.55, effective as of October 1, 1953, the effective date of the license.

(C) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this order. In acknowledgment of the acceptance of this order, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

ARKANSAS POWER & LIGHT COMPANY, DOCKET NO. E–7090

ORDER DENYING REHEARING

(Issued November 5, 1965)

Arkansas Power & Light Company (Respondent) on October 6, 1965, filed an application for rehearing of our Opinion No. 473 and order determining jurisdiction issued September 7, 1965, 34 FPC 747, where we determined that Respondent's sales of electric energy for resale to its municipal and cooperative customers in Arkansas are sales in interstate commerce subject to our jurisdiction under the Federal Power Act. The points made by Respondent were covered in the briefs before the examiner and in the exceptions and were disposed of in our opinion and order. No further discussion is necessary.

The Commission further finds:

The assignments of error and grounds for rehearing set forth in the application for rehearing filed by Respondent in this proceeding present no facts or legal principles which would warrant any change or modification in the Commission's Opinion No. 473 and order.

The Commission orders:

The application for rehearing filed by Respondent is denied.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

JAKE L. HAMON, ET AL., DOCKET NO. RI61-408, ET AL.[1]

ORDER CONDITIONALLY APPROVING RATE SETTLEMENT PROPOSAL, SEVERING AND TERMINATING PROCEEDINGS AND PRESCRIBING REFUNDS

(Issued November 5, 1965)

There is before us for consideration a Motion for Approval of Settlement Proposal, and Termination of Rate Proceedings filed on August 6, 1965, by Jake L. Hamon, *et al.* (Hamon) encompassing the rates for twenty-one of Hamon's currently effective FPC Gas Rate Schedules. In summary, the settlement proposal as filed by Hamon provides:

(1) Settlement rates, including tax reimbursement, equal to or less than the Commission's applicable area ceilings;

(2) Hamon waives the right to file for contractually authorized increased rates until August 1, 1970; however, Hamon reserves the right to file for any increased rates, if contractually authorized, up to the applicable area-rate levels established by any order or rule of the Commission, or to file for any contractually authorized increase in tax reimbursement;

(3) Hamon will delete any favored-nation, and indefinite price redetermination clauses contained in the presently effective FPC Gas Rate Schedules, and as to Rate Schedule Nos. 14, 41 and Edwin L. Cox (Operator), *et al.*, FPC Gas Rate Schedule No. 47, Hamon will, insofar as his interest is concerned, eliminate the periodic price increase provisions therefrom;

(4) Refunds with interest, at applicable interest rates, to the date of issuance of this order, under rate schedules where collection was made subject to refund, of the difference between the revenues actually collected and those which would have been collected at the settlement rate, in each instance; additionally, Hamon will refund under its FPC Gas Rate Schedule Nos. 28 and 31 commencing with March 24, 1964, to the date of issuance of this order, all monies charged and collected for gas above 16¢ per Mcf, with appropriate interest, and under Rate Schedule No. 18, it will refund $79,240.65, and under Rate Schedule No. 27, it will refund $105.09;

(5) Exclusion from the settlement proposal of sales in the Permian Basin;

In support of his proposal, Hamon states that the settlement rates, refunds, moratorium periods and other provisions thereof, not specifically noted herein are in the public interest in that they are reasonable, and will provide price stability for a long period of time for natural gas moving in interstate commerce.

Additionally, Hamon requests that we sever from the consolidated proceedings in Docket No. AR64-1, the proceedings in *Jake L. Hamon (Operator), et al.*, Docket No. G-16747, *et al.;* and also sever those matters which concern Hamon from the proceedings in *Skelly Oil Company, et al.*, Docket No. G-18638, *et al.*, and the proceedings, in *Amerada Petroleum Corporation, et al.*, Docket No. CI62-1544, *et al.* Consequently, as a condition to our approval of Hamon's proposal we shall require Hamon to file a motion in the United States Court of Appeals for the Tenth Circuit for withdrawal of its petition for review of Opinion No. 422, 31 FPC 623, in the *Amerada* proceeding (CA10-8363).

With respect to refunds, we find Hamon's proposal to be acceptable, and shall approve the same. Such refunds will be approximately $181,000, in-

[1] The additional dockets involved herein are set forth in the appendices hereto.

cluding applicable interest, and Hamon's jurisdictional revenues will be reduced approximately $94,000 annually.

Hamon has included in his offer a reservation that the proposed settlement would no longer be binding in the event amendment of the Natural Gas Act removes any of his sales from our jurisdiction. This reservation is unacceptable as to those favored-nation, price redetermination or periodic escalation provisions which Hamon has agreed in his offer to delete from his rate schedules.[2] We shall therefore require as a condition to this order that Hamon amend his contracts as agreed so as to remove any future contractual basis for higher rates under these provisions. Hamon's reservation will thus be made ineffectual as to the deleted provisions.

We believe that Hamon's settlement proposal as hereinafter conditioned, is in the public interest and shall approve the same. However, we desire to make it clear that acceptance of Hamon's offer of settlement shall not be construed as approval of any future increased rate that may be filed by Hamon under the subject rate schedules and is without prejudice to any findings or order of the Commission in any future proceeding involving Hamon's rates and rate schedules. Additionally, for all of the reasons set forth in *Humble Oil & Refining Company*, Docket No. G-9287, *et al.*, 32 FPC 49, we shall require Hamon to deposit the refund monies in a special escrow account or to commingle the retained refunds with his general assets pending further order of the Commission.

The Commission finds:

The proposed settlement of the above-designated proceedings, on the basis described herein, as more fully set forth in the offer of settlement filed with the Commission by Hamon on August 6, 1965, is consistent with the Statement of General Policy No. 61-1, as amended, 18 CFR 2.56, and approval thereof as made effective and hereinafter ordered is in the public interest and is appropriate to carry out the provisions of the Natural Gas Act.

The Commission orders:

(A) The offer of settlement filed with the Commission by Hamon on August 6, 1965, is approved in accordance with the provisions of this order.

(B) Hamon shall file, within 30 days from the date of issuance of this order, notices of change in rates under its FPC Gas Rate Schedules to reflect the settlement rates and executed contract amendments in accordance with the terms of his settlement proposal as approved herein. The notices of change and the contractual amendments shall be submitted in accordance with Part 154 of the Commission's Regulations under the Natural Gas Act.

(C) Within 30 days from the date of issuance of this order, Hamon shall file a motion to withdraw his appeal in the United States Court of Appeals for the Tenth Circuit to review the Commission's Opinion No. 422 in the *Amerada* proceeding (CA10-8363).

(D) Hamon shall compute the difference between the rates collected subject to refund and the settlement rate for the sales for which it proposes to make refunds with applicable interest to the date of this order, and shall within 45 days from the date of issuance of this order submit a report to the Commission, with a copy to its jurisdictional pipeline purchasers, setting out the amount of refunds (showing separately the principal and applicable interest) the bases used for such determination, the period covered, and ten days thereafter shall submit to the Commission a copy of a letter from its jurisdictional pipeline purchasers agreeing to the correctness of such amounts.

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[2] See *Warren Petroleum Corporation*, Docket No. RI61-63, (30 FPC 1040).

(E) Hamon shall retain the amounts shown in the report required under paragraph (D) above, subject to further order of the Commission directing the disposition of those amounts, excepting the refunds due and owing to Northern Natural Gas Company to which Hamon shall refund such monies ten days after receiving the letter from Northern required by Paragraph (D) above, with applicable interest.

(F) Hamon may deposit the retained refunds in a special escrow account, and shall tender for filing within 60 days of the date of issuance of this order an executed Escrow Agreement, conditioned as set out below, accompanied by a certificate showing service of a copy thereof upon its jurisdictional pipeline customers. Unless notified to the contrary by the Secretary within 30 days from the date of filing thereof, the Escrow Agreement shall be deemed to be satisfactory and to have been accepted for filing. The Escrow Agreement shall be entered into between Hamon and any bank or trust company used as a depositor for funds of the United States Government and the agreement shall be conditioned as follows:

(1) Hamon, the bank or trust company, and the successors and assigns of each, shall be held and formally bound unto the Federal Power Commission for the use and benefit of those entitled thereto, with respect to all amounts and the interest thereon deposited in the special escrow account, subject to such agreement, and such bank or trust company shall be bound to pay over to such person or persons as may be identified and designated by final order of the Commission and in such manner as may be therein specified, all or any portion of such deposits and the interest thereon.

(2) The bank or trust company may invest and reinvest such deposits in any short-term indebtedness of the United States or any agency thereof or in any form of obligation guaranteed by the United States which is, respectively, payable within 120 days as the said bank or trust company in the exercise of its sound discretion may select.

(3) Such bank or trust company shall be liable only for such interest as the invested funds described in Paragraph (2) above will earn and no other interest may be collected from it.

(4) Such bank or trust company shall be entitled to such compensation as is fair, reasonable and customary for its services as such, which compensation shall be paid out of the escrow account to such bank or trust company. Said bank or trust company shall likewise be entitled to reimbursement for its reasonable expenses necessarily incurred in the administration of this escrow account, which reimbursement shall be made out of the escrow account.

(5) Such bank or trust company shall report to the Secretary quarterly, certifying the amount deposited in the bank or trust company for the quarterly period.

(G) If Hamon elects to commingle the retained refunds with his general assets and use them for business purposes, he shall notify the Secretary of the Commission of his intention so to do within sixty days of the issuance of this order, and shall pay interest on such monies at the rate of 4.5% per annum from the date of issuance of this order to the date on which they are paid over to the person or persons ultimately determined to be entitled thereto by final order or orders of the Commission.

(H) Hamon, over the signature of a responsible officer of his firm, shall file with the Commission within 30 days from the date of issuance of this order an original and one copy in writing of its acceptance or rejection of the terms and conditions of this order.

(I) Upon notification by the Secretary of the Commission that Hamon has complied with the terms and conditions of this order, the proceedings in

Appendix A hereto shall terminate, however, the proceedings in Docket No. RI60–60 shall terminate only insofar as it pertains to Hamon; the proceeding in Docket No. RI61–408 shall be severed from the proceedings in Docket No. AR64–1, *et al.*, and the proceedings in Appendix B hereto shall be severed from their respective consolidated proceedings, and the certificates of public convenience and necessity issued to Hamon in the *Hamon*, *Skelly* and *Amerada* proceedings (*supra*) shall be deemed effective, all without further order of the Commission.

(J) The acceptance by the Commission of Hamon's offer of settlement is without prejudice to any findings or determinations that may be made in any proceeding now pending, or hereafter instituted by or against Hamon and is without prejudice to claims or contentions which may be made by Hamon, the Commission staff, or any affected party hereto, in any proceedings.

APPENDIX A

JAKE L. HAMON, ET AL., FPC GAS RATE SCHEDULE—DOCKET NO. RI61–408, ET AL.

Rate schedule No.	Area and field	Purchaser	Docket number		¢/Mcf @ area pressure base (inclusive of tax reimbursement)		
			Sec. 7(c)	Sec. 4(e)	Not subject to refund	Rate in effect 7–31–65	Settlement rate
	14.65 psia						
	TEXAS RRC DISTRICT 1						
3	Jake Hamon	Tennessee Gas	G–7430	RI65–457	14.6	[1] 14.6	14.6
	TEXAS RRC DISTRICT 2						
11	Cabeza Creek area.	United Gas	G–9861		13.1664	13.1664	13.1664
	TEXAS RRC DISTRICT 4						
13	East Riverside	Texas Eastern	G–10649		14.6	14.6	14.6
			G–13005 [2]				
35	Santo Nino	South Texas Natural.	CI63–1362 [3]		[4] 16.0	16.0	16.0
	TEXAS RRC DISTRICT 10						
43	West Feldman	Transwestern	CI65–502		[4] 17.0	17.0	17.0
	OKLAHOMA, OTHER						
14	Southeast Aylesworth.	Lone Star	G–13407	RI63–307	[4] 11.0	[5] 12.0	[6] 12.0
[6] 19	West Marlow	do	G–17259	RI60–60	[4] 11.0	16.5	[6] 12.0
39	North Spiro	Arkansas-Louisiana.	CI64–540		[4] 15.0	15.0	15.0
41	East Aylesworth	Lone Star	G–15533	RI65–163	[4] 11.0	[5] 12.0	[6] 12.0
	OKLAHOMA PANHANDLE						
17	Northwest Dower	Northern Natural.	G–16357	RI61–408	[4] 15.5	16.5	15.5
23	Laverne	Michigan Wisconsin.	G–20594		[4][7] 17.0	[7] 17.0	[7] 17.0
34	Mocane Laverne	Northern Natural.	CI63–133		[4] 17.0	17.0	17.0

See footnotes at end of table.

APPENDIX A—continued

JAKE L. HAMON, ET AL., FPC GAS RATE SCHEDULE—DOCKET NO. RI61-408, ET AL.

Rate schedule No.	Area and field	Purchaser	Docket number		¢/Mcf @ area pressure base (inclusive of tax reimbursement)		
			Sec. 7(c)	Sec. 4(e)	Not subject to refund	Rate in effect 7-31-65	Settlement rate
	14.65 psia						
	OKLAHOMA PANHANDLE—con.						
36	Southwest Hooker.	Natural Gas Pipeline.	CI62-250		*17.0	17.0	17.0
37	do	Northern Natural.	CI62-251		*16.0	16.0	16.0
38	Mocane Laverne	do	CI64-291		*17.0	17.0	17.0
40	do	do	CI64-641		*17.0	17.0	17.0
42	North Hardesty	do	CI64-1559		*17.0	17.0	17.0

*Initial rate.
[1] Filed for rate increase to 15.6¢ per Mcf, docket No. RI65-457. This rate has not been placed into effect.
[2] Supplement adding acreage.
[3] No producing properties currently active.
[4] Eliminate all pricing provisions.
[5] No amounts effective subject to refund have been collected.
[6] By order issued Aug. 7, 1963, the Commission among other matters amended Hamon's certificate, docket No. G-17259, by substituting Edwin L. Cox (Operator), *et al.*, and designating the rate schedule as Edwin L. Cox (Operator), *et al.*, FPC gas rate schedule No. 47. The order also designated Cox as respondent in docket No. RI60-60 and Hamon as co-respondent.
[7] Rate subject to upward Btu adjustment.

APPENDIX B

JAKE L. HAMON, ET AL., FPC RATE SCHEDULE—DOCKET NO. RI61-408, ET AL., PENDING CERTIFICATE APPLICATIONS

Rate schedule No.	Area and field	Purchaser	Docket number		¢/Mcf @area pressure base (inclusive of tax reimbursement)		
			Sec. 7(c)	Sec. 4(e)	Initial rate	Rate in effect 7-31-65	Settlement rate
	14.65 psia						
	TEXAS RRC DISTRICT NO. 4						
18	Corpus-Christi Northwest.	United Gas	G-16747 [1]		18.2304	[2] 15.0	15.0
27	Prado	South Texas Natural.	CI61-930 [3]		16.0	[2] 15.0	15.0
28	Northeast Thompsonville.	do	CI61-922 [4]		18.0	18.0	15.0
31	do	do	CI61-1745 [4]		18.0	18.0	15.0

[1] Consolidated in Jake L. Hamon (Operator), *et al.*, docket No. G-16747, *et al.*
[2] This rate is being collected although the rate schedule has not been supplemented.
[3] Consolidated in Skelly Oil Co., *et al.*, docket No. G-18638, *et al.*
[4] Consolidated in Amerada Petroleum Corp., *et al.*, Docket No. CI62-1544, *et al.*

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

PACIFIC POWER & LIGHT COMPANY, DOCKET NO. E-7247

ORDER AUTHORIZING THE ISSUANCE OF COMMON STOCK

(Issued November 5, 1965)

Pacific Power & Light Company (Applicant), a corporation organized under the laws of the State of Maine and doing business in the States of Oregon, California, Wyoming, Washington, Montana and Idaho with its principal place of business at Portland, Oregon, filed an application on September 29, 1965, for authorization pursuant to Section 204 of the Federal Power Act to issue and sell to its employees up to but not in excess of 250,000 shares of its authorized but unissued shares of Common Stock of the par value of $3.25 per share.

The proposed issuance of Common Stock will be made pursuant to the terms of Applicant's Employees' Stock Purchase Plan adopted by the Board of Directors on January 26, 1965 and approved by Applicant's stockholders on April 20, 1965. This Plan provides for periodic offerings during a period of five years of not less than 10 and not more than 400 shares of Applicant's authorized but unissued Common Stock to each regular full-time employee of the Company, but not more than 250,000 shares in the aggregate, at a price equal to 90% of the fair market value on the date of offering. A regular full-time employee is one who has been in the employ of Applicant for at least six months and who is in its active service on the date an offering is made. As used in the Plan, the term "regular full-time employee" includes officers but excludes directors not otherwise employed by Applicant. The fair market value will be determined by an average of bid and ask prices on the over-the-counter market for Applicant's outstanding Common Stock. The bid and ask market prices are to be furnished by security dealers. Subscription payments must be made within 27 months from the date of offering.

The aggregate of offerings under the Plan will not exceed 5% of the number of all shares of Common Stock outstanding at the time of any offering. Applicant expects that on the basis of its experience that 250,000 shares will be a sufficient number for 5 successive yearly offerings under the Plan. According to the application, the provisions of Applicants' Employee Stock Purchase Plan have been adopted in accordance with the amendment to the Internal Revenue Code contained in the Revenue Act of 1964 which makes specific provision for the qualifications of such Stock Purchase Plans. Applicant's previous offerings of stock to its employees were authorized by this Commission in orders issued on May 7, 1953, 12 FPC 976, September 20, 1957, 18 FPC 350, October 13, 1960, 24 FPC 871, and October 15, 1962, 28 FPC 602, in Docket Nos. E-6490, E-6773, E-6955 and E-7056, respectively.

Applicant states that no underwriting fees or commission will be paid in connection with the proposed issuance of Common Stock. Applicant expects that the purchase price formula will produce proceeds per share about equal to proceeds per share pursuant to a sale to underwriters or pursuant to an underwritten rights offer. Applicant proposes to apply the net proceeds from the issuance and sale of the Common Stock for construction, improvement and extension of its electric facilities in accordance with Applicant's 1965, 1966 and 1967 construction program which was described in the Commission's order issued June 3, 1965, *Pacific Power & Light Company*, in Docket No. E-7129, 33 FPC 1207.

Applicant states that the purposes of the Plan are to encourage employees to become stockholders in the Company, to stimulate and increase interest on their part in the affairs of the Company, to afford them an opportunity to share in the proceeds and growth of the Company and to promote systematic savings by them.

Written notice of the application has been given to the Public Utilities Commissioner of Oregon, the Wyoming Public Service Commission, the Washington Utilities and Transportation Commission, the Public Utilities Commission of the State of California, the Public Service Commission of Montana and the Idaho Public Utilities Commission and to the Governor of each of those States. Notice has also been published in the Federal Register on October 15, 1965 (30 F.R. 13179), stating that any person desiring to be heard or to make any protest with reference to the application should on or before October 29, 1965, file a petition or protest with the Federal Power Commission, Washington, D.C. 20426. No protest, petition or request to be heard in opposition to the granting of the application has been received.

The Commission finds:

(1) Applicant, a corporation, is a public utility within the meaning of Section 204 of the Federal Power Act subject to the jurisdiction of the Commission as heretofore determined and set forth in the Commission's order issued March 28, 1962, *Pacific Power & Light Company*, in Docket No. E–7025 (27 FPC 620).

(2) The proposed issuance and sale of up to a maximum of 250,000 shares of Common Stock, par value $3.25 per share, pursuant to the provisions of the above-described Employees' Stock Purchase Plan, will constitute an issuance of securities within the purview of Section 204 of the Federal Power Act.

(3) Applicant is not organized and operating in a State under the laws of which the security issue here involved is regulated by a State commission within the meaning of Section 204(f) of the Act; and the proposed issuance of Common Stock, as described above, is therefore, not exempt by virtue of that Section from the requirements of Section 204 of the Act.

(4) Under the circumstances set forth above, sufficient cause has been shown for exempting the proposed issuance and sale of Common Stock from the competitive bidding requirements of Sections 34.1a(a), (b), and (c) of the Commission's Regulations under the Federal Power Act.

(5) The proposed issuance and sale of Common Stock, as hereinafter authorized, will be for a lawful object, within the corporate purposes of Applicant and compatible with the public interest, which is appropriate for and consistent with the proper performance of service by Applicant as a public utility, and which will not impair its ability to perform that service, and is reasonably necessary and appropriate for such purposes.

(6) The period of public notice given in this matter is reasonable.

The Commission orders:

(A) The proposed issuance and sale of Common Stock, referred to above, upon the terms and conditions and for the purposes specified in the application, are hereby authorized, subject to the provisions of this order.

(B) The proposed issuance and sale of Common Stock are hereby exempted from the competitive bidding requirements of Sections 34.1a(b) and (c) of the Commission's Regulations under the Federal Power Act.

(C) This authorization shall not extend beyond 60 months from the date of issuance of this order.

312–270—69——82

(D) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations of cost, or any other matter whatsoever now pending or which may come before this Commission.

(E) Nothing in this order shall be construed to imply any guarantee or obligation on the part of the United States in respect of any securities to which this order relates.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

PAN AMERICAN PETROLEUM CORPORATION, DOCKET NO. RI66-154

ORDER GRANTING APPLICATION FOR REHEARING, CONDITIONALLY ACCEPTING FILING, AND PROVIDING FOR HEARING ON AND SUSPENSION OF PROPOSED CHANGE IN RATE

(Issued November 5, 1965)

Pan American Petroleum Corporation (Pan American) filed an application for rehearing on October 8, 1965, of the Commission's order issued September 10, 1965, 34 FPC 847, rejecting, *inter alia*, a proposed rate increase from 16.0¢ to 20.5¢ per Mcf [1] tendered on August 13, 1965, by Pan American for the sale of residue gas from gas-well gas and oil-well gas to Transwestern Pipeline Company under its FPC Gas Rate Schedule No. 329 in the Permian Basin Area of Texas. The contract involved here was executed on March 8, 1962, and thus covers a sale for new gas under Opinion No. 468, 34 FPC 159. Pan American's proposed rate, which exceeds the applicable just and reasonable rate ceilings determined in Opinion No. 468 for the sale of gas in the Permian Basin Area, was rejected for the reasons set forth in the order issued August 26, 1965, in *Socony Mobil Oil Company, Inc. (Operator), et al.*, 34 FPC 595.

On October 20, 1965, subsequent to the issuance of our rejection order, the Tenth Circuit in *Skelly Oil Co.* v. *F.P.C.* (CA10 No. 8385, *et al.*) stayed through January 20, 1966, the effectiveness of Opinion Nos. 468 and 468-A, 34 FPC 1068, as to Skelly, Phillips and Warren. The Court's order further provided that any member of the Court may grant a similar stay if other petitions for review are filed in or transferred to that Court. Argument was also set for January 7, 1966 on the question of further stay.

Pan American in Case No. 8458 filed in the Tenth Circuit both a petition for review and a motion for stay dated October 25, 1965, of Opinion Nos. 468 and 468-A. Under these circumstances, it is appropriate to grant Pan American's application for rehearing and to suspend its proposed increase for five months from the time it would have become effective had it not been rejected. However, we wish to make it clear that we will reject this increase *ab initio* in the event the stay is dissolved or Opinion Nos. 468 and 468-A are upheld upon judicial review.

The proposed changed rate and charge may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds:

It is in the public interest and consistent with the Natural Gas Act that the Commission enter upon a hearing regarding the lawfulness of the proposed change, and that Supplement No. 2 to Pan American's FPC Gas Rate

[1] The proposed increased rate is designated herein as Supplement No. 2 to Pan American's FPC Gas Rate Schedule No. 329. Details of the proposed increase are set forth in Appendix A hereof.

Schedule No. 329 herein be suspended and its use be deferred as ordered below.

The Commission orders:

(A) Under the Natural Gas Act, particularly Sections 4 and 15, the Regulations pertaining thereto [18 CFR, Chapter I], and the Commission's Rules of Practice and Procedure, a public hearing shall be held concerning the lawfulness of the change proposed by Pan American.

(B) Pending hearing and decision thereon, Supplement No. 2 to Pan American's FPC Gas Rate Schedule No. 329 is suspended and its use deferred until February 13, 1966, and thereafter until made effective as prescribed by the Natural Gas Act.

(C) Unless otherwise ordered by the Commission, neither the suspended supplement, nor the rate schedule sought to be altered, shall be changed until disposition of this proceeding or expiration of the suspension period.

(D) Notices of intervention or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C. 20426, in accordance with the Rules of Practice and Procedure [18 CFR 1.8 and 1.37(f)] on or before December 20, 1965.

APPENDIX A

Docket No.	Respondent	Rate sched. No.	Supplement No.	Purchaser and producing area	Amount of annual increase	Date filing tendered	Effective date unless suspended	Date suspended until	Cents per Mcf		Rate in effect subject to refund in docket Nos.
									Rate in effect	Proposed increased rate	
RI66-154	Pan American Petroleum Corp., P.O. Box 1410, Fort Worth, Tex. 76101. Attn: J. K. Smith, Esq.	329	2	Transwestern Pipeline Co., (South Kermit Field, Winkler County, Tex.) (R.R. District No. 8), (Permian Basin area).	$8,910	8-13-65	[1] 9-13-65	2-13-66	[4] 16.0	[2] [3] 20.5	

[1] The stated effective date is the first day after expiration of the required statutory notice.
[2] Periodic rate increase.
[3] Pressure base is 14.65 psia.
[4] Initial rate.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

PENROSE PRODUCTION COMPANY, ET AL., DOCKET NO. RI66-155

ORDER CONDITIONALLY ACCEPTING FILING AND PROVIDING FOR HEARING ON AND SUSPENSION OF PROPOSED CHANGE IN RATE

(Issued November 5, 1965)

On October 6, 1965, Penrose Production Company, *et al.*, (*Penrose*)[1] tendered for filing a proposed change in its presently effective rate schedule for the sales of natural gas subject to the jurisdiction of the Commission. The proposed change, which constitutes an increased rate and charge, is contained in the following designated filing:

Description: Notice of Change, dated October 4, 1965
Purchaser and Producing Area: El Paso Natural Gas Company (Eumont Field, Lea County, New Mexico) (Permian Basin Area)
Rate Schedule Designation: Supplement No. 7 to Penrose's FPC Gas Rate Schedule No. 6
Effective Date: November 6, 1965[2]
Amount of Annual Increase: $2,690
Effective Rate: 11.7199¢ per Mcf.[3]
Proposed Rate: 17.0992¢ per Mcf.[4]
Pressure Base: 14.65 psia.

Penrose requests that its proposed rate increase be permitted to become effective "immediately". Good cause has not been shown for waiving the 30-day notice requirement provided in Section 4(d) of the Natural Gas Act to permit an earlier effective date for Penrose's rate filing and such request is denied.

Penrose proposes a favored-nation rate increase from 11.7199¢ to 17.0992¢ per Mcf, amounting to $2,690 annually, for a sale of "old" gas-well gas to El Paso Natural Gas Company in the Permian Basin Area of New Mexico. The proposed rate exceeds the just and reasonable ceiling of 13.5¢ per Mcf, plus applicable state and local production taxes, prescribed in Opinion No. 468, 34 FPC 159.

Up to September 8, 1964, the interest in certain properties involved with Penrose's proposed rate increase was covered by Mapenza Oil Company (Mapenza) under a contract dated August 20, 1956. Mapenza did not submit filings to the Commission covering such sale. In 1957, Mapenza authorized Continental Oil Company (Continental) to make such filings in its behalf. (Continental's FPC Gas Rate Schedule No. 85). By assignments dated November 13, 1958, Mapenza transferred its interest to Penrose Production Company, who continued to have the acquired interest covered by Continental, until September 8, 1964, when Penrose submitted its own certificate application and rate schedule to continue the sale formerly covered by Continental. The sale involved herein was one of those covered when Continental was

[1] 1605 Commerce Building, Fort Worth, Texas 76102. Attn: Glenn G. Neill.
[2] The stated effective date is the first day after expiration of the required statutory notice.
[3] Present rate previously suspended and is in effect subject to refund in Docket No. RI65-398.
[4] Subject to reduction of 0.4467¢ per Mcf for compression of low pressure gas (below 600 psig).

made a respondent in Docket No. AR61–1. The fact that the assignee, Penrose, received separate certificate authorization in 1964 and filed its own rate schedule did not have the effect of removing that sale from the area rate proceeding in Docket No. AR61–1.

The just and reasonable rate prescribed by the Permian Basin Opinion No. 468 and the moratorium applicable to all sales covered by Opinion No. 468 is therefore deemed to cover the subject sale. The proposed rate increase is thus subject to rejection. We recognize, however, that the Tenth Circuit in *Skelly Oil Co.* v. *F.P.C.* (No. 8385, *et al.*) has issued a temporary stay until January 20, 1966 of Opinion Nos. 468 and 468–A (34 FPC 1068), which covers the moratorium provisions of ordering paragraph (H) of Opinion No. 468. While this stay in terms is applicable only to Skelly, Phillips and Warren (who had, as of the time of the court's order, filed petitions for review of Opinion Nos. 468 and 468–A), we believe Penrose should be treated similarly to the three large producers who secured court stays. Accordingly, instead of rejecting the Penrose filing at this time, we shall conditionally accept it for filing, and simultaneously suspend the rate increase for a period of five months from the date of expiration of the statutory notice. Our acceptance of the instant rate increase is expressly conditioned to provide that the rate increase will be rejected, *ab initio*, in the event the court stay referred to above is dissolved or Opinion Nos. 468 and 468–A are upheld upon judicial review insofar as ordering paragraph (H) is concerned.

The proposed changed rate and charge may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds:

It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the proposed change, and that Supplement No. 7 to Penrose's FPC Gas Rate Schedule No. 6 be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly Sections 4 and 15 thereof, the Commission's Rules of Practice and Procedure, and the Regulations under the Natural Gas Act [18 CFR, Chapter I], a public hearing shall be held upon a date to be fixed by notice from the Secretary concerning the lawfulness of the proposed increased rate and charge contained in Supplement No. 7 to Penrose's FPC Gas Rate Schedule No. 6.

(B) Pending such hearing and decision thereon, Supplement No. 7 to Penrose's FPC Gas Rate Schedule No. 6 is conditionally accepted for filing, as noted above, and is hereby suspended and the use thereof deferred until April 6, 1966, and thereafter until such further time as it is made effective in the manner prescribed by the Natural Gas Act.

(C) Neither the supplement hereby suspended, nor the rate schedule sought to be altered thereby, shall be changed until this proceeding has been disposed of or until the period of suspension has expired, unless otherwise ordered by the Commission.

(D) Notices of intervention or petitions to intervene may be filed with the Federal Power Commission, Washington, D. C., 20426, in accordance with the Rules of Practice and Procedure [18 CFR 1.8 and 1.37(f)] on or before December 22, 1965.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

THE WASHINGTON WATER POWER COMPANY AND THE MONTANA POWER COMPANY, DOCKET NO. E-7237

ORDER AUTHORIZING TRANSFER OF FACILITIES

(Issued November 5, 1965)

The Washington Water Power Company (Washington) and The Montana Power Company (Montana), filed a joint application with the Federal Power Commission on August 9, 1965, seeking an order pursuant to Section 203 of the Federal Power Act, authorizing the acquisition by Washington and the disposition by Montana of certain electric facilities located in Coeur d'Alene mining area in Shoshone County, Idaho.

Washington is a corporation organized under the laws of the State of Washington and qualified to do business in the States of Washington, Idaho and Montana with its principal business office at Spokane, Washington. It is engaged primarily in the generation, transmission, distribution and sale of electric energy in eastern Washington, northern Idaho, and western Montana.

Montana is incorporated under the laws of the State of Montana and is qualified to do business in the States of Montana, Idaho, and Wyoming, with its principal place of business at Butte, Montana. It is engaged primarily in the generation of electric energy in Montana and in the transmission, distribution and sale of electric energy in Montana, Yellowstone National Park in Wyoming and Shoshone County, Idaho.

According to the application, the facilities which Washington proposes to acquire from Montana include four miles of double circuit 100 kv transmission line 22 miles of 16.5 kv and 4 miles of 2.4 kv distribution line, the Burke transmission substation, a number of other substations, line transformers and appurtenant facilities. These facilities include all the properties of Montana located within the State of Idaho. The customers served from these facilities consist of 76 residential, 12 commercial and three industrial.

The application indicates that the facilities are to be acquired by Washington and sold by Montana for a cash consideration of $600,000. This amount will be $336,981.21 in excess of the original depreciated cost of these facilities which was $263,018.79. On the books of Washington, the excess of $336,981.21 will be an Electric Plant Acquisition. Washington proposes to amortize this Acquisition Adjustment by equal annual charges over a period of ten years to Account 425, Miscellaneous Amortization, with concurrent credits to Account 115, Accumulated Provision for Amortization of Electric Plant Acquisition Adjustments. Annual amortization will be about $33,700.

On the books of Montana, the excess of $336,981.21 will be a profit on the sale of facilities. Montana proposes to credit this profit to Account 434, Miscellaneous Credits to Surplus. This profit will require the payment of additional income taxes which will be charged to Account 435, Miscellaneous Debits to Surplus.

For many years, both Washington and Montana have served customers in the Coeur d'Alene mining area in Idaho and some of Montana's customers have been and are being served from Washington's facilities, Montana billing the customers and in turn purchasing power from Washington. Although the $600,000 which Washington has agreed to pay for the facilities is considerably more than the depreciated original cost of these facilities, the application indicates that the purchase price is based on the protection of pres-

ent revenues and prospective increases, in part covered by contract, and in part anticipated as the result of a very great increase in activity in this mining district.

According to Washington, the American Smelting and Refining Company plans to spend $5,000,000 in the next three years in developing properties in this mining area and to locate a mill near Osburn in Washington's service territory. Revenues from these additional loads are estimated in excess of $155,000 per year and contracts have been signed. Washington states that after pro-forma statement of these amounts and after similar statement of operating expenses and taxes, it will receive a net income increase in excess of $93,000. Therefore, according to Washington, the purchase price comes well within the ratio of capital expenditure to new business which Washington would use in determining the desirability of any extension of facilities. In addition to the plans of the American Smelting and Refining Company, Washington also believes that there will be further new developments in this mining area which have not yet been announced.

It is estimated that the change of ownership of facilities will result in most of the customers receiving a reduction in rates averaging 7% for residential customers and 12% for commercial customers. Rates of a few customers will increase from $.03 to $.55 a month. According to the application, the properties have been costly and difficult for Montana to maintain, particularly in times of emergency, since the closest Montana line crew is stationed about 120 miles from the facilities. Washington proposes to eliminate duplicate facilities wherever possible which should result in improved voltage regulation, continuity of service and area appearance and because Washington has business offices, line crews and service men in the area, it expects to be able to render more rapid service.

Written notice of the application has been given to the Idaho Public Utilities Commission and to the Governor of that State. Notice has also been published in the Federal Register on August 25, 1965 (30 F.R. 11004), stating that any person desiring to be heard or to make any protest with reference to the application, shall file petitions or protests on or before September 16, 1965. No protest, petition or request to be heard in opposition to the granting of the application has been received.

The Commission finds:

(1) Washington, a corporation, owns and operates facilities for the transmission and sale at wholesale of electric energy which is generated in the States of Washington, Idaho, Montana and Oregon and consumed outside the state in which it is generated, all of which facilities are in addition to and do not include facilities used for the generation of electric energy used in local distribution or only for the transmission of electric energy in interstate commerce or facilities for the transmission of electric energy consumed wholly by the transmitter, and Washington is, therefore, a public utility within the meaning of Section 203 of the Federal Power Act.

(2) Montana, a corporation, is a public utility within the meaning of Section 203 of the Federal Power Act, subject to the jurisdiction of the Commission as heretofore described and set forth in the Commission's order issued November 1, 1961, *The Montana Power Company, et al.*, Docket No. E–7000 (26 FPC 668).

(3) By the proposed transaction, Montana will dispose of part of its facilities subject to the jurisdiction of the Commission and Washington will merge or consolidate its facilities, subject to the jurisdiction of the Commission with those of Montana, another person, all within the meaning and subject to the requirements of Section 203 of the Federal Power Act.

(4) The proposed transaction, as described above, upon the terms and conditions set forth in the application, and subject to the provisions of this order will be consistent with the public interest as expressed in Section 203 of the Federal Power Act.

The Commission orders:

(A) The proposed sale by Montana and the proposed acquisition by Washington of the aforementioned electric facilities, all as described above, is authorized and approved upon the terms and conditions and for the purposes set forth in the application subject to the provisions of this order.

(B) Montana and Washington shall record the proposed transaction herein authorized and the facilities and properties referred to above as provided in the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees.

(C) This authorization shall expire unless the transaction herein authorized and approved is consummated within 90 days from the date of issuance of this order.

(D) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuations, estimates or determinations of cost, or any matter whatsoever now pending or which may come before this Commission or any other regulatory body and nothing herein shall be construed as an acquiescence by this Commission in any estimate or determination of cost or any valuation of property claimed or asserted.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

ALABAMA POWER COMPANY, DOCKET NO. E-6893

ORDER WAIVING PENALTY FOR DELINQUENCY IN PAYMENT OF INTERIM ASSESSMENT FOR HEADWATER BENEFITS

(Issued November 8, 1965)

On July 27, 1965, a letter was sent to Alabama Power Company in which an interim assessment was made for headwater benefits received by the Company at its Weiss, Lay, Mitchell and Jordan plants due to the operation of the upstream Federal Alatoona project.[1] This interim bill, in the amount of $235,261 was payable within 60 days of the date of the letter. The sixty day period expired on September 25, 1965.

By letter of September 23, 1965 the Company objected to the interim billing on the theory that the Commission's authority to make such a demand was doubtful, and that there appeared to be no procedure for refunding in case it later developed that the Company's interim payment was greater than the final total amount found to be due. In questioning the Commission's authority to make an interim billing for headwater benefits charges the Company referred to litigation on this point then pending in the Court of Appeals for the Fourth Circuit.[2] On these grounds, it was requested that the Commission postpone its interim bill. The request was denied by letter dated October

[1] The billing did not include any assessment for the cost of making the headwater benefits study.

[2] The case cited by the Company, *Virginia Electric & Power Company* v. *F.P.C.*, was subsequently decided on October 6, 1965, the Court of Appeals upholding the Commission's authority to make such interim billings. 351 F. 2d 408 (CA4–1965).

7, 1965. Within a week thereafter, on October 13, 1965, a letter was received from the Alabama Power Company enclosing a check for the amount of the interim bill. However, since this payment was not received within the prescribed 60-day period, a penalty attached for such delinquency under the Commission's Regulations.

In its October 13, 1965 letter forwarding payment, the Company points out that its delay in making payment was occasioned solely by the Company's effort to protect what it considered to be its legal rights, and requests that the Company be relieved of any penalties for delinquency.

The Commission finds:

It will not be inconsistent with the public interest to waive the penalty which attached by reason of Alabama Power Company's delay in payment of the amount demanded in the Commission's July 27, 1965 interim billing for headwater benefits.

The Commission orders:

The aforementioned penalty is hereby waived.

OPINION NO. 480

NATURAL GAS PIPELINE COMPANY OF AMERICA, DOCKET NO. CP64-150; OKLAHOMA NATURAL GAS COMPANY, DOCKET NO. CP64-273; OKLAHOMA NATURAL GAS STORAGE COMPANY, DOCKET NO. CP64-273

OPINION AND ORDER GRANTING CERTIFICATE AND DETERMINING JURISDICTION

(Issued November 8, 1965)*

Syllabus

1. Determination of jurisdictional issue depends on whether proposed operation under storage agreement involves sale of gas for resale in interstate commerce. P. 1261.
2. Contractual label put upon transaction by parties is not controlling if it attempts to avoid statute while engaging in activities intended to be regulated. P. 1261.
3. Unlike *Lo-Vaca* proposed transaction presents no dangers to federal regulatory scheme. P. 1262.
4. Relying on particular facts of this case, Commission *concludes* that joint use of Sayre storage field does not constitute sale or transportation of gas within meaning of the Gas Act. P. 1262.
5. Arrangement whereby Natural Gas Pipe pays Storage Company for use of cushion gas as part of its interstate activities and Storage Company retains title to equivalent amount of gas at end of lease, must be construed as a sale of gas under the Act. PP. 1263, 1264.
6. Exchanges of gas [even temporal one proposed here] have always been construed as sales and resales of gas. P. 1264.
7. Commission *concludes* that Sayre field proposal does not involve transportation or sale of natural gas in interstate commerce by Oklahoma Natural or Storage Company provided Storage Company does not maintain gas there and be compensated therefor, in a volume exceeding its proportionate use of the field. P. 1264.

* See Opinion No. 480-A on rehearing issued February 7, 1966, 35 FPC 189.

8. In a proceeding under Sections 1(b) and 7(c) of the Natural Gas Act, Commission *determines* jurisdiction and *issues* certificate of public convenience and necessity authorizing acquisition and operation of Sayre gas storage field.

Charles C. McDugald for Natural Gas Pipeline Company of America.

Bradford Ross and *John L. Arrington, Jr.* for Oklahoma Natural Gas Company and Oklahoma Natural Gas Storage Company.

Charles R. Brown for the Staff of the Federal Power Commission.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

Ross, *Commissioner:*

This proceeding concerns an application by Natural Gas Pipeline Company of America (Natural) under Section 7(c) of the Natural Gas Act to lease and operate an underground gas storage field at Sayre, Oklahoma, belonging to Oklahoma Natural Gas Storage Company (Storage), a subsidiary of Oklahoma Natural Gas Company (Oklahoma Natural). Most of the field is to be used to hold Natural's gas; however, Storage will continue to use a portion of the field. This proceeding also involves a joint petition filed by Storage and Oklahoma Natural for a declaratory order determining that the activities and operations contemplated under the storage agreement described below will not subject either to our jurisdiction.[1]

Subject to certain conditions later described, all the parties including Staff agree that the public convenience and necessity require that Natural's application be granted. The only issue is whether, under the agreement, Storage would transport or sell gas to Natural in interstate commerce within the meaning of Section 1(b) or 7(c) of the Natural Gas Act for which a certificate would be required, in which event the petitioners would become natural-gas companies.

Natural's application and the joint petition were consolidated and a hearing was held on October 20, 1964. The Commission waived the intermediate decision procedure; briefs were exchanged; and the Commission requested supplementary briefs to consider the impact of the following recent cases upon the issues: *California* v. *Lo-Vaca Gathering Co.*, 379 U.S. 366; *F.P.C.* v. *Amerada Petroleum Corp.*, 379 U.S. 687; and *Transcontinental Gas Pipe Line Corporation*, 33 FPC 237, Opinion No. 449, Docket No. CP63–222, issued February 17, 1965. The supplemental briefs were filed, and the consolidated proceedings are now before the Commission for decision.

Sayre Storage Field is located near the Texas border in the southwest part of Oklahoma. It is now owned and operated by Oklahoma Natural for service to its Clinton system, which is located entirely within Oklahoma and not connected to its general system.[2]

The document which forms the basis of this proceeding is the "Storage, Operating and Service Agreement" dated September 19, 1963, as amended, which was executed between Natural and Oklahoma Natural. On March 17, 1964, Oklahoma Natural assigned all of its rights under the agreement to Storage. Under the agreement Natural will operate the field for the injection and withdrawal of gas for its own account and for that of Storage. Measure-

[1] They also requested exemption under Section 1(c) of the Act with respect to gas they contemplated buying from Natural, but they state that such exemption is now unnecessary since such purchases are no longer contemplated.

[2] Oklahoma Natural would convey to Storage all of the Clinton system storage, transmission and other properties, but would retain the distribution facilities.

ments are to be made and records are to be kept of the amount of gas injected, withdrawn and held in storage by each company.

Gas stored for Natural's account under the agreement will be purchased by Natural in northcentral Texas and in Oklahoma. It will flow westerly in Natural's 26-inch Oklahoma extension through Oklahoma and then will be diverted through Natural's 24-inch lateral to the Sayre Field. When Natural withdraws gas from the field for its own account it will flow back to the 26-inch Oklahoma extension and will continue westerly to the Texas Panhandle where it will join other sources of gas supply and flow north and east in Natural's main line.

The gas supply for the Clinton system now comes from fields all located in Oklahoma, and gas in excess of market requirements is injected into the Sayre Field and is available for withdrawal during peaking. Under the proposed arrangements the same gas supply will be used. Natural will inject the gas into Sayre storage for the account of Storage at a mutually agreed upon point, and upon request by Storage will redeliver it at a mutually agreed upon point of withdrawal at the field. Injections by Natural for Storage will be undertaken only at times consistent with Natural's operation of the field, as determined solely by Natural. The contract provides that volume of injections and withdrawals by Natural for Storage are limited to 3,000,000 Mcf annually and 20,000 Mcf daily. However, the parties anticipate that Storage's volume of injections and withdrawals will approximate 1.1 million Mcf annually. The contract provides that Storage may purchase gas from Natural for storage in Sayre and use in the Clinton system.[3]

With the consummation of the agreement, and for the first five years of Natural's operation of the field, Storage is obliged to maintain a minimum of 18,000,000 Mcf in the field as cushion gas, and minimum of 6,000,000 Mcf for the remainder of the term of the agreement. It is estimated that at least 20,000,000 Mcf is now in Sayre.[4] Upon termination of the agreement, which may be at any time within the 40-year maximum term, at Natural's discretion, both Natural and Storage are entitled to the volumes represented by their respective storage accounts. If the recoverable reserves on termination are less than the volumes in the storage account of Storage after Natural withdraws its gas, Natural pays Storage the difference at Natural's then effective commodity rate. If the recoverable reserve exceed Storage's account, Storage pays Natural for the difference at the same rate.

The record shows that Oklahoma Natural (and its successor, Storage) is regulated by the Oklahoma Corporation Commission. Storage desires to continue to use the Sayre storage field if this can be done without subjecting itself to regulation by the Federal Power Commission.

The Commission staff argues that jurisdiction follows the physical facts of gas flow, and that the appropriate test is engineering and scientific rather than legalistic or governmental citing *Connecticut Light & Power Co.* v. *F.P.C.*, 324 U.S. 515, and the *Lo-Vaca*, *supra*, and *Amerada*, *supra*, Supreme Court decisions. Staff points out that Natural's gas from out-of-state sources will be commingled in the Sayre field with Oklahoma gas injected by Storage, and that some of the Oklahoma gas will be resold by Natural in interstate commerce. Similarly, Staff argues that a portion of the gas injected by Natural will be resold by Storage to serve its Clinton system. Staff, therefore,

[3] Natural has stated it would file for appropriate authorization when it is ready to make such a sale.

[4] Section 4.3(c) provides that either party may terminate the agreement if it is determined that less than 20,000,000 Mcf of recoverable gas is in Sayre Storage Field.

concludes that Storage will be selling gas in interstate commerce to Natural, and, when it delivers gas to the Sayre field, will be transporting gas in interstate commerce. In addition, Staff contends that the cushion gas Natural will use and partially replace represents an exchange of gas, and hence a sale of gas subject to the jurisdiction of the Commission. In Staff's opinion, the *Transco, supra*, decision is *sui generis* and distinguishable because no question of jurisdiction over transportation was involved and because of greater specificity in the volumes of gas to be transported by the pipeline.

Natural, Oklahoma Natural and Storage argue that title to gas delivered by Storage to Natural remains with Storage and that the transaction is a bailment and not a sale even though the same physical volumes are not returned to Storage as were delivered. They point out that it is not necessary for a bailee of fungible goods to return the same goods but only units of like quality and quantity.

Essentially the determination of the jurisdiction issue in this proceeding depends on whether the proposed transaction, involves a sale of gas by Storage for resale in interstate commerce. The contractual label that the parties put upon the transaction is not controlling if it is merely an attempt to avoid the nomenclature of the statute while the parties engage in activities which Congress intended be regulated under the Natural Gas Act, and which would be so regulated if presented under an accurate label.

The basic consideration that must guide the Commission in deciding the jurisdictional question before us was laid down by the Supreme Court in *F.P.C.* v. *Transcontinental Gas Pipe Line Corp.*, 365 U.S. 1:

> * * * When Congress enacted the Natural Gas Act, it was motivated by a desire "to protect consumers against exploitation at the hands of natural gas companies." *Sunray Mid-Continent Oil Co.* v. *F.P.C.*, 364 U.S. 137, 147. To that end, Congress "meant to enact a comprehensive and effective regulatory scheme." *Panhandle Eastern Pipe Line Co.* v. *F.P.C.*, 332 U.S. 507, 520. See *Public Utilities Commission* v. *United Fuel Gas Co.*, 317 U.S. 456, 467. It is true, of course, the Congress did not desire comprehensive federal regulation; much authority was reserved for the States. But, it is equally clear that Congress did not desire that an important aspect of this field be left unregulated. See *Panhandle Eastern Pipe Line Co.* v. *F.P.C.*, *supra*. Therefore, when a dispute arises over whether a given transaction is within the scope of federal or state regulatory authority, we are not inclined to approach the problem negatively, thus raising the possibility that a "no man's land" will be created. Compare *Guss* v. *Utah Labor Board*, 353 U.S. 1. That is to say, in a borderline case where Congressional authority is not explicit we must ask whether state authority can practicably, regulate a given area and, if we find that it cannot, then we are impelled to decide that federal authority governs.

Viewed in this light our assertion of jurisdiction in *Lo-Vaca, supra*, filled a large gap in our control over sales by gas producers in interstate commerce. In that case the parties had provided in their contracts that, contrary to the physical facts, some of the gas commingled in the interstate pipeline was to be used in its compressor stations and thus, allegedly, not sold for resale. The Supreme Court in its decision affirming the Commission's jurisdiction emphasized that if the parties were thus free to allocate the gas by contract havoc would be raised with the federal regulatory scheme as construed in the *Phillips* case. A pipeline would be able to discriminate in favor of its "non-jurisdictional" customers and could immunize a particular producer supplier from the reach of federal regulation (379 U.S. at p. 370). The *Amerada* case

involving similar circumstances, was affirmed by the Supreme Court on the basis of *Lo-Vaca*.

Unlike *Lo-Vaca*, the proposed transaction presents no dangers to the federal regulatory scheme. Here with the exception of the cushion gas problem noted below, there is no sale and delivery to an interstate pipeline of gas which will be commingled with gas from other sources in carrying on the pipeline's general business of transporting and selling gas for resale in interstate commerce. Here there is simply an arrangement for sharing the storage field now owned by Oklahoma Natural for the benefit of both companies. Natural is provided with no opportunity to immunize any particular supplier from the reach of federal regulation. This is clear since Storage will not be supplying gas to Natural.

Again unlike *Lo-Vaca*, no facility used for transporting gas in interstate commerce will escape our jurisdiction. In the present proceeding, as in *Transco*, we have complete jurisdiction to grant or withhold permission to Natural to enter into the storage arrangement with Oklahoma Natural and Storage and a certificate is required from this Commission for its operation. If it had undesirable features we could impose conditions (as we do here), or we could limit the duration of the arrangement. As it is, there is no dispute that the arrangement if lawful is in the public interest, and should be approved. In any future rate case or investigation Natural will, of course, be required to justify its storage costs in its cost of service by accepted standards. Thus, the ultimate consumers served through Natural are fully protected without federal jurisdiction over Storage or Oklahoma Natural.

We conclude that Storage's joint use of the Sayre storage field with Natural does not constitute the sale or transportation of gas within the meaning of the Gas Act. In so concluding, we rely on the particular facts of this case which make clear that our jurisdiction over Storage would not further the objectives of the Gas Act. As the Supreme Court held in *F.P.C.* v. *Transcontinental Gas Pipe Line Corp.*, *supra*, in a borderline situation this fact is controlling. We are satisfied that if Storage or Oklahoma Natural's operations in this case resulted in any evasion of the Federal regulatory pattern under the Natural Gas Act that we would have jurisdiction over them. However, as we stated in *Transco*, *supra*, not every transaction which involves commingling of gas from different sources *per se* requires a finding of federal jurisdiction.

Insofar as the proposal relates to cushion gas, the jurisdictional question is less clear. Initially, Natural will have the right to the use of 20,000 Mcf presently estimated to be in Sayre. Additionally, Storage is obliged under the agreement to maintain a minimum of 18,000,000 Mcf in Sayre as cushion for the first five years of operations under the agreement, and a minimum of 6,000,000 Mcf thereafter. Up to this point, we are satisfied that the proposal does not have the effect of transforming Storage into a natural gas company.

It would serve no purpose to insist, as a condition precedent to a finding on the jurisdictional question, that Storage initially withdraw all the gas in Sayre only to have Natural replenish the supply. In our opinion, the gradual withdrawal of cushion gas by Storage and replacement by Natural over a relatively brief period is but an integral and reasonable part of the overall agreement of the parties to share a storage facility. As Staff points out:

> the significant point is that the proposed transaction enables Natural to have a highly flexible storage operation immediately available for its use. But for the proposed transaction, it would take Natural a relatively long period of time to inject volumes of "cushion gas" necessary to provide Natural with the desired volumes of working gas

Similarly, Storage's obligation to maintain a minimum of 6,000,000 Mcf in Sayre as cushion gas for the term of the agreement is another integral feature of the parties' basic intent to share a storage facility. By the fifth year of operations, Storage plans to use 14.47 percent of the capacity of Sayre and Natural the remaining 85.53 percent. In volumetric terms, Storage proposes to inject and withdraw 1.1 million Mcf and Natural 6.5 million Mcf, both on an annual basis. The cushion gas required to operate the field at this capacity is 42 million Mcf.[5]

It is apparent that the approximately 6,000,000 Mcf which Storage is required to maintain as cushion is directly proportional to its intended use of the Sayre field. Accordingly, it is appropriate to treat this 6,000,000 Mcf of gas as being used in connection with Storage's intrastate operations rather than the interstate operations of Natural. This feature of the agreement, we believe, is closely analogous to that presented in the *Transco* case. In both situations there is no delivery of gas to an interstate pipeline which the pipeline can use for its own operations and which it is required to pay for. The situation is thus distinguishable from the *Lo-Vaca* situation where, for a substantial fee, both title and the beneficial use of certain volumes of gas were being transferred to the pipeline.

Using these same two cases as precedent, however, we find that those provisions of the agreement which provide that if Storage chooses to store gas in the field in excess of its intended proportionate use of the field, Natural will pay therefor as cushion gas, constitutes a sale of gas in interstate commerce. The agreement provides that Storage may store 12,000,000 Mcf in Sayre over and above the 6,000,000 Mcf related to its intended use and that if it does so, Natural's payments for use of the field will be proportionately increased. At the specified rate of $595 per month for 1,000,000 Mcf for cushion gas, Natural would be paying 28¢ per Mcf for gas used as cushion over the 40-year lease period. Additionally, we note that assuming Storage fully exercises its option, Natural will be paying nearly $3.5 million dollars for such gas—over 20 percent of the rental fee for the use of the Storage field.

No reason has been advanced by the parties to show why this aspect of the proposal is incidental to the sharing of Sayre field. Since this aspect is not merely a conventional arrangement nor related to the basic purpose of the transaction, the situation is outside the scope of the rationale of *Transco, supra*, but rather constitutes a sale for all practical purposes. We, therefore, find that the exercise by Storage of its option to maintain in excess of 6,000,000 Mcf in Sayre storage field and be compensated by Natural therefor would constitute a sale of gas to Natural in interstate commerce within the meaning of Sections 1(b) and 7(c) of the Natural Gas Act.

The question remains whether this arrangement whereby Natural will be paying Storage for the use of cushion gas as part of its interstate activities is removed from the category of a "sale" because at the end of the 40-year lease period (plus any renewal thereof) Storage will retain title to an equivalent amount of gas. Recognizing that as a matter of contract law the transaction might well be characterized as a bailment for hire, we think it clear that insofar as its status under the Natural Gas Act is concerned, it must be construed as a sale. See *Federal Power Commission* v. *Marr*, 311 U.S. 381, where a sale of a long-term lease of land containing proven gas reserves was construed as constituting a sale of gas. The situation here is analogous to the situation where a pipeline takes gas in one part of its line in exchange for a consideration of a promise to provide the seller with an equivalent

[5] These data are contained in official working papers furnished by the parties to Staff of which we take official notice.

amount of gas at another point on the pipeline. Such exchanges have always been construed as involving sales and resales of gas.[6] The fact that the pipeline's agreement to exchange gas here is temporal rather than geographical does not change the jurisdictional result.

In view of the foregoing, we conclude that the instant transaction does not involve the transportation or sale of gas in interstate commerce by Oklahoma Natural or Storage, or either of them, provided that Storage does not maintain gas in the Sayre storage field, and be compensated therefor by Natural, in a volume which exceeds Storage's intended proportionate use of the field.

The Commission further finds:

(1) Natural Gas Pipeline Company of America, a Delaware corporation having its principal place of business at Chicago, Illinois, is engaged in the transportation of natural gas in interstate commerce and the sale in interstate commerce of natural gas for resale for ultimate public consumption and is a "natural-gas company" within the meaning of the Natural Gas Act.

(2) The activities and operations contemplated by the transactions proposed herein will not subject either Oklahoma Natural or Storage to the jurisdiction of the Federal Power Commission, with the exception of the provisions relating to gas which Storage may provide in excess of that volume (6,000,000 Mcf) needed as a cushion for Storage's intended use of the field, for which Storage would be compensated by Natural.

(3) The facilities to be constructed and operated by Natural as hereinbefore described and as more fully set forth in Natural's application and the record in this proceeding are proposed to be used by Natural in the transportation of natural gas in interstate commerce, subject to the jurisdiction of this Commission, and the construction, and operation thereof by Natural are subject to the requirements of Section 7(c) of the Natural Gas Act.

(4) Natural is able and willing to do the acts and perform the services proposed, and to conform to the provisions of the Natural Gas Act as amended and the Rules and Regulations of the Commission thereunder.

(5) The acquisition by Natural of all rights, properties and interests of Oklahoma Natural in and to the Sayre underground gas storage field located in Beckham County, Oklahoma, necessary or convenient to be exercised in the operation thereof by Natural for the underground storage of gas, the construction and operation of facilities and the operation by Natural of the Sayre underground gas storage field for the injection and withdrawal of gas all as more fully set forth in Natural's application and the record in this proceeding are required by the public convenience and necessity and a certificate of public convenience and necessity therefor should be issued as hereinafter ordered and continued.

The Commission orders:

(A) A certificate of public convenience and necessity is hereby issued, upon the terms and conditions of this order and subject to all pertinent provisions of the Natural Gas Act and the Commission's Regulations thereunder, authorizing Natural to acquire all of the rights, properties and interest of Storage Company in and to the Sayre underground storage field located in Beckham County, Oklahoma, necessary or convenient to be exercised in the operation thereof by Natural for the underground storage, the construction and operation of facilities and the operation by Natural of Sayre underground gas

[6] *Oklahoma Natural Gas Co.*, 23 FPC 291.

storage field for the injection and withdrawal of gas all as more fully set forth in Natural's application and the record in this proceeding.

(B) The certificate of public convenience and necessity issued by Paragraph (A) above is subject to the following conditions:

(1) The combined inventory of Natural and Storage Company shall not exceed 56 billion cubic feet of natural gas without having first received further authorization from the Commission and provided that, if any year prior to and including 1969, or any portion of any such year, should become a test year in any subsequent rate proceeding wherein the justness or reasonableness of Natural's existing or proposed rates is at issue, not more than 32.5 billion cubic feet of natural gas which might be stored in Sayre Field for the account of Natural may be included in Natural's rate base, unless the Commission specifically approves the inclusion in Natural's rate base of a greater quantity based on a showing by Natural that any volume in excess of such amount is then used or useful in its test year operations.

(2) Natural shall construct the proposed facilities, rework the 26 gas wells and drill one additional gas well as described in its application within one year of the issuance of this order.

(C) The Joint Petition filed by Oklahoma Natural and Storage for a declaratory order determining the jurisdictional status of petitioners pursuant to the storage agreement is granted and the Commission concludes that neither petitioner will become a natural gas company within the meaning of the Natural Gas Act; provided that petitioners, or either of them, do not maintain in excess of 6,000,000 Mcf of gas in the Sayre storage field on or after the first five years of joint operation with Natural for which additional amounts of gas petitioners or either of them are directly or indirectly compensated by Natural.

(D) In the event Oklahoma Natural or Storage maintain gas in Sayre storage field in excess of that specified in paragraph (C) *supra*, and are directly or indirectly compensated therefor by Natural, they shall file with the Commission an appropriate application for a certificate to transport and sell gas in interstate commerce, as required by Section 7(c) of the Natural Gas Act and the Commission's rules and regulations thereunder.

(E) The Joint Application for exemption from the Natural Gas Act filed by Oklahoma Natural and Storage is hereby dismissed without prejudice to its renewal if they should propose to purchase gas from Natural.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

PANHANDLE EASTERN PIPE LINE COMPANY, DOCKET NOS. CP66-33 AND CP66-34

ORDER AUTHORIZING EXPORTATION OF NATURAL GAS AND CANCELLING DOCKET NUMBER

(Issued November 8, 1965)

On July 29, 1965, Panhandle Eastern Pipe Line Company (Applicant) filed in Docket No. CP66-33 an application, as supplemented on September 23, 1965, pursuant to Section 3 of the Natural Gas Act for authorization to export

natural gas from the United States to Canada, all as more fully set forth in the application, as supplemented, in this proceeding.*

Applicant proposes to export up to 3,000,000 Mcf of natural gas per year for sale to Tecumseh Gas Storage, Limited (Tecumseh). The proposed sale is for a two year period with any make-up gas to be delivered during the third year. Total sales are limited to 6,000,000 Mcf. The subject proposal is to be accomplished through Applicant's existing facilities under the Detroit River, at the international boundary, connecting with those facilities of Union Gas Company of Canada, Limited (Union). Applicant will deliver the gas to Union and Union will transport such gas for delivery to Tecumseh's storage system. Tecumseh will utilize the gas as base storage.

In each year Applicant will deliver 1,000,000 Mcf of gas during the period November 1 through March 31 and the remaining 2,000,000 Mcf will be delivered during the period April 1 through October 31. Applicant may offer Tecumseh up to 20,000 Mcf per day, but Tecumseh shall not be obligated to take delivery of more than 10,645 Mcf of gas per day. Applicant and Tecumseh have entered into an agreement, dated April 6, 1965, providing for the proposed sale at a base rate of 39 cents per Mcf (14.73 psia) in United States coin, subject to certain adjustments set forth in said agreement. Applicant estimates the annual net operating income for the proposed sale to be $184,308.

Applicant states that the sales will be completely interruptible on a daily basis and curtailable to the extent of 20 percent on an annual basis.

On July 29, 1965, Applicant filed in Docket No. CP66–34, in accordance with Executive Order No. 10485, an application for a presidential permit authorizing the operation of existing facilities for the export of natural gas to Tecumseh. Such application will be considered as an application to amend further the amended permit, as further amended, in Docket No. G–10798. Accordingly, Docket No. CP66–34 should be cancelled. Said amended permit, as further amended, will be released concurrently with the subject order and with the order in Docket No. CP66–48.

Notice of the filing of the instant application was issued on August 9, 1965. This notice fixed September 7, 1965, as the last day for filing protests or petitions to intervene. No protests or petitions to intervene have been received herein. Opportunity for hearing has been given by the issuance of said notice and the publication thereof in the Federal Register on August 14, 1965 (30 F.R. 10173).

The Commission finds:

The exportation of natural gas by Applicant, Panhandle Eastern Pipe Line Company, as hereinabove described and as set forth in the application, as supplemented, in Docket No. CP66–33, will not be inconsistent with the public interest within the meaning of Section 3 of the Natural Gas Act provided that said exportation be on the terms and conditions hereinafter set forth:

(a) Applicant shall file statements or reports with the Commission from time to time under oath and in such details as the Commission may require with respect to the whole or any part of the instant export operation.

(b) The authorization granted herein is not transferable or assignable and shall remain in full force and effect only so long as Applicant continues the

* On August 12, 1965, Applicant filed in Docket No. CP66–48 a related application pursuant to Section 7(c) of the Act for a certificate of public convenience and necessity authorizing the transportation of natural gas in order to export said gas for sale to Tecumseh Gas Storage, Limited. The order granting such a certificate in said docket will be issued concurrently with the subject order, *infra*, p. 1268.

acts or operations herein authorized in accordance with the terms and conditions herein set forth.

(c) The authorization granted herein shall automatically terminate upon the termination or expiration of the April 6, 1965, contract, attached as an exhibit to the application in this proceeding.

(d) Applicant shall not, during the term of the authorization granted by this order, materially change or alter its export operations without first obtaining the permission and approval of the Commission.

(e) In the event that Applicant should abandon or permanently cease for any reason whatsoever all or any part of the instant export operation prior to the termination date of the contract described in (c) hereof, Applicant shall forthwith notify the Commission of said fact and the reason therefor.

(f) The authorization granted herein should be conditioned upon Applicant's obtaining any related necessary authorizations from the National Energy Board of Canada.

(g) The maximum annual volume and maximum daily volumes exported for sale to Tecumseh should not exeed 3,000,000 Mcf and 20,000 Mcf, respectively, and the total volumes to be exported under the instant authorization should not exceed 6,000,000 Mcf.

(h) Applicant should inform the Commission of the date the total volume of 6,000,000 Mcf has been delivered and deliveries have ceased, under the instant authorization, within 20 days of such date.

(i) Applicant should curtail or interrupt service to Tecumseh to the extent required to meet existing or future contracted maximum delivery obligations for firm service to its customers, and Applicant should not give priority to Tecumseh for additional gas under this contract at the expense of firm customers desiring to acquire additional gas to meet any future increases in their requirements.

The Commission orders:

(A) Authorization is granted to Applicant to export natural gas from the United States to Canada, as hereinabove described and as set forth in the application, as supplemented, in Docket No. CP66–33, upon the conditions herein set forth and subject to the provisions of the Natural Gas Act and the Commission's Regulations issued thereunder.

(B) The authorization granted herein is conditioned upon Applicant's obtaining any related necessary authorizations from the National Energy Board of Canada.

(C) The maximum annual volume and maximum daily volumes exported for sale to Tecumseh shall not exceed 3,000,000 Mcf and 20,000 Mcf, respectively, and the total volumes to be exported under the instant authorization shall not exceed 6,000,000 Mcf.

(D) Applicant shall inform the Commission of the date the total volume of 6,000,000 Mcf has been delivered and deliveries have ceased, under the instant authorization, within 20 days of such date.

(E) Applicant shall curtail or interrupt service to Tecumseh to the extent required to meet existing or future contracted maximum delivery obligations for firm service to its customers, and Applicant shall not give priority to Tecumseh for additional gas under this contract at the expense of firm customers desiring to acquire additional gas to meet any future increases in their requirements.

(F) Docket No. CP66–34 is cancelled.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

PANHANDLE EASTERN PIPE LINE COMPANY, DOCKET NO. CP66-48

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued November 8, 1965)

On August 12, 1965, Panhandle Eastern Pipe Line Company (Applicant) filed in Docket No. CP66-48 an application, as supplemented on September 23, 1965, pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas in order to export said gas for sale to Tecumseh Gas Storage, Limited, (Tecumseh) all as more fully set forth in the application, as supplemented, in this proceeding.*

Applicant proposes to transport natural gas in order to export and sell to Tecumseh 3,000,000 Mcf per year for a two year period with any make-up gas to be delivered during the third year. Total sales are limited to 6,000,000 Mcf. The proposed export and sale is to be accomplished through Applicant's existing facilities under the Detroit River, at the international boundary, connecting with those facilities of Union Gas Company of Canada, Limited (Union). Tecumseh will utilize the gas as base storage. Sales to Tecumseh will be completely interruptible on a daily basis and curtailable to the extent of 20 percent on an annual basis.

Applicant will deliver the subject gas to Union at the above-described interconnection of the two systems and Union will transport such gas for delivery to Tecumseh's storage system.

Applicant and Tecumseh have entered into an agreement, dated April 6, 1965, providing for the proposed sale.

No additional facilities will be required by Applicant.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application, as supplemented, has been filed.

At a hearing held on November 4, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, supplement and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Panhandle Eastern Pipe Line Company, a Delaware corporation having its principal places of business in New York City, New York, and in Kansas City, Missouri, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of October 17, 1945, in Docket No. G-254 (4 FPC 1081).

(2) The transportation of natural gas hereinbefore described, as more fully described in the application, as supplemented, in this proceeding, is to be in

* On July 29, 1965, Applicant filed related applications pursuant to Section 3 of the Natural Gas Act and Executive Order No. 10485 in Docket Nos. CP66-33 and CP66-34, respectively, requesting authorization to export natural gas and to operate the necessary existing facilities at the international boundary between the United States and Canada for the export of natural gas. The application in Docket No. CP66-34 will be considered as an application to amend further the amended permit, as further amended, in Docket No. G-10798. Said amended permit, as further amended, and the export authorization requested in Docket No. CP66-33 will be issued concurrently with the subject order, *supra*, p. 1265.

interstate commerce, subject to the jurisdiction of the Commission, and such transportation by Applicant is subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The transportation of natural gas by Applicant is required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(3) and (e) of Section 157.20 of such Regulations.

(6) The certificate issued hereinafter should be conditioned upon Applicant's obtaining any related necessary authorizations from the National Energy Board of Canada.

The Commission orders:

(A) A certificate of public convenience and necessity is issued authorizing Applicant, Panhandle Eastern Pipe Line Company, to transport natural gas in order to export natural gas for sale to Tecumseh as hereinbefore described, all as more fully described in the application, as supplemented, in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(3) and (e) of Section 157.20 of such Regulations.

(C) The certificate issued by paragraph (A) above is conditioned upon Applicant's obtaining any related necessary authorizations from the National Energy Board of Canada.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

BILL D. SHORT, PROJECT NO. 1944

ORDER ISSUING NEW LICENSE (MINOR)

(Issued November 8, 1965)

Application was filed on March 5, 1965, by Bill D. Short (Applicant) of Baranof, Alaska, for a new license under the Federal Power Act (Act) for constructed minor Project No. 1944, located on Baranof Island and Baranof River, a tributary of Warm Spring Bay, in the First Judicial Division, Alaska, and affecting lands of the United States within the Tongass National Forest.

The last license for the project, which was issued on May 7, 1959, 21 FPC 641, jointly to Applicant herein and Donald L. McDaniel for a period of 5 years, effective as of June 23, 1958, expired on June 22, 1963. By letter from Applicant dated August 27, 1963, we were advised that the partnership between Applicant and Donald L. McDaniel had been dissolved, and that any new license for the project should be issued to the Applicant herein solely. The energy generated by the project is used at tourist cabins and other buildings owned by Applicant.

The Secretary of the Army and the Chief of Engineers offer no objection to the issuance of a new license for the project.

The Department of the Interior, in reporting on the application, has advised that the continued operation of the project would have no effect upon game and fur animals, and no fish passage facilities or other special measures for fish and wildlife are necessary.

The Chief, Forest Service, acting for the Secretary of Agriculture, who has supervision over the Tongass National Forest, has advised that the project would not interfere or be inconsistent with the purposes for which the Tongass National Forest was created or acquired, provided any new license for the project is made subject to the same provisions for the protection of National Forest lands as were included in the last license for the project. The license conditions herein are identical to those included in the last license.

The Department of Health, Education, and Welfare, has advised that the present project operation does not contribute to water quality problems nor can it be expected to create such problems in the future, and any new license for the project will have no adverse effect on water quality.

The Department of Fish and Game, State of Alaska, has advised that the project will not adversely affect the fishery values of Warm Spring Bay and Baranof Lake, and the agency therefore has no comments, recommendations or objections to the project from a conservation point of view.

Annual charges under the last license have been paid through the expiration date of license. Since the application for new license recites that the project works and lands are substantially unchanged, this new license fixes the same annual charges as that fixed in the expired license, namely, $5.00 for reimbursing the United States for the costs of administration of Part I of the Act, and $5.00 for recompensing the United States for the use, occupancy, and enjoyment of its lands by the project.

In our order on rehearing issued February 17, 1965, in *Wisconsin Power & Light Company, Project No. 2347, et al.*, 33 FPC 275, we stated that we would have no objection to the issuance of licenses for minor projects without waiving Sections 14 and 15 of the Federal Power Act and the other provisions of the Act necessary to the effectuation of those sections, provided the minor project applications are timely supplemented pursuant to Section 4.50 of our Regulations under the Act (18 CFR § 4.50), which relates to applications for major projects. In the event the Applicant herein wishes a license in which those provisions of the Act are not waived he should so advise us within 30 days from the date of issuance of this order and file his supplemental application within 30 additional days thereafter.

The Commission finds:

(1) Applicant is a citizen of the United States and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effectuate the purposes of a license for the project.

(2) Public notice of the filing of the application has been given. No protests or petitions to intervene have been received. No conflicting application is before the Commission.

(3) The project does not affect a Government dam, nor will the issuance of a license therefor, as hereinafter provided, affect the development of any water resources for public purposes which should be undertaken by the United States.

(4) Subject to the terms and conditions hereinafter imposed, the project will be best adapted to a comprehensive plan for improving or developing

a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, and for other beneficial public uses, including recreational purposes.

(5) The issuance of a license for the project will not interfere or be inconsistent with the purposes for which the Tongass National Forest was created or acquired.

(6) The amount of annual charges to be paid under the new license for the purpose of reimbursing the United States for the costs of administration of Part I of the Act, and for recompensing it for the use, occupancy, and enjoyment of its lands by the project is reasonable as hereinafter fixed and specified.

(7) It will be in the public interest to waive pursuant to Section 10(i) of the Act the terms and conditions contained in the following sections of Part I of the Act:

Sections 4(b), except the second sentence thereof; 4(e), insofar as it relates to approval of plans by the Chief of Engineers and the Secretary of the Army and to public notice; 6, insofar as it relates to public notice and to the acceptance and expression in the license of terms and conditions of the Act which are hereinafter waived; 10(c), insofar as it relates to deprication reserves; 10(d); 10(f); 11; 12; 14, except insofar as the power of condemnation is reserved; 15; 19; 20; 22; and 23(a), insofar as it relates to the determination of fair value.

(8) Revised Exhibit K (FPC No. 1944–1) on file with the Commission and included in the application for new license by reference thereto, conforms to the Commission's rules and regulations and should be reapproved as part of this new license.

The Commission orders:

(A) This new license is hereby issued to Bill D. Short, of Baranof, Alaska, under Sections 4(e) and 10(i) of the Federal Power Act, for a period of 5 years, effective as of June 23, 1963, for the continued operation and maintenance of minor Project No. 1944, located on Baranof Island and Baranof River, a tributary of Warm Spring Bay, Alaska, and affecting lands of the United States within the Tongass National Forest, subject to the terms and conditions of the Act insofar as not expressly waived herein, which Act is hereby incorporated as a part of this new license, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) Project No. 1944 consists of:

(i) All lands constituting the project area and enclosed by the project boundary or the limits of which are otherwise defined.

(ii) A concrete weighted pipe intake, 1578 feet of woodstave pipe, a frame powerhouse with installation of about 4 (four) horsepower; and short distribution lines; and all other structures, fixtures, equipment or facilities used or useful in the operation and maintenance of the project and located on the project area; and all rights and interests therein, the possession of which is necessary in the maintenance and operation of the project.

(C) This license is also subject to the terms and conditions set forth in Form L–7, December 15, 1953, entitled "Terms and Conditions of License for Minor Project Affecting Lands of the United States", (17 FPC 486) which terms and conditions, designated as Articles 1 through 14, are attached hereto and made a part hereof; and subject to the following special conditions set forth herein as additional articles:

Article 15. The Licensee shall comply with such reasonable modifications of the project structures and operation in the interest of fish and wildlife resources as may be hereafter prescribed by the Commission upon the recommendation of the Secretary of the Interior.

Article 16. The Licensee is hereby limited under the terms of this license to diversion from Baranof River of one (1) cubic foot of water per second, said amount being the approximate capacity of the constructed project works. In case a license for more complete development of the stream is granted, such license shall contain a provision safeguarding the Licensee in his right to divert, during the life of this license, the said one (1) cubic foot per second of water except when the natural flow of the stream falls below eight (8) cubic feet per second, at which time the Licensee shall be entitled to excess of natural flow over the first seven (7) cubic feet previously assigned under the license for Project No. 1185; provided, that should an applicant for a license for the more complete development so elect he may be required, in lieu of releasing said one (1) cubic foot per second of water to flow down Baranof River for the use of the Licensee, to furnish the Licensee free of charge, at the townsite boundary, five (5) continuous electrical horsepower or such part thereof and at such times as the Licensee may demand, and the Licensee shall accept this provision in lieu of the one (1) cubic foot of water herein before provided.

Article 17. The Licensee shall pay to the United States the following annual charges, effective as of June 23, 1963:

(i) For the purpose of reimbursing the United States for the costs of administration of Part I of the Act, $5.00; and

(ii) For the purpose of recompensing the United States for the use, occupancy, and enjoyment of its lands, $5.00.

(D) The revised exhibit designated in finding (8) above is hereby reapproved and made a part of this new license.

(E) The terms and conditions of the Act, which it has been found above to be in the public interest to waive, are hereby excluded from this license.

(F) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgement of the acceptance of this license, it shall be signed for the Licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

NORTHERN NATURAL GAS COMPANY. DOCKET NO. CP66-75

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued November 9, 1965)

On September 15, 1965, Northern Natural Gas Company (Applicant) filed in Docket No. CP66-75 an application pursuant to Section 7(c) of the Natural Gas Act, as implemented by Section 157.7(b) of the Regulations under the Act, for a certificate of public convenience and necessity authorizing the

construction during the calendar year 1966 and the operation of certain facilities to enable Applicant to take into its certificated main pipeline system natural gas which will be purchased from producers thereof, all as more fully set forth in the application in this proceeding.

The purpose of this "budget-type" application is to augment Applicant's ability to act with reasonable dispatch in contracting for and connecting to its pipeline system new supplies of natural gas in various producing areas adjacent to said system. Additionally, Applicant will construct and operate horsepower and pipeline additions to present gathering systems.

The total cost of the facilities covered by this application will not exceed a maximum of $5,000,000, with no single project to exceed a cost of $500,000, which costs are proposed to be financed from cash on hand or from funds generated from operations.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on November 4, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Northern Natural Gas Company, a Delaware corporation having its principal place of business in Omaha, Nebraska, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of April 6, 1943, in Docket No. G-280 (3 FPC 967).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit within 60 days after the expiration of the authorization granted hereinafter, a statement in compliance with subparagraph (3) of the Section 157.7(b) of the Commission's Regulations under the Natural Gas Act.

(6) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(7) The authorization hereinafter granted should be limited to construction during the calendar year 1966 and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $5,000,000, with no single project to exceed a cost of $500,000.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity is issued authorizing Applicant, Northern Natural Gas Company, to construct during the calendar year 1966, the proposed facilities hereinbefore described, as more fully described in the application in this proceeding, and to operate such facilities only to take natural gas supplies from producers who have received authorization from the Commission to sell natural gas to said Applicant.

(B) Applicant shall submit within 60 days after the expiration of the authorization granted by paragraph (A) above a statement in compliance with subparagraph (3) of Section 157.7(b) of the Commission's Regulations under the Natural Gas Act.

(C) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(D) The authorization granted in paragraph (A) above is limited to construction during the calendar year 1966, and the total expenditures for facilities to be constructed thereunder are limited to a maximum of $5,000,000 with no single project to exceed a cost of $500,000.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

PANHANDLE EASTERN PIPE LINE COMPANY, DOCKET NO. CP65-255

ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued November 9, 1965)

On August 20, 1965, Panhandle Eastern Pipe Line Company (Applicant), filed in Docket No. CP65-255 an application to amend the order of the Commission issued in said docket June 28, 1965, 33 FPC 1295, which order authorized an expansion program which would increase Applicant's peak day capacity by approximately 235,000 Mcf per day and enable it to provide increased volumes of natural gas to its existing customers for the 1965-1966 winter season, as more fully set forth in the application to amend.

Applicant seeks amendment of said order so as to authorize Applicant to provide increased summer and winter contract demand quantities to Missouri Power and Light Company, City of Morton, Illinois, Village of Westville, Illinois, Bowling Green Gas Company, The Gas Service Company and Michigan Gas Utilities Company as set forth in Schedule A attached hereto, and to provide up to 1,500 Mcf per day to fuel turbine powered generators of the Toledo Edison Company. In order to provide service to the Toledo Edison Company, Applicant proposes to substitute 6.1 miles of 8-inch pipe rather than the 6-inch pipe originally authorized in Defiance, Ohio, lateral and install a metering and regulating station. The additional cost attributable to the line substitution is estimated at $39,000, while the cost of the metering and regulating station is estimated at $20,000.

The additional volumes proposed to be delivered to The Gas Service Company will require the construction of an additional delivery point in Marion County, Missouri at an estimated cost of $20,000. Applicant also proposes the addition of five miles of new 6-inch lateral line to Fortville, Indiana, because of a change in the sales distribution location from that originally anticipated and thereby provide continued and uninterrupted service to the Greenfield Gas Company. The cost of the 6-inch lateral is estimated at $151,000.

The cost of the additional facilities proposed in this amendment is estimated at $230,000.

Due notice of the filing of the application to amend and opportunity for hearing thereon have been given by publication in the Federal Register on September 4, 1965, (30 F.R. 11358). No protest, petition to intervene, or notice of intervention has been filed in the proceeding concerning this amendment.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act, and the public convenience and necessity require that the Commission's order issued June 28, 1965, in Docket No. CP65-255 be amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order, issued June 28, 1965, in Docket No. CP65-255 is amended by authorizing Panhandle Eastern Pipe Line Company to (1) increase summer and winter contract demand quantities to Missouri Power and Light Company, City of Morton, Illinois, the Village of Westville, Illinois, Bowling Green Gas Company, The Gas Service Company and Michigan Gas Utilities Company, as set forth in Schedule A attached, (2) provide up to 1,500 Mcf per day to Toledo Edison Company to fuel turbine powered generators, substitute 6.1 miles of 8-inch pipe in lieu to the 6-inch pipe originally authorized and construct and operate a delivery point in Defiance County, Ohio, (3) construct and operate an additional delivery point in Marion County, Missouri, for the additional volumes of gas to be delivered to The Gas Service Company in (1) above and (4) construct and operate an additional five miles of 6-inch lateral line to Fortville, Indiana, to provide service to the Greenfield Gas Company, as hereinbefore described and as set forth in the subject application to amend.

(B) Applicant shall curtail or interrupt service to Toledo Edison Company herein authorized to the extent required to meet existing or future contracted maximum delivery obligations for first service to its customers; and shall not give priority to Toledo for additional gas under the contract at the expense of firm customers desiring to acquire additional gas to meet any future increases in their requirements.

(C) In all other respects said order shall remain in full force and effect.

(D) The grant of the certificate issued hereby for the sale of gas to Toledo Edison Company shall not be construed as determining for the purpose of any future rate proceeding involving Applicant the matter of the proper costs to be allocated to such sale undertaken pursuant to the authorization granted herein.

SCHEDULE A

TABULATION FOR REVISED QUANTITIES (VOLUMES IN MCF)

Purchaser	April	May	June	July	August	September	October	November to March
Village of Westville:								
Present	1,190	660	215	110	110	420	1,070	2,200
Proposed	1,190	660	240	150	150	430	1,070	2,200
Net increase	0	0	25	40	40	10	0	0
Missouri Power & Light:								
Present	34,500	22,000	11,000	8,000	9,000	16,000	31,500	57,762
Proposed	34,500	22,000	11,000	9,000	10,000	16,000	32,500	57,762
Net increase	0	0	0	1,000	1,000	0	1,000	0
Bowling Green Gas:								
Present	1,200	700	275	200	200	500	1,000	2,250
Proposed	1,200	700	325	225	250	500	1,000	2,250
Net increase	0	0	50	25	50	0	0	0
The Gas Service Co.:								
Present	25,850	13,675	6,790	6,135	6,135	11,090	19,175	32,025
Proposed	26,350	14,175	7,290	6,635	6,635	11,590	19,675	32,525
Net increase	500	500	500	500	500	500	500	500
Michigan Gas Utilities:								
Present	17,800	14,400	7,000	6,000	6,000	12,750	17,000	32,000
Proposed	23,000	15,000	10,000	7,000	7,500	15,000	21,000	32,000
Net increase	5,200	600	3,000	1,000	1,500	2,250	4,000	0
City of Morton:								
Present	2,800	1,860	1,400	1,250	1,300	2,700	4,400	6,300
Proposed	2,800	1,860	1,400	1,250	1,300	3,300	4,400	6,300
Net increase	0	0	0	0	0	600	0	0
Total increase	5,700	1,100	3,575	2,565	3,090	3,360	5,500	500

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

PORTLAND GENERAL ELECTRIC COMPANY, PROJECT NO. 2195

ORDER EXTENDING TIME FOR FILING PROJECT SPILLWAY PLANS

(Issued November 9, 1965)

On September 13, 1965, Portland General Electric Company, licensee for Project No. 2195, filed application for a two-month extension of the time specified in Article 36 of its license within which to submit for Commission approval plans to increase the spillway capacity of the River Mill Development of the project to 150,000 cubic feet per second.

Article 36 was included in the license by Amendment No. 3, issued April 23, 1965, 33 FPC 876, and required the licensee to submit such plans within 6 months of the date of the order, namely by October 23, 1965.

In support of its application, the licensee advises that immediately after the issuance of the amendment, it employed a firm of consulting engineers to prepare plans, specifications and cost estimates for an increase in the River Development spillway capacity; that the firm has submitted three proposed plans and is studying four more; and it now appears that all of the plans will not be available to the licensee for study and filing by the licensee within the time prescribed in Article 36 of the license.

The Commission finds:

In the circumstances, it will not be incompatible with the public interest to grant the extension as applied for.

The Commission orders:

The time specified in Article 36 of the license for Project No. 2195 within which to submit for Commission approval plans to increase the spillway capacity of the River Mill Development of the project is hereby extended to and including December 23, 1965.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., David S. Black and Carl E. Bagge.

ROY M. HUFFINGTON, INC., ET AL., DOCKET NO. G–18680

ORDER ACCEPTING OFFER OF SETTLEMENT, REQUIRING FILING OF CONTRACT AMENDMENT, AND PROVIDING FOR REFUNDS

(Issued November 9, 1965)

On July 19, 1965, Roy M. Huffington, Inc., *et al.* (Huffington) filed an offer of settlement in this proceeding pursuant to Section 1.18(e) of the Commission's Rules of Practice and Procedure involving a sale of natural gas to Transcontinental Gas Pipe Line Corporation (Transco) made under Huffington's FPC Gas Rate Schedule No. 1, in the South Intracoastal City Field, Vermilion Parish, Louisiana. Huffington initiated the sale under the authority of an unconditioned temporary certificate, and the proceeding involving its application for a permanent certificate of public convenience and necessity was consolidated with the proceedings in *Union Texas Petroleum, et al.*, Docket No. G–13221, *et al.*, in which we issued our Opinion No. 436 and Opinion No. 436–A (32 FPC 254, 952).

Under the terms of its offer, Huffington proposes to reduce its presently effective rate of 22.8¢ per Mcf to the 20.0¢ per Mcf rate required by Opinion No. 436. All escalation provisions will be removed and the settlement price will be effective for the remaining term of the contract.

Huffington will refund approximately $10,200, exclusive of interest, to Transco, which is the estimated amount collected subject to refund above the settlement rate from July 23, 1964, the date of issuance of Opinion No. 436 to the date of issuance of this order, and its revenues will be reduced approximately $9,000 annually below its presently effective rate at the present volume of delivery.

Upon approval by the Commission of its offer of settlement, Huffington proposes to withdraw its appeal from Opinion Nos. 436 and 436–A now pending as Case No. 7912 in the United States Court of Appeals for the Tenth Circuit.

No protests or objections to the offer of settlement have been filed by any party to this proceeding.

While we find that acceptance of Huffington's offer of settlement is in the public interest, such acceptance is without prejudice to any finding or order of the Commission in any future proceedings, including area rate or other similar proceedings, involving Huffington's rate.

The Commission finds:

The proposed settlement of the above-designated proceedings, on the basis described herein, as more fully set forth in the offer of settlement filed with

the Commission by Huffington on July 19, 1965, is in the public interest and appropriate to carry out the provisions of the Natural Gas Act and should be approved and made effective as hereinafter ordered.

The Commission orders:

(A) The offer of settlement filed with the Commission by Huffington on July 19, 1965, is hereby approved in accordance with the provisions of this order.

(B) Huffington shall file, within 30 days from the date of issuance of this order, an executed contractual amendment to its FPC Gas Rate Schedule No. 1, eliminating all escalation and tax reimbursement provisions therefrom and a notice of change in rate to the settlement rate of 20.0¢ per Mcf at 15.025 psia as specified in its offer of settlement. The notice of change and contractual amendment shall be submitted in accordance with Part 154 of the Commission's Regulations under the Natural Gas Act.

(C) Huffington shall compute the difference between the rate collected and the settlement rate for the period from July 23, 1964, to the date of this order for sales of natural gas to Transco, and within 30 days from the date of this order shall submit a report to the Commission, and serve a copy on Transco, setting out the amount of refunds it has computed it is obligated to make (showing separately the principal and interest) the basis used for such determination and the period covered.

(D) Huffington shall, within 45 days from the date of issuance of this order, refund with applicable interest to the date of refund to Transco the monies computed in accordance with paragraph (C) above, and shall within 10 days thereafter file with the Commission a release from Transco showing receipt of the refunds in conformity with the settlement proposal as approved herein.

(E) Upon withdrawal of the appeal now pending in the Tenth Circuit and upon notification by the Secretary of the Commission that Huffington has otherwise complied with the terms and conditions of the order, the rate and charge of 20.0¢ per Mcf at 15.025 psia, specified in Huffington's offer of settlement, shall be effective as of the date of issuance of this order, and the certificate of public convenience and necessity granted it in Opinion No. 436 shall be deemed effective.

(F) The acceptance by the Commission of Huffington's offer of settlement, is without prejudice to any findings or determinations that may be made in any proceeding now pending, or hereafter instituted by or against Huffington, including area rate or other similar proceedings.

Commissioner Black *dissenting.*

BLACK, *Commissioner, dissenting:*

I dissent. The essence of a bona fide settlement is a *quid pro quo* exchange. That essence is lacking here. Huffington here proposes, and the Commission accepts, the substitution of the Commission's in-line price for the remaining life of the contract in lieu of the contractually authorized rates. Huffington further agrees to drop his appeal of the Commission's Union Texas opinion in return for the Commission's waiving the public's contingent rights to refunds of the difference between the contractually authorized rate collected under the unconditioned temporary certificate and the Commission's in-line price determination. Other parties to the Union Texas opinion will, of course, pursue their appeal; thus, the sole benefit to the public from a settlement with Huffington is the substitution of the in-line price for the remaining life of the contract. Moreover, the record here is void as to the remaining deliverability of the wells which are the subject of these contracts. Thus

we are without the facts essential to evaluate the benefit, if any, which the public will receive from this settlement. Unless it can be demonstrated that there would be at least 5 years of remaining deliverability at the settlement price, I am of the opinion that the benefit which the public would receive is too small to warrant the waiver of Huffington's contingent refund liability.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., David S. Black and Carl E. Bagge.

ROY M. HUFFINGTON, INC., ET AL., DOCKET NO. RI63-478

ORDER DENYING OFFER OF SETTLEMENT

(Issued November 9, 1965)

On July 19, 1965, Roy M. Huffington, Inc., *et al.* (Huffington) filed an offer of settlement in this proceeding pursuant to Section 1.18(e) of the Commission's Rules of Practice and Procedure involving a proposed increase rate for a sale of natural gas made to United Gas Pipe Line Company (United) from the Hayes Field, Calcasieu Parish, Louisiana, under Huffington's FPC Gas Rate Schedule No. 2. Huffington's initial rate for this sale was 18.8¢ per Mcf of natural gas, at 15.025 psia, and the proposed increased rate is 22.8¢ per Mcf which it has been charging and collecting subject to refund since December 26, 1963, such increased rate having been suspended by order of the Commission and placed in effect by Huffington by proper motion filed in accordance with the applicable provisions of the Natural Gas Act. Huffington proposes a settlement rate of 19.25¢ per Mcf. Additionally, Huffington proposes to charge the settlement rate until such time as the just and reasonable area rate is determined in the South Louisiana Area Rate Proceeding, Docket No. AR61-2, and then to charge such rate, and any contractually provided for rates during the remaining contract period. Also, it would eliminate a price redetermination clause from the subject rate schedule.

Under the settlement proposal, Huffington's annual revenues would be decreased approximately $40,250 from that being charged and collected under the currently effective rates, based upon the delivery volumes set forth in Exhibit B to its proposal, and it would refund approximately $8,850, exclusive of applicable interest, to United.

On August 4, 1965, United filed a timely opposition to the subject offer of settlement. United avers that no special or unusual circumstances surrounded the negotiation of its contract with Huffington. In response to Huffington's claim that it was about to lose its leases at the time of its negotiations with United, United denies this, and as to Huffington's statement that its presently effective rate of 22.8¢ per Mcf was the going rate in the field at that time, United points out that although it was paying such rate to Gulf Oil Corporation (Gulf) in this field, the rate was being paid to Gulf subject to refund. Subsequently, Gulf settled the rate at 17.0¢ per Mcf, *Gulf Oil Corporation, et al.*, Docket No. G-9520, *et al.*, 29 FPC 837.

We stated in our order in this proceeding, issued November 20, 1964, 32 FPC 1344, wherein we denied an offer of settlement by Huffington, that "* * * we have never approved a proposed settlement rate in excess of the initial rate or applicable increased rate ceiling except under special or unusual circumstances surrounding the particular sale." We find none here. The applicable increased rate ceiling is 15.75¢ per Mcf, Huffington's initial rate is 18.8¢ per Mcf, and its proposed settlement rate is 19.25¢ per Mcf. Consequently, we cannot approve the instant proposal.

The Commission finds:

It is necessary and proper in carrying out the provisions of the Natural Gas Act and the Regulations thereunder to deny the offer of settlement filed by Huffington with the Commission on July 19, 1965.

The Commission orders:

The offer of settlement filed by Huffington in this proceeding on July 19, 1965, is denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

SABINE PIPE LINE COMPANY, DOCKET NO. CP64-97

ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued November 9, 1965)

On August 26, 1965, Sabine Pipe Line Company (Applicant), filed in Docket No. CP64-97 a petition to amend the certificate of public convenience and necessity issued on March 25, 1964, 31 FPC 696, authorizing Applicant to construct and operate a pipeline to be used to transport natural gas owned by Texaco Inc. (Texaco) from the Erath Plant of Texaco in Vermilion Parish, Louisiana, to Texaco's Port Arthur plants in Jefferson County, Texas, all as more fully set forth in the petition to amend.

The certificate issued March 25, 1964, authorized Applicant, a wholly-owned subsidiary company of Texaco, to construct and operate approximately 127 miles of 24-inch pipeline to transport natural gas for Texaco. Petitioner proposed to transport approximately 155,000 Mcf of natural gas on an average day and approximately 187,000 Mcf on a maximum day during the first full year of operation.

Applicant proposes the following changes in its construction program:

(1) Acquisition of approximately 43 miles of existing 16-inch pipeline from the east bank of the Calcasieu River in the vicinity of Lake Charles, Louisiana, directly to a point approximately 7 miles from Texaco's Port Arthur plants, which line is presently owned by The Texas Pipe Line Company, another wholly-owned subsidiary company of Texaco;

(2) Looping of the above-described 16-inch line with an 18-inch pipeline;

(3) Substitution of 22-inch pipeline for the presently authorized 24-inch pipeline from Texaco's Henry Gasoline Plant to the east bank of the Calcasieu River and the final 7 miles of proposed pipeline.

As noted above, Sabine was authorized to construct facilities from Texaco's Erath Plant. The difference between this and the presently described Henry Gasoline Plant results from the fact that the Henry Gasoline Plant was to be located within the Erath Unit boundry limits but that it was not constructed at the time of Sabine's original application. Sabine states that except for proximity of the Henry Gasoline Plant is entirely unrelated to the Erath Plant.

The estimated cost of construction of the facilities as they are now proposed is $16,512,923, which will be financed initially with cash available from the issuance of Applicant's capital stock to Texaco and a loan to Applicant by Texaco.

The stated reason for the amendment to the construction proposal is that Applicant could achieve approximately the same maximum line capacity with

a slightly smaller diameter pipeline at a saving in current construction cost. The increase in estimated construction cost from the original estimate of $15,700,000 is due to increased labor cost for pipeline construction in South Louisiana and a decision to bury the river crossings so as to minimize the possibility of line damage. Applicant further states that the decision to acquire the existing pipeline of The Texas Pipe Line Company instead of constructing the 43-mile segment of 24-inch line is a saving in construction and right-of-way costs.

Applicant states that by increasing the pressure at which the gas is to be received at Texaco's Henry Plant from 800 psig to 1100 psig, the mainline capacity will be approximately the same as originally proposed.

Due notice of the filing of the application to amend and opportunity for hearing thereon have been given by publication in the Federal Register on September 9, 1965 (30 F.R. 11570). No protest, petition to intervene or notice of intervention has been filed in the proceeding concerning this amendment.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued March 25, 1964, in Docket No. CP64–97 be amended as hereinafter ordered.

The Commission orders:

(A) The Commission's said order issued in Docket No. CP64–97 on March 25, 1964 is amended so as to authorize Applicant to (1) acquire approximately 43 miles of existing 16-inch pipeline of The Texas Pipe Line Company presently extending from the east bank of the Calcasieu River in the vicinity of Lake Charles, Louisiana to a point approximately 7 miles from Texaco's Port Arthur plants, (2) construct and operate an 18-inch pipe-line looping the 43 miles of 16-inch described in (1) above to be acquired from Texas Pipe Line Company, and (3) modify its original facilities by reducing the size of two segments of its main line from 24-inches to 22-inches from the Henry Plant to the east bank of the Calcasieu River (a distance of 79 miles) and the final 7 miles of proposed line.

(B) In all other respects said order shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

NEKOOSA-EDWARDS PAPER COMPANY, PROJECT NO. 2499

ORDER ISSUING LICENSE (MINOR)

(Issued November 10, 1965)

Application was filed on December 9, 1964, by Nekoosa-Edwards Paper Company (Applicant) of Port Edwards, Wisconsin, under Section 4(e) of the Federal Power Act (Act) for a license for constructed Project No. 2499, known as the Unionville Hydroelectric Project, located in the Town of Potsdam on the Raquette River in St. Lawrence County, New York. The project does not affect lands of the United States.

The project was originally constructed in 1907, and the structures and equipment have not been altered since then.

In Docket No. DI–179, *In the matter of Central New York Power Corporation*, the Commission in its Opinion No. 185, issued November 22, 1949, found that the "Raquette River, from its confluence with the St. Lawrence River

to at least Piercefield at about mile 91 is a navigable waterway of the United States." (8 FPC 390). The Unionville project is located on the Raquette River approximately 35 river miles upstream from its confluence with the St. Lawrence River.

The Secretary of the Army and the Chief of Engineers have reported that the plans of the project structures affecting navigation are satisfactory insofar as the interests of navigation are concerned, and recommended for inclusion in any license for the project the terms and conditions in the interests of navigation set forth in attached Form L-9.

The Department of the Interior, in reporting on the application, recommended that the licensee for the project be required to file an "Exhibit R" within a stated period, and that the Department be afforded the opportunity to review the exhibit—all as provided for in Article 12 herein.

The Department of Health, Education, and Welfare has advised that the project has no adverse effects on water supply, water pollution control, or vector control, and none is anticipated.

In our order on rehearing issued February 17, 1965, in *Wisconsin Power & Light Company*, Project No. 2347, *et al.*, 33 FPC 275, we stated that we would have no objection to the issuance of licenses for minor projects without waiving Sections 14 and 15 of the Federal Power Act and the other provisions of the Act necessary to the effectuations of those sections, provided the minor project applications are timely supplemented pursuant to Section 4.50 of our Regulations under the Act (18 CFR § 4.50), which relates to applications for major projects. In the event the Applicant herein wishes a license in which those provisions of the Act are not waived, it should so advise us within 30 days from the date of issuance of this order and file its supplemental application within 30 additional days thereafter.

For the reasons set forth in our April 25, 1962, Opinion No. 357 (27 FPC 830), the license herein granted shall have a termination date of December 31, 1993. Since there was no project construction after 1935, we will make the effective date of the license November 1, 1949, the first day of the month in which we determined the Raquette River to be a navigable water, as set forth above.

Th Commission finds:

(1) Applicant is a corporation organized under the laws of the State of Wisconsin and is authorized to do business in the State of New York, and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effectuate the purposes of a license for the project.

(2) Public notice of the filing of the application has been given. No protests or petitions to intervene have been received. No conflicting application is before the Commission.

(3) The project does not affect a Government dam, nor will the issuance of a license therefor, as hereinafter provided, affect the development of any water resources for public purposes which should be undertaken by the United States.

(4) Subject to the terms and conditions hereinafter imposed, the project will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, and for other beneficial public uses, including recreational purposes.

(5) The installed horsepower capacity of the project hereinafter authorized for the purpose of computing the capacity component of the administrative annual charge is 1,850 horsepower, and the amount of annual charges, based

on such capacity, to be paid under the license for the project, for the costs of administration of Part I of the Act is reasonable as hereinafter fixed and specified.

(6) It will be in the public interest to waive pursuant to Section 10(i) of the Act, the terms and conditions contained in the following sections of Part I of the Act:

Sections 4(b), except the second sentence thereof; 4(e) insofar as it relates to approval of plans by the Chief of Engineers and the Secretary of the Army and to public notice; 6, insofar as it relates to public notice and to the acceptance and expression in the license of terms and conditions of the Act which are hereinafter waived; 10(c), insofar as it relates to depreciation reserves; 10(d); 10(f); 11; 12; 14, except insofar as the power of condemnation is reserved; 15; 19; 20; 22; and 23(a), insofar as it relates to the determination of fair value.

The Commission orders:

(A) This license is hereby issued to Nekoosa-Edwards Paper Company of Port Edwards, Wisconsin, under Sections 4(e) and 10(i) of the Act, for a period effective as of November 1, 1949, and terminating December 31, 1993, for the continued operation and maintenance of Project No. 2499, located on the Raquette River, a navigable water of the United States, subject to the terms and conditions of the Act insofar as not expressly waived herein, which Act is hereby incorporated herein by reference as a part of this license, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) Project No. 2499 consists of:

(i) All lands constituting the project area and enclosed by the project boundary or the limits of which are otherwise defined.

(ii) A 299 foot long, 18 foot high reinforced concrete buttress dam with flashboards, which add 2 feet to the height when in use; a masonry flume 18 feet by 80 feet; a brick and reinforced concrete powerhouse with total installed capacity of 1,850 horsepower operating under an estimated head of 20.5 feet; and all other structures, fixtures, equipment or facilities used or useful in the operation and maintenance of the project and located on the project area, and all rights and interests therein, the possession of which is necessary in the maintenance and operation of the project.

(C) This license is also subject to the terms and conditions set forth in Form L-9 (July 1, 1964) entitled, "Terms and Conditions of License for Constructed Minor Project Affecting Navigable Waters of the United States" (32 FPC 577), which terms and conditions, designated as Articles 1 through 11, are attached hereto, and made a part hereof, and subject to the following special conditions set forth herein as additional articles:

Article 12. The licensee shall, within one year from the date of this license, file with the Commission for approval its proposed recreational use plan for the project. The plan shall be prepared after consultation with appropriate Federal, State and local agencies, and shall include recreational improvements which may be provided by others in addition to the improvements the Licensee plans to provide.

Article 13. The Licensee shall pay to the United States the following annual charge:

For the purpose of reimbursing the United States for the costs of administration of Part I of the Act for the period November 1, 1949, through March 31, 1962, a charge of $5.00 per annum, and effective as of April 1, 1962, an annual charge of $92.50.

(D) The terms and conditions of the Act, which it has been found above to be in the public interest to waive, are hereby excluded from this license.

(E) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgment of the acceptance of this license, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

TRUNKLINE GAS COMPANY v. THE SUPERIOR OIL COMPANY, DOCKET NO. R164-273; THE SUPERIOR OIL COMPANY, DOCKET NOS. G-18168, G-20435 AND G-20577

ORDER ON REMAND REQUIRING PAYMENT OF INTEREST AND MODIFYING ORDERS

(Issued November 10, 1965)*

This case has been remanded to us by the United States Court of Appeals for the Fifth Circuit, pursuant to our request, to permit us to consider whether Trunkline Gas Company (Trunkline), particularly in the light of the filed rate doctrine, should be required to pay interest on the entire amount of a sum we have heretofore required Trunkline to pay The Superior Oil Company (Superior). We have previously held that Trunkline need pay interest on only a portion of such amount.[1] We now conclude that Trunkline should be required to pay interest on the entire amount.

The issue in this case arises from Trunkline's tendering payments for interstate purchases of gas from Superior at rates different from those filed with, and accepted by the Commission. Thus, from September 1963 through January 1964, Trunkline tendered payment of $1,876,630.08, reflecting rates of 14.0¢ per Mcf and 15.5¢ per Mcf under two gas purchases from Superior. However, the total amount payable under the rates of 20.0¢ and 24.05¢ per Mcf on file with the Commission applicable to these two sales[2] was $2,858,-242.90, which is $981,612.82 more than the $1,876,630.08 tendered by Trunkline. Upon the Commission's finding in its order of March 9, 1964, 31 FPC 506, that the proper amounts due Superior must be computed under the filed rates, Trunkline paid Superior the correct principal amount of $2,858,242.90 on March 30, 1964. In addition, Trunkline made an interest payment of $17,-330.80, computed on the $981,612.82 difference between the amounts originally tendered and those actually due. The Commission approved this computation of interest in its orders of April 15 and June 9, 1964. Superior appealed this decision to the Fifth Circuit claiming that the Commission erred in not requiring interest on the $2,858,242.90 representing the full amounts payable by Trunkline. Subsequent to the court's remand order, additional briefs were filed by the parties and by Staff arguing primarily whether the filed rate doctrine supports Superior's position. Subsequently, supplemental briefs were filed relating to the applicability of the recently decided *Phillips* case, No. 7845, filed July 22, 1965, 349 F. 2d 535 (CA10-1965).

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* See orders issued January 3, 1966 and March 4, 1966 re rehearing, etc., 35 FPC 14, 335.

[1] By orders issued herein on April 15, 1964, and June 9, 1964, 31 FPC 934, 1511.

[2] Superior's FPC Gas Rate Schedules Nos. 1 and 3, respectively.

Upon reconsideration of this issue, we conclude that the filed rate doctrine supports the position advanced by Superior and by Staff, and that the *Phillips* case, *supra*, is inapposite.

To summarize, under the language of Section 4(d) of the Natural Gas Act, and numerous judicial interpretations,[3] Trunkline's tenders of lesser amounts than those due under the filed rates were neither lawful nor effective. Superior could not have lawfully accepted such tenders. Under these circumstances, the tender of less than the filed rate does not excuse the payment of interest on any part of the amount due.[4]

Trunkline's principal argument seems to be that this Commission has final authority over the rates applicable to the instant sales, and that it has a right to seek relief with respect thereto. Based on these two premises, Trunkline concludes that Superior should have accepted the original tenders. We agree with Trunkline's assertions that this Commission has jurisdiction over the subject matter of the dispute and that Trunkline has a right to seek relief from this Commission. However, the right to seek relief does not, as Trunkline concludes, carry with it the power to act prior to the Commission's determination as though the relief sought had been granted.

In addition, Trunkline relies on the *Associated* case[5] as authority for Superior's being free to accept the original tenders without prejudging any of its rights. In effect, the *Associated* case held that a seller may place a higher rate in effect but continue to collect a lesser rate pending the determination of the justness and reasonableness of the higher rate. We do not believe that this decision supports Trunkline's position for two reasons. First, the court held only that the seller has an option, where the buyer does not object, to charge a lower rate while having a higher rate in effect. Here, Superior exercised its option to collect the higher rate. Secondly, the Commission amended its rules and regulations by Order No. 230, issued December 5, 1960, 24 FPC 1058, so as, in effect, to eliminate the choice afforded by *Associated*.

Finally, Trunkline relies on certain court decisions involving situations where partial payment had been made where the court required interest only on the additional amounts due and owing. These cases are distinguishable and not controlling here because they did not present the decisive question whether the partial payments were lawfully proferred and accepted.

The *Phillips* decision, *supra*, has no applicability to the instant situation. The filed rate doctrine was not involved in *Phillips*, since Phillips did charge and collect, subject to refund, the rates on file with this Commission during the locked-in periods involved in those proceedings. Phillips' subsequent tender of what both it and the purchaser agreed was the sum subject to refund when the filed rates were found to lack contractual support does not involve any violation of that doctrine.

The Commission orders:

(A) Trunkline shall, within 60 days of the date of issuance of this order, pay Superior the amount of $33,212.67, constituting unpaid interest on the principal amounts paid by Trunkline on March 30, 1964, plus additional

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[3] See *Hope Natural Gas Co.* v. *F.P.C.*, 134 F. 2d 287 (CA4–1943) reversed on other grounds, 320 U.S. 591, *Socony Mobil Oil Co., Inc.* v. *Brooklyn Union Gas Co.*, 299 F. 2d 692, 694 (CA5–1962), cert. denied, 371 U.S. 887, *Northwestern Public Service Company* v. *Montana-Dakota Utilities Co.*, 181 F. 2d 19, 22–23 (CA8–1950), affirmed, 341 U.S. 246; *United States* v. *I.C.C.*, 352 U.S. 158, 172 (1956); *River Terminals Corporation* v. *Southwestern Sugar & Molasses Company*, 253 F. 2d 922 (CA5–1958), reversed on other grounds, 360 U.S. 411; and *United States* v. *Associated Air Transport, Inc.*, 275 F. 2d 827, 832–33 (CA5–1960).

[4] *Pacific Mail S. S. Co.* v. *Western Pacific R. Co.*, 251 Fed. 218, 222, (CA9).

[5] *Associated Oil & Gas Co.* v. *F.P.C.*, 280 F. 2d 31 (CA5–1960).

interest on such interest at 7 percent per annum accruing from March 30, 1964, until the date the payment is made. Trunkline shall, simultaneously with the making of such payment, transmit to the Commission a statement showing the amount so paid and the computations underlying such payment.

(B) Within 75 days of the date of issue of this order, Superior shall transmit to Trunkline and to the Commission its written acceptance of the payments ordered in paragraph (A) above, or in the event Trunkline's payments are not made or are not deemed satisfactory, a statement setting forth the pertinent facts in this regard.

(C) The Commission's orders issued in this proceeding on April 15, 1964 and June 9, 1964, are modified to require Trunkline to pay interest to Superior as hereinabove set forth.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

AREA RATE PROCEEDING, AR61-1; CLAUDE E. AIKMAN, ET AL., G-18466, ET AL.; NORTH CENTRAL OIL CORPORATION (OPERATOR), ET AL., CI60-435, ET AL.

ORDER MODIFYING OPINION NO. 468-A

(Issued November 12, 1965)

On October 22, 1965, a number of respondents to this proceeding applied for rehearing, or, in the alternative, for reconsideration of Opinion No. 468-A issued October 4, 1965, 34 FPC 1068, insofar as that opinion stated that the New Mexico Oil and Gas Ad Valorem Production Tax should not be included in computing the applicable New Mexico production taxes which may be added to the base price to be collected by New Mexico producers of natural gas.

Examination of the cost computation from which was derived the basic price, not including production taxes, revealed that certain payments of the New Mexico Oil and Gas Ad Valorem Production Tax were included in the computation. Obviously a tax included as part of the basic cost computation should not be recouped by the producers a second time by being added on to the base price in which the cost has already been included. Upon further review of the record and the October 22 motion by the respondents it appears that certain producers had so classified the payment of the subject tax that it was not included in our costing computation.

It appears that, while a number of companies included the New Mexico tax payments as part of the cost computation that determined the base price, a far greater number treated the New Mexico tax as a production tax so that their payments thereunder never found their way into the computation of the cost upon which the base price was established. Examination of the volumes of gas-well gas sold by the various producers in New Mexico establishes that the volume produced by companies which did not treat the New Mexico tax as a production tax were relatively small whereas the overwhelming majority of New Mexico gas-well gas upon which this tax levied was produced by companies which treated this tax as a production tax. In these circumstances, we think that equity requires that the New Mexico Oil and Gas Ad Valorem Production tax be considered one of the production taxes which may be added to the base price for gas produced in New Mexico. Opinion No. 468-A should be modified accordingly.

The Commission orders:

Opinion No. 468–A is hereby modified to the extent that in the computation of the applicable state and local production taxes for New Mexico there may be included the New Mexico Oil and Gas Ad Valorem Production Tax.

Commissioner Bagge *not participating.*

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

AREA RATE PROCEEDING (PERMIAN BASIN), DOCKET NO. AR61–1, ET AL.

ORDER AMENDING ORDER TO SHOW CAUSE

(Issued November 12, 1965)*

On August 5, 1965, 34 FPC 424, the Commission issued in the above-designated proceeding an order requiring certain respondents to show cause why the determinations set forth in Opinion No. 468[1] should not apply to sales of gas and to certificate applications in the Permian Basin which were not consolidated in the Permian case. As a result of further review of the Commission's records it appears that the August 5 order failed to cover all of the sales of gas and certificate applications in the Permian Basin which were not consolidated. Accordingly, it appears to be necessary and proper to amend the August 5 show cause order as set forth below.

The Commission orders:

(A) Appendix "A" to the August 5 order to show cause is hereby amended by adding "Yates Petroleum Company".

(B) Appendix "B" to the August 5 order to show cause is hereby amended by adding "Bartessa Oil Corporation. Docket No. CI61–1725", "Chase Petroleum Company, *et al.*, Docket No. CI64–820", "Roy E. Kimsey, Jr. (Operator), *et al.*, Docket No. CI65–782", and "Maxwell Oil Company, Docket Nos. G–18231 and G–18232".

(C) Appendix "C" to the August 5 order to show cause is hereby amended by adding the following:

Producer	*Docket No.*
George T. Abell	RI66–30.
Hanley Co., *et al*	RI65–633, RI66–7.
Hanley Co. (Operator), *et al*	RI65–614.
C. E. Long, *et al*	RI66–31.
Marathon Oil Co	RI66–9.
Marathon Oil Co. (Operator), *et al*	RI66–8.
The Pure Oil Co.[2]	RI66–16.
Skelly Oil Co. (Operator), *et al*	RI66–29.
Socony Mobil Oil Co., Inc	RI66–21.
Socony Mobil Oil Co., Inc. (Operator)	RI66–22.
Sohio Petroleum Co	RI66–26.
Sohio Petroleum Co. (Operator), *et al*	RI66–25.
Sun Oil Co	RI65–582, RI66–18.
Texaco Inc	RI66–1.
Warren Petroleum Corp	RI66–17.

*See order issued December 3, 1965, 34 FPC 1411.

[1] By order issued October 12, 1965, 34 FPC 1135, in the above-designated proceeding all references to Opinion No. 468 were to read as meaning Opinion No. 468 as modified and clarified by Opinion No. 468–A, 34 FPC 159, 1068, and accompanying order.

[2] Union Oil Co. of California has succeeded to the interest of The Pure Oil Co.

(D) Appendix "D" to the August 5 order to show cause is hereby amended by adding the following:

Producer	*Docket No.*
W. K. Byrom	CI64-732.
Cabot Corp. (SW), *et al*	G-18619, CI60-110.
Gulf Oil Corp. (Operator), *et al*	CI65-983.
Humble Oil & Refining Co	CI61-1581.
Oddesa Natural Gasoline Co	CI62-990.
Joseph I. O'Neill, Jr., *et al*	G-19113.
Pan American Petroleum Corp	CI60-476.
Shell Oil Co	CI61-1491.
Sinclair Oil & Gas Co	CI61-498, CI64-438.
Standard Oil Co. of Texas, a division of Chevron Oil Co	G-18023, G-18024, G-18025.
Socony Mobil Oil Co, Inc	G-18725, G-18728, G-18729.
Sun Oil Co	CI61-372.
Tidewater Oil Co	CI61-1016, CI64-794.
Union Texas Petroleum Co., a division of Allied Chemical Corp., *et al*	CI64-689.
Phillips Petroleum Co	CI61-1529.
Joseph E. Seagram, d/b/a Texas Pacific Oil Co	CI66-103.

(E) Those parties added to the subject proceeding as respondents above shall comply with the applicable provisions of ordering paragraphs (A), (B) and (C) of the order of August 5, as modified by the order of October 12, requiring the respondents to show cause by December 6, 1965 why the determinations set forth in Opinion Nos. 468 and 468-A should not apply to those sales of gas and to certificate applications in the Permian Basin which were not consolidated in the subject proceeding.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

AREA RATE PROCEEDING, ET AL. (PERMIAN BASIN AREA), DOCKET NO. AR61-1, ET AL.

ORDER GRANTING PARTIAL STAY[1]

(Issued November 12, 1965)[2]

The United States Court of Appeals for the Tenth Circuit on October 20, 1965, in *Skelly Oil Co.* v. *F.P.C.* (CA10 No. 8385, *et al.*) stayed through January 20, 1966, the effectiveness of Opinion Nos. 468 and 468-A, 34 FPC 159, 1068, as to Skelly Oil Company, Phillips Petroleum Company and Warren Petroleum Corporation. The Court's order further provided that any member of the Court may grant a similar stay if other petitions for review are filed in or transferred to that Court. Argument was set for January 7, 1966, on the question of further stay.

In light of the Court's stay order, we think it only fair to stay the effectiveness of Opinion Nos. 468 and 468-A as to all producers covered by these opinions, except as noted below. To do otherwise might lead to unnecessary confusion and inequities among the various producers involved here. We shall

[1] This order is not applicable to Skelly, Phillips and Warren, or to any other producer which has filed a petition for court review.

[2] See order extending stay issued February 11, 1966, 35 FPC 211.

therefore stay, *inter alia*, the effectiveness of the rate reductions required under paragraphs (A) and (B) of Opinion No. 468, as amended, and the moratorium on rate increase filings provided in paragraphs (H) and (K) of that opinion. We can find no justification, however, for delaying the filings required by ordering paragraphs (E), (F) and (I) of Opinion No. 468, as amended, although the operative effect of the filings will be stayed.[3] The rate reduction filings under paragraph (E), the statement and filings with respect to quality standards under paragraph (F), and the refund reports required under paragraph (I) are necessary to ascertain the exact scope of the producers' contingent obligations to make refunds if Opinion Nos. 468 and 468–A are ultimately upheld.

Any filings made because of the stay of paragraphs (H) or (K) relating to the moratorium on rate increases will be accepted for filing contingent upon the outcome of the further proceedings on a permanent stay which the Tenth Circuit has scheduled, and these increases, meanwhile can be suspended for five months under Section 4(e) of the Act. Such filings will be rejected, *ab initio*, if the Commission's moratorium is ultimately upheld upon judicial review.

In view of the Court's October 20 order, we are also extending the time for compliance with the filing requirements of paragraph (E) to November 30, 1965, and paragraph (F) and (I) to December 30, 1965.

The Commission orders:

For the reasons set forth above, provisions of Opinion Nos. 468 and 468–A, ordering respondents to take or refrain from taking specified forms of action are stayed until January 20, 1966, except that the filings required by Ordering Clauses (E), (F) and (I) shall be made, the filing date under Paragraph (E) being extended to November 30, 1965 and under paragraphs (F) and (I) to December 30, 1965.

During the pendancy of this stay, or any extension thereof, filings made pursuant to ordering paragraphs (E) will be accepted for informational purposes only and will be kept separate from the filed rate schedules of said producer.

Commissioner Bagge *not participating.*

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

BLANDIN PAPER COMPANY, PROJECT NO. 2362

ORDER ISSUING LICENSE (MAJOR) AND DENYING REQUEST FOR DISCLAIMER OF JURISDICTION

(Issued November 12, 1965)

Application was filed on April 25, 1963, by Blandin Paper Company (Applicant) of Grand Rapids, Minnesota, for a license under Section 4(e) of the Federal Power Act (Act) for constructed major Project No. 2362, known as the Blandin Paper Company Project (originally known as the Grand Rapids Project) located on the Mississippi River, in Itasca County, Minnesota, at the Town of Grand Rapids.

[3] There is also no need to stay the minimum rate provisions in paragraph (G) of Opinion No. 468.

The Grand Rapids project was originally constructed in 1901–02, under an Act of Congress dated February 27, 1899 (30 Stat. 904),[1] as amended by the Act of February 27, 1900 (31 Stat. 33),[2] with a powerhouse containing mechanical grinders. A 600-kw hydroelectric unit was installed in 1916. In 1948 the original timber-crib dam collapsed and the power plant was partly destroyed. The dam was completely reconstructed in 1949. The spillway was rebuilt and a new 1500-kw hydroelectric unit was added. The total cost of reconstruction was reported to be about $1,250,000. The location and plans for the 1949 construction were approved by the Department of the Army on July 7, 1949.

We will first deal with the Applicant's challenge of our jurisdiction to license this project. Applicant contends that the aforementioned Act of Congress authorizing the construction of the original Grand Rapids project exempts the present project from the Commission's licensing jurisdiction under the terms of Section 23(a) of the Federal Power Act.[3] We cannot agree. We are of the opinion that the rebuilding of the project in 1949 was beyond the

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[1] The Act of 1899 provides:

BE IT ENACTED by the Senate and House of Representatives of the United States of America in Congress assembled, That the consent of Congress is hereby granted to the Grand Rapids Water Power and Boom Company, of Grand Rapids, Minnesota, its successors and assigns, to construct across the Mississippi River, at a point within the limits of the village of Grand Rapids, Minnesota, to be approved by the Secretary of War, a dam, canal, and works necessarily incident thereto, for waterpower purposes, and a wagon and foot bridge if desired in connection therewith for the purpose of travel. Said dam shall be so constructed that there can at any time be constructed in connection therewith a suitable lock for navigation purposes: Provided, That the Government of the United States may at any time take possession of said dam without compensation and control the same for purposes of navigation but shall not do so to the destruction of the water power created by said dam to any greater extent than may be necessary to provide proper facilities for navigation:

Provided also, That said dam shall be so constructed that it will not at any time raise the water surface, at a point three hundred feet above said dam, to an elevation higher than the floor of the sluices of the reservoir dam built by the Government at Pokegama Falls on the Mississippi River, in section thirteen, township fifty-five, range twenty-six west of the fourth principal meridian, Minnesota: Provided further, That said dam shall be so constructed as to provide for the free passage of saw logs without tolls or charges; and the said company shall construct and maintain, at its own expense, suitable fishways, to be approved by the United States Fish Commissioner; and the said company, its successors and assigns, shall make such change and modification in said dam, canal, and works incident thereto, and said bridge, as the Secretary of War may from time to time deem necessary in the interests of navigation, at its own cost and expense: Provided further, That in case any litigation arises from the obstruction of the channel by said dam, canal, and works incident thereto, or such bridge, the case may be tried in the proper court of the United States in the district in which said works are situated.

Sec. 2. That the right to amend, alter, or repeal this Act is hereby expressly reserved.

Sec. 3. That this Act shall be null and void unless said dam herein authorized be commenced within one year and completed within three years from the date hereof.

[2] The 1900 Act provides:

BE IT ENACTED by the Senate and House of Representatives of the United States of America in Congress assembled, That section three of an Act entitled "An Act to authorize the Grand Rapids Water Power and Boom Company, of Grand Rapids, Minnesota, to construct a dam and bridge across the Mississippi River," approved February twenty-seventh, eighteen hundred and ninety-nine, is hereby amended so as to read as follows: "Sec. 3. That this Act shall be null and void unless said dam herein authorized be commenced within two years and completed within four years from the date hereof." Approved February 27, 1900.

[3] Section 23(a) provides that:

The provisions * * * of this Part shall not be construed as affecting any permit or valid existing right-of-way heretofore granted * * * or as affecting any authority heretofore given pursuant to law * * *.

scope of the 1899 Congressional Permit, and that such rebuilding without Commission license was therefore unlawful under Section 23(b) of the Federal Power Act.[4]

Although the 1899 Act, as amended in 1900, clearly granted a permit to construct the original Grand Rapids project, that Act should not be construed to provide a basis for the Applicant's claim of right to maintain and operate the present reconstructed project at this site. The terms of this congressional authorization, unless amended, was limited to the life of the original project works, and does not continue in perpetuity to authorize the construction of new projects at this site. This is consistent with the decision of the Court of Appeals for the Eighth Circuit in *Northwest Paper Co.* v. *F.P.C.*, 344 F. 2d 47 (CA8–1965) and *Minnesota Power & Light Co.* v. *F.P.C.*, 344 F. 2d 53 (CA8–1965). These two cases involved facts similar to those before us in this proceeding, including almost identical pre-1920 congressional authorization of water power facilities and substantial reconstruction of the projects after 1920, the year the Federal Water Power Act was passed. In both cases, the Court of Appeals considered the effect of the pre-1920 permits, holding that those permits did not authorize the maintenance and operation of projects having substantial reconstruction. The court reasoned that this holding was consistent with the accepted canon of interpretation that questions concerning such grants of private rights are resolved in favor of the Government. Moreover, the court concluded that such a construction of the original congressional authorizations squared with the intent of Congress, as expressed in the Federal Power Act, to centralize the authority over water power resources in this Commission.

We believe the *Northwest Paper* and *Minnesota Power* cases are dispositive of the jurisdictional issue in the present proceeding. The project as reconstructed in 1949 is not the project that was authorized by the 1899 Act. As described above, the dam and spillway were completely rebuilt after the collapse of the original structure and a new 1500 kw generating unit was installed. Moreover, the poor level was raised above the elevation specified by the 1899 Act. That Act provided in part:

> That said dam shall be so constructed that it will not at any time raise the water surface * * * to an elevation higher than the floor of the sluices of the reservoir dam built by the government at Pokegama Falls on the Mississippi River * * *

The dam at Pokegama Falls is located some three miles upstream from Applicant's dam. Available records indicate that the floor of the sluices at the Goverynment dam is at elevation 1264.89 mean sea level (1912 adjustment). Applicant's present reservoir pool is at elevation 1268.2 (1929 adjustment). By reconciling the difference of about 0.465 feet between the two datum planes, we find that the present normal pool elevation is about 3.8 feet higher than originally authorized. It should be apparent from the foregoing facts that Applicant's present project is not authorized by either the letter or the intent of the Act of 1899, and therefore, that the 1949 construction undertaken without a license from this Commission was unlawful under Section 23(b) of the Federal Power Act.

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[4] Section 23(b) provides in pertinent part that:

It shall be unlawful * * * for the purposes of developing electric power * * * to construct, operate, or maintain any dam * * * or other works across, along or in any of the navigable waters * * * except under and in accordance with the terms of a permit or valid existing right-of-way granted prior to June 10, 1920, or a license granted pursuant to this Act. * * *

Having decided that a license is necessary for the present project, we now proceed to consideration of the license application itself.

The Department of the Interior, in reporting on the application, recommended for inclusion in any license for the project certain conditions in the interests of fish, wildlife, and recreation. We consider that Interior's objectives are met by the provisions of attached Form L–3, revised August 1, 1964.

The Department of Health, Education, and Welfare (H.E.W.) has advised that the Minnesota State Department of Health has reviewed the history of fish kills and nuisance conditions in the Mississippi River at Grand Rapids and recommends that Applicant not be permitted to interrupt the flow below its dam except as permitted or required by the U.S. Corps of Engineers. The Department further advised that it is not anticipating that the granting of a license for the project will intensify vector problems. The Applicant's reservoir, which is about 3 miles long, 30 feet deep (maximum) and having an average width of about 1,000 feet, is too small to interrupt the flow of the river for any significant period. It thus does not appear necessary at this time to prescribe water releases for fish protection. The objectives of the Minnesota State Department of Health that the license as issued be adequate to assure that appropriate actions on this area can be taken if the necessity therefor should eventuate are met by the provisions of Article 6 in the attached Form L–3. There, the Commission reserves the right to prescribe water releases in the interest of the fullest practicable conservation and utilization of the project for power purposes and for other beneficial public uses, including recreational purposes. This includes such releases for fish protection or water pollution control as the Commission may find to be appropriate, after notice and opportunity for hearing. This we consider more appropriate than assigning this matter to the unreviewable discretion of any federal agency.

The Secretary of the Army and the Corps of Engineers have reported that the 1949 construction was substantially in accordance with the approved plans and that the plans of the project structures affecting navigation are satisfactory.

In our opinion, the term of this license should run through December 31, 1993 and its effective date should be September 1, 1948, the first day of the month during which reconstruction of the destroyed powerhouse facilities and the dam were commenced.

The Commission finds:

(1) The project affects navigable waters of the United States.

(2) Applicant is a corporation organized under the laws of the State of Minnesota, and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effectuate the purposes of a license for the project.

(3) Public notice of the filing of the application has been given. No protests or petitions to intervene have been received. No conflicting application is before the Commission.

(4) The project affects a Government dam, but the issuance of a license therefor, as hereinafter provided, will not affect the development of any water resources for public purposes which should be undertaken by the United States.

(5) Subject to the terms and conditions hereinafter imposed, the project will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign

commerce, for the improvement and utilization of water-power development, and for other beneficial public uses, including recreational purposes.

(6) The installed horsepower capacity of the project hereinafter authorized for the purpose of computing the capacity component of the administrative annual charge is 2,800 horsepower, and the amount of the annual charge, based on such capacity, to be paid under the license for the project, for the cost of administration of Part I of the Act is reasonable.

(7) The 2.4 kv transmission line extending about 500 feet from the project to the point of connection at Applicant's paper mill steam power plant and which was included in the application for license is a primary line subject to license as a part of the project.

(8) The exhibits designated and described in paragraph (B) below conform to the Commission's rules and regulations and should be approved as part of this license.

The Commission orders:

(A) This license is hereby issued to Blandin Paper Company (Licensee) under Section 4(e) of the Federal Power Act (Act) for a period effective as of September 1, 1948, the first day of the month during which reconstruction was commenced on both the powerhouse and dam facilities, and terminating on December 31, 1993, for the continued operation and maintenance of Project No. 2362, located on the Mississippi River, a navigable water of the United States, in Itasca County, Minnesota, subject to the terms and conditions of the Act, which is incorporated herein by reference as a part of this license, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) Project No. 2362 consists of:

(i) all lands constituting the project area and enclosed by the project boundary or the limits of which are otherwise defined, and/or interest in such lands necessary or appropriate for the purposes of the project, whether such lands or interest therein are owned or held by the Licensee or by the United States; such project area and project boundary being more specifically shown and described by the following exhibit which formed a part of the application for license and which is designated as follows:

Exhibit K (FPC No. 2362–1) "Map of Blandin Paper Company Reservoir."

(ii) a rock-filled crib and concrete gravity dam 30 feet high and 94 feet long including 6 stop-log openings and one tainter gate bay; a reservoir about 3 miles long having a normal pool elevation of 1268.2 feet above mean sea level—1929 adjustment; a concrete and masonry powerhouse and intake structure 59 feet long and about 60 feet high containing two hydroelectric units, one of 600 kw and one of 1500 kw capacity; a 2.4 kv transmission line extending 500 feet to the Licensee's paper mill steam powerplant; and appurtenant electrical and mechanical facilities; such project area and project boundary being more specifically shown and described by the exhibit hereinbefore cited and by certain other exhibits which also formed a part of the application and which are designated and described as follows:

Exhibit L: (FPC No. 2362–2) "Plan, Elevation, and Sections."

Exhibit M: Four typewritten pages, "General Description of Equipment, Project Works and Specifications", filed in the Commission on April 25, 1963.

Note: The paper mill screening and pumping system located in the project powerhouse, and the pipes and wires leading thereto and extending therefrom, are not parts of the project.

(iii) all of the structures, fixtures, equipment or facilities used or useful in the maintenance and operation of the project and located on the project area, including such portable property as may be used or useful in connection with the project or any part thereof, whether located on or off the project area, if and to the extent that the inclusion of such property as part of the project is approved or acquiesced in by the Commission; also, all riparian or other rights, the use or possession of which is necessary or appropriate in the maintenance or operation of the project.

(C) This license is also subject to the terms and conditions set forth in Form L–3 (Revised August 1, 1964) entitled "Terms and Conditions of License for Constructed Project Affecting Navigable Waters of the United States" (32 FPC 1114), which terms and conditions, designated as Articles 1 through 29, are attached hereto and made a part hereof, and subject to the following special conditions set forth herein as additional articles:

Article 30. The Licensee shall pay to the United States the following annual charge, effective September 1, 1948:

For the purpose of reimbursing the United States for the costs of administration of Part I of the Act, a reasonable annual charge as determined by the Commission in accordance with the provisions of its regulations, in effect from time to time. The authorized installed capacity for such purpose is 2,800 horsepower.

Article 31. On the application of any person, association, corporation, Federal agency, State or municipality, the Licensee shall, after notice and opportunity for hearing, permit such reasonable use of its reservoirs or other project works or parts thereof as may be ordered by the Commission in the interest of comprehensive development of the waterway or waterways involved and the conservation and utilization of water resources of the region for water supply for steam-electric, irrigation, industrial, municipal or similar purposes consistent with the primary objective of the project. The Licensee shall receive such reasonable compensation as may be appropriate for use of its reservoirs or other project works or parts thereof for such purposes, any such compensation to be fixed either by Commission approval of an agreement between Licensee and the party or parties benefiting or by the Commission in the event the parties are unable to agree. Applications shall contain information in sufficient detail to afford a full understanding of the proposed use, including satisfactory evidence that the applicant possesses necessary water rights pursuant to applicable State law, or a showing of cause why such evidence cannot be submitted, and a statement as to the relationship of the proposed use to any State or municipal plans or orders which may have been adopted with respect to the use of such waters.

(D) The exhibits designated and described in paragraph (B) above are hereby approved as part of this license.

(E) Applicant's aforementioned request that we disclaim Commission jurisdiction over the Grand Rapids Project No. 2362 is hereby denied.

(F) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgment of the acceptance of this license, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

GRANITE STATE GAS TRANSMISSION, INC., DOCKET NO. CP66-37; TENNESSEE GAS TRANSMISSION COMPANY, DOCKET NO. CP66-40

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

(Issued November 15, 1965)

On July 30, 1965, Granite State Gas Transmission, Inc. (Granite) filed in Docket No. CP66-37 an application pursuant to Section 7(c) of the Natural Gas Act authorizing (1) the construction and operation of certain natural gas facilities, and (2) the transportation of natural gas in interstate commerce to the State of Maine for Portland Gas Light Company (Portland Gas), as more fully set forth in the application.

Granite's present facilities, which were exempted from the provisions of the Natural Gas Act in Docket No. G-10423 (16 FPC 969), consist of 41.6 miles of 4, 6 and 8-inch transmission lines in New Hampshire, and a small propane-air peak shaving facility. Natural gas service presently rendered by Granite comprises service to one resale customer, Allied New Hampshire Gas Company, and three direct sales, all exclusively within New Hampshire. Granite's natural gas supply is received from its sole supplier, Tennessee Gas Transmission Company (Tennessee) at the Massachusetts-New Hampshire boundary near Haverhill, Massachusetts.

Construction and operation of Granite's proposed facilities will bring Granite under the provisions of the Natural Gas Act. Granite proposes (1) to construct an additional 5.33 miles of 8⅝ inch pipeline from a point on its existing facilities near Dover, New Hampshire, to the New Hampshire-Maine boundary; (2) to install and operate a 360 horsepower compressor unit on its existing pipeline; and, (3) to construct metering facilities at the delivery point to Portland Gas. Granite's proposed facilities will connect with a pipeline which Portland Gas proposes to construct from the Maine-New Hampshire boundary to the Portland, Maine, area, a distance of approximately 45 miles.

Portland Gas proposes to contract directly with Tennessee for the entire firm natural gas requirements of its distribution system. Tennessee will deliver Portland Gas' natural gas at its existing connection with Granite, and Granite will transport the gas for the account of Portland Gas to the New Hampshire-Maine boundary, where Portland Gas will take delivery. The estimated natural gas requirements for the Portland market area are as follows:

	First year	Second year	Third year
Annual (Mcf)	1,012,378	1,231,284	1,439,186
Peak day (Mcf)	5,566	6,998	7,009

Portland Gas has received preliminary approvals from the Maine Public Utilities Commission and the New Hampshire Public Utilities Commission for the acquisition of the capital stock of Granite. Thereafter, Granite will operate as a wholly-owned subsidiary of Portland Gas.

Granite's estimated cost of constructing the proposed facilities is $370,230, which amount will be advanced to Granite by Portland Gas at an interest rate of 5.5% per annum. Portland Gas will obtain a combination of additional common stock, debentures, and first mortgage bonds.

On August 4, 1965, Tennessee filed in Docket No. CP66-40 an application pursuant to 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale for resale in interstate commerce of natural gas to Portland Gas, as more fully set forth above and in the application. Tennessee's proposed sales of natural gas to Portland Gas will not require the construction of additional facilities, for the Commission's order in Docket No. CP66-54 (dated August 25, 1965) granted temporary authorization to Tennessee to construct and operate facilities adequate to meet Portland Gas' natural gas requirements.

After notice of Granite's application and Tennessee's application was published in the Federal Register, a petition for leave to intervene was filed on September 7, 1965, by Biddeford and Saco Gas Company. On October 28, 1965, however, Biddeford and Saco Gas Company withdrew this petition. On August 19, 1965, Allied New Hampshire Gas Company filed a petition for leave to intervene, and on September 7, 1965, the Public Utilities Commission of the State of Maine filed a notice of intervention, both of which were in support of Granite's application. No protest to the granting of Granite's application has been filed.

Granite is presently the sole supplier of natural gas in New Hampshire, and Portland Gas, its prospective parent, is the sole supplier in Maine. No interstate pipeline with access to gas production or with its own production has lines running into either state. In order to assure that companies and communities in these two states, which may in the future desire natural gas service and be authorized to distribute it, will not be precluded from obtaining such service as a result of the control of the sole New Hampshire supplier/transporter by the sole Maine distributor, we are conditioning the certificate issued to Granite to insure that the facilities of both companies will be available for transportation of gas to other authorized distribution entities to the extent that this can be accomplished without unduly burdening Granite or its parent or impair their ability to render adequate service to their customers.

At a hearing held on November 10, 1965, the Commission on its own motion received and made all evidence submitted in support of the applications, including the applications and exhibits, a part of the record in this proceeding. Upon consideration of this record,

The Commission finds:

(1) Granite State Gas Transmission, Inc., a New Hampshire corporation having its principal place of business in Portsmouth, New Hampshire, is a "natural-gas company" within the meaning of the Natural Gas Act.

(2) Tennessee Gas Transmission Company, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act.

(3) The facilities proposed to be constructed by Granite will be used in the transportation of natural gas in interstate commerce, and are subject

to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(4) The proposed sale and delivery of natural gas by Tennessee is subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(5) Granite and Tennessee are able and willing properly to do the acts and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(6) Granite's proposed transportation of natural gas in interstate commerce and Tennessee's proposed sale of natural gas for resale in interstate commerce are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(7) Public convenience and necessity require that the certificate hereinafter issued and the rights created thereunder be conditioned upon Granite's and Tennessee's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), and (e) of Section 157.20 of said Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Granite State Gas Transmission, Inc., authorizing the construction and operation of facilities as hereinbefore described and as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) A certificate of public convenience and necessity is issued to Tennessee Gas Transmission Company authorizing the sale and delivery of natural gas as hereinbefore described and as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(C) The certificates issued by this order and the rights granted thereunder are conditioned upon Granite's and Tennessee's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e), of Section 157.20 of said Regulations.

(D) These certificates are granted upon the express condition that Granite State Gas Transmission, Inc., and its parent-company, Portland Gas Light Company, agree, as evidenced in writing by responsible officers of said companies within thirty (30) days from issuance of this order, that upon order of the Commission after notice and opportunity for hearing finding that such action is necessary and desirable in the public interest, they will make available to any person or municipality who may be authorized pursuant to the laws of New Hampshire or Maine to distribute natural gas in any community thereof, the use of their transportation facilities for the transportation or sale of natural gas received from any natural gas company which may hereafter interconnect with facilities of Granite State Gas Transmission, Inc., or its parent-company; provided that such transportation or sale, of natural gas can be undertaken by Granite State Gas Transmission, Inc., or its parent, without placing any undue burden thereon, and does not require the enlargement of transportation facilities for such purposes or impair the ability of Granite State Gas Transmission, Inc., or its parent, to render adequate service to their customers.

312-270—69——85

OPINION NO. 481

NIAGARA MOHAWK POWER CORPORATION, PROJECT NOS. 2318, 2320, 2330 AND 2424

OPINION AND ORDER ON REHEARING DETERMINING LIABILITY FOR ANNUAL CHARGES

(Issued November 15, 1965)*

Syllabus

1. Since project was not constructed in violation of Section 23(b) of Federal Power Act and there was no finding of navigability after Section was approved, backdating license only to April 1, 1962 was entirely consistent with *Androscoggin* criteria. PP. 1299, 1300.
2. Licenses issued for constructed projects are made retroactively effective to insure that licensees have same rights and obligations as they would have had if they had made timely applications therefor. P. 1300.
3. Backdating retroactively imposes certain license obligations: licensee must pay annual charges for cost of administering Part I of Federal Power Act for past license period; net investment in project is calculated as of effective date of license; and amortization reserves from excess profits are also established on this basis. P. 1300.
4. Had Commission made licenses effective in 1962, as Niagara contends, it would be granting an advantage over those licensees who made timely applications. P. 1300.
5. Impropriety of extending benefits of *Androscoggin* to projects constructed, in whole or in part, after enactment of Section 23(b) or to projects operated on waters found navigable after 1935 has been made clear; as to former category, Commission held licenses would be effective from date of construction; in latter category licenses would be effective from date of finding of navigability. P. 1301.
6. Instant decision is predicated upon discretionary power explicitly delegated to Commission under the Act, particularly Sections 6, 10(g) and 309. P. 1301.
7. Section 10(e) of Power Act does not require that aggregate annual charges for all licenses exactly equal Commission's costs for administering Part I nor has Commission interpreted the section as so requiring. P. 1302.
8. 45 years of administrative interpretation indicates that there need be no precise correlation between annual charges and administrative costs. P. 1302.
9. Purpose of imposing annual charges from effective date of backdated license is not simply to recover administrative costs but also to prevent discrimination against licensees who timely complied with licensing requirements. P. 1302.
10. Backdated licenses require payments of annual charges from effective date of license, for there administrative charges and all benefits and obligations become operative. P. 1302.
11. There is no reason why backdating should not logically apply to creation of an amortization reserve pursuant to Section 10(d) as well as Section 10(e). P. 1303.

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* Initial decision appears on p. 1303.

12. In a proceeding arising under Part I of the Federal Power Act, Commission *denies* applications to amend licenses and *determines* liability of annual charges.

Lauman Martin for Niagara Mohawk Power Corporation.
George F. Bruder for the Staff of the Federal Power Commission.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

BAGGE, *Commissioner:*

This proceeding is before us on the Niagara Mohawk Power Corporation's (Niagara) application for rehearing of (1) statements of annual charges for three of its existing licensed projects [1] and (2) an order issuing a license for another existing project.[2]

Project No. 2318 is located on the Sacandaga River at Hadley and Conklingville, New York. Project Nos. 2320 and 2330 are located on the Racquette River in St. Lawrence County, New York. Construction work was performed on these projects at various times between 1902 and 1930. Project No. 2424 was constructed in 1941 at Lockport, New York, on the Erie Canal, which is part of the New York State Barge Canal System. Licenses for Project Nos. 2318, 2320 and 2330, issued in 1963 and 1964, were accepted by Niagara. The license for Project No. 2424, issued in 1964, was not accepted by Niagara.

The Commission issued statements of annual charges for the cost of administering Part I of the Federal Power Act on the three accepted licenses totaling $174,259.05, covering the periods from the effective dates of the licenses through 1963. Niagara applied for rehearing of these statements on August 12 and November 10, 1964. On January 7, 1965, Niagara applied for rehearing of our order issuing license for Project No. 2424. We granted rehearing on all applications and consolidated the proceedings.

Presiding Examiner Francis L. Hall issued an initial decision on July 12, 1965. This decision directed Niagara to pay the annual charges as assessed for Project Nos. 2318, 2320, and 2330, and to accept and return to the Commission the license issued for Project No. 2424. The Examiner also recommended that the Commission impose retroactive administration charges for Project No. 2438 of the New York State Electric and Gas Corporation from the date of passage of the original Federal Water Power Act on June 10, 1920, rather than from April 1, 1962, the first day of the month in which the Commission issued the decision establishing the present criteria for backdating. *Public Service Company of New Hampshire*, 27 FPC 830 (*Androscoggin*). The Examiner considered that the Commission, in imposing annual charges for this project only from 1962, inadvertently departed from the *Androscoggin* criteria. This recommendation is beyond the scope of this proceeding. Furthermore, we consider that backdating the license for Project No. 2438 to 1962 was entirely consistent with the *Androscoggin* criteria. This

[1] Project Nos. 2318, 2320 and 2330.

[2] Project No. 2424. The dates of issuance, effective dates and termination dates of the licenses are as follows:

Project	Date of licensing order	Effective date	Termination date
2318	June 25, 1963, 29 FPC 1290	Apr. 1, 1949	Dec. 31, 1993
2320	June 12, 1964, 31 FPC 1549	Nov. 1, 1949	Dec. 31, 1993
2330	July 15, 1964, 32 FPC 125	Nov. 1, 1949	Dec. 31, 1993
2424	Dec. 9, 1964, 32 FPC 1404	July 1, 1941	June 30, 1991

project, like Niagara Mohawk's Project No. 2424, is located on the Erie Canal, which was found navigable in 1903. However, Project No. 2438, unlike Project No. 2424, was built before Section 23(b) was added to the Act in 1935. Since the project was not constructed in violation of this provision, and since there was no finding of navigability after the provision was approved, we believe that the owner qualified to have the license backdated only to April 1, 1962, the first day of the month in which the *Androscoggin* decision was issued. Niagara filed exceptions to the Examiner's decision. The objections of Niagara will be discussed seriatim.

The issues presented here are whether the Commission has authority (1) to backdate a license for a constructed hydroelectric development, (2) to require a licensee to pay retroactive annual administrative charges under subsection 10(e), and (3) to establish amortization reserves under subsection 10(d) of the Federal Power Act on the basis of effective date of the license.

Upon review of the record, the briefs and exceptions, we are of the opinion that the Examiner's findings and conclusions are correct.

Underlying each of the issues in this proceeding is the fundamental question of the scope of Commission discretion under the Federal Power Act. Enacted in 1935, Section 23(b) of the Act provides that it shall be unlawful for any person for the purpose of developing electric power to construct, operate or maintain any dam across any of the navigable waters of the United States except under a license granted pursuant to the Act or a Federal permit granted prior to June 10, 1920.[3] The object of making licenses issued for constructed projects retroactively effective is to insure that licensees have the same rights and obligations as they would have had if they had made a timely application for license. Backdating retroactively imposes certain license obligations. The licensee must pay annual charges for the cost of administering Part I of the Federal Power Act for the past period of the license. In addition, the licensee's net investment in the project is calculated as of the effective date of the license. Amortization reserves from excess profits are also established on the basis of this date.

While the Commission found the rivers navigable in 1949,[4] Niagara did not apply for a license for Projects 2318, 2320 and 2330 until 1962, an interval of thirteen years. The interval was greater in the case of Project 2424 since the determination of navigability had already been made in 1903 when the project was completed in 1941.[5] Application for a license was not made, however, until the end of 1963. However, the Commission treated Niagara as though it had applied for licenses when its obligation became clear by making the license for the first three projects effective in 1949 and making the license for Project 2424 effective in 1941. Had we made the licenses effective in 1962, as Niagara contends, we would be granting Niagara an advantage over those licensees who made timely application for license.

In reaching this result we are fully supported by *Central Maine Power Company* v. *F.P.C.*, 345 F. 2d 875 (CA1–1965). We also follow the approach used in *Public Service Company of New Hampshire*, 27 FPC 830 (1962), (*Androscoggin*). In *Central Maine, supra*, the company commenced construction in 1937. We made the license retroactively effective as of January 1, 1938. The court held that:

> In such circumstances in our opinion it is neither discriminatory nor a true penalty for the Commission to treat petitioner in the terms of its

[3] 16 U.S.C. 817.

[4] *New York Power and Light Corp.*, 8 FPC 231 (1949); *Central New York Power Corp.*, 8 FPC 390 (1949).

[5] *Robert W. Parsons*, 191 U.S. 17, 27 (1903).

license as it would have treated it had it complied with the statute when it should have. It is a familiar principle of equity itself to regard as being done that which should have been done. Any possible discrimination would be the other way. Were petitioner to prevail, parties like Wisconsin Public Service Corp. who had complied with the law would be worse off than those who did not.

In *Androscoggin, supra*, the project had been built and improved before 1935. The dam was replaced in 1958 and 1959. On July 24, 1958, the Commission found that the Androscoggin River is a navigable water of the United States. The company, however, did not make application for a license for its constructed project until December 27, 1960. Taking into consideration the gradual development of the concept of navigability, the failure to apply for a license, and the doubt as to the exact date of construction in 1958, the Commission made the effective date of the license July 1, 1958, the first day of the month in which navigability had been determined.

The Commission made it clear that it would be improper to extend the benefits of *Androscoggin* to projects which had been constructed, in whole or in part, after Section 23(b) had been added to the Act in 1935 or to projects operated on waters which had been found navigable after that time. We held that as for projects in the former category, we would make the licenses effective from the date of construction while projects in the latter category would be granted licenses effective from the date of the finding of navigability. We have dated the licenses for Niagara's four projects accordingly.

Central Maine, supra, refers to broad equitable considerations as support for the Commission's authority to backdate licenses. In addition to these considerations, we conclude that the Federal Power Act is broad enough to encompass this exercise of our discretion. Section 6 makes licenses subject to conditions imposed by the Act and the Commission.[6] Section 10(g) authorizes the Commission to impose "such other conditions not inconsistent with the provisions of this Act as the Commission may require."[7] In *Metropolitan Edison Co.* v. *F.P.C.*, 169 F. 2d 719 (CA3–1948), the court held that Section 10(g) gives the Commission "wide latitude and discretion in the performance of its licensing and regulatory functions" and authorizes the Commission to determine the actual legitimate original cost and accrued depreciation applicable to a project as of the effective date of the backdated license. Moreover, Section 309 gives the Commission broad power "to perform any and all acts * * * it may find necessary or appropriate to carry out the provisions of this Act."[8] We accordingly predicate this decision upon our discretionary power which has been explicitly delegated to us under the Act.

Niagara argues that under Section 10(e) the licensee is to pay reasonable annual charges "in an amount to be fixed by the Commission for the purpose of reimbursing the United States for the costs of the administration" of Part I of the Federal Power Act. It objects to being required to pay a share of the costs, irrespective of whether the Commission was fully reimbursed in the past. Without a showing of a deficit, Niagara asserts, the annual charges constitute a penalty unauthorized by the statute. In support of this argument, Niagara cites Section 11.20(a)(1) of the Commission's Regulations under the Federal Power Act which reads: "A determination shall be made for each fiscal year of the costs of administration of Part I of the Federal Power Act chargeable to such licensees * * *." Niagara contends that there

[6] 16 U.S.C. 799.
[7] 16 U.S.C. 803(g).
[8] 16 U.S.C. 825(h).

has not been a sufficient showing in support of the charges under the Act and the Regulations.

Section 10(e) of the Federal Power Act does not require that the aggregate annual charges for all licenses exactly equal the Commission's costs for administering Part I of the Act and the Commission has not interpreted the section as so requiring. Between 1938 and 1963 the Commission's regulations provided that annual charges be fixed according to the annual generation and the authorized installed capacity of a licensed project, without reference to the cost of administration. The present regulation (§ 11.20) cited by Niagara did not become effective until January 1, 1964, after the period of the charges assessed in this proceeding (See Order No. 272, 30 FPC 1333), and while that regulation seeks to more closely correlate annual charges and cost of administration, it may not fully achieve this purpose. The reason is that annual charges being paid under licenses issued prior to August 26, 1935, are frequently too low to bear their proportionate share of annual administration costs under the present regulation and the Commission has held that charges under pre-1935 licenses may not be increased under the terms of those licenses. See Order No. 272–A, 31 FPC 1555. We believe that 45 years of administrative interpretation indicates that there need not be a precise correlation between annual charges and administrative costs.

Moreover, the purpose of imposing annual charges from the effective date of a backdated license is not simply to recover administrative costs. It is also to prevent discrimination against licensees who timely complied with the licensing requirements of the Act. *Central Maine Power Co.* v. *F.P.C.*, 345 F. 2d 875, 876–877 (CA1–1965); see also *Metropolitan Edison Co.* v. *F.P.C.*, 169 F. 2d 719, 724 (CA3–1948). Even if the former purpose had been fully realized, we would be justified in retroactively imposing annual charges for the latter purpose.

Niagara argues that its licenses for Project Nos. 2318, 2320 and 2330 do not, by their terms, provide for fixing of annual charges for the past period of the licenses. This argument is based upon a distinction in the terms of these licenses from the terms of the licenses issued in *Androscoggin, supra*, and Niagara's Project 2424. The article of the *Androscoggin* license relating to annual charges reads: "Article 18. The Licensee shall pay to the United States the following annual charges, effective as of July 1, 1958 * * *." The parallel provisions of the licenses for Project Nos. 2318, 2320 and 2330 do not provide for an effective date. Niagara contends that this omission indicates an intent to waive the payment of annual charges for the past period of the licenses.

The licenses issued for Projects 2318, 2320 and 2330 do require payment of annual charges for the period before the date of issuance. The licensing order for Project 2318 specifically provides that the license is issued "for a period effective as of April 1, 1949," while the licensing orders for the other two projects provide for an effective date of November 1, 1949. Once the license is effective, the administrative charges and all of the benefits and obligations of the license become operative. Section 11.28 of the Regulations provides that, with certain exceptions, annual charges "shall commence upon the effective date of the license." Here, the order issuing licenses for Projects 2318, 2320 and 2330 specifically designated effective dates in 1949. No other dates were fixed for the accrual of annual charges. Each license contains an article specifying the method for fixing annual charges.[9] Like other license obliga-

[9] Project No. 2318: Article 21; Project Nos. 2320 and 2330: Article 29.

tions, the obligation to pay annual charges under this article becomes operative from the effective date of the license. The effective date of the license is not the date the license order becomes final, as suggested by Niagara. Nor is it significant, in view of the wording of the Regulations, that the order in *Androscoggin, supra*, and the order in Project 2424 expressly provided that the annual charges be effective as of the effective date of the license.

With respect to Project 2424, Niagara contends that backdating does not apply to the creation of an amortization reserve pursuant to subsection 10(d) of the Act. We conclude that there is no reason why backdating should not logically apply to Section 10(d) as well as to Section 10(e).

The Commission further finds:

(1) Upon consideration of the record made in this proceeding, there is no reason to modify the Commission's orders issuing licenses for Project Nos. 2318, 2320, 2330 and 2424 or the amount of $174,259.05 billed Niagara for annual charges for administration for the periods April 1, 1949–December 31, 1963 (for Project 2318) and November 1, 1949–December 31, 1963 (for Projects 2320 and 2330) where the beginning dates for the charges are the effective dates of the licenses.

(2) The assignments of error and grounds for rehearing set forth in the applications for rehearing or the record made herein present no facts or legal principles which would warrant any change or modification in the Commission's order issued December 9, 1954, granting a license in Project 2424, or the statements of annual charges applicable to Project Nos. 2318, 2320, and 2330 issued under the Federal Power Act, especially Section 10(e) (16 U.S.C. 803(e)).

The Commission orders:

(A) The Niagara Mohawk Power Corporation's applications to amend or modify the licenses for Project Nos. 2318, 2320, 2330 and 2424 are denied.

(B) The Niagara Mohawk Power Corporation's applications to cancel or modify the statements of annual charges in the amount of $174,259.05 for Project Nos. 2318, 2320 and 2330, covering the periods from the effective dates of the licenses through 1963, are denied.

(C) The Decision of the Presiding Examiner is adopted as the decision of the Commission except where inconsistent herewith.

(D) Exceptions not granted are denied.

INITIAL DECISION

OF THE PRESIDING EXAMINER UPON AUTHORITY OF THE COMMISSION TO ASSIGN A RETROACTIVE EFFECTIVE DATE TO BE USED IN FIXING OBLIGATIONS TO PAY ANNUAL CHARGES AND TO SET UP AMORTIZATION RESERVES FOR CONSTRUCTED HYDROELECTRIC PROJECTS

(Issued July 12, 1965)

HALL, *Presiding Examiner:* Niagara Mohawk Power Corporation (Niagara Mohawk) applied for, and the Commission issued, a license for each of the four hydroelectric projects involved in this proceeding, all of which had been constructed and maintained on navigable waters of the United States without the requisite federal authorization. The licenses issued for Projects 2318, 2320 and 2330 (constructed prior to the 1935 amendment of Section 23(b) of the Federal Power Act (Act)) have been accepted by Niagara Mohawk. However, the company has so far declined to accept the license tendered for Project 2424 (constructed in its present form in 1941 in violation of Section 23(b)).

The dates of issuance of the licensing orders and the effective and termination dates of the licenses are:

Project	Date of licensing order	Effective date	Termination date
2318	June 25, 1963	Apr. 1, 1949	Dec. 31, 1993
2320	June 12, 1964	Nov. 1, 1949	Dec. 31, 1993
2330	July 15, 1964	Nov. 1, 1949	Dec. 31, 1993
2424	Dec. 9, 1964	July 1, 1941	June 30, 1991

The significance of the effective date of each license (as distinguished from the date of the licensing order) is that such date controls Niagara Mohawk's obligation to pay annual charges and—after twenty years—to create amortization reserves.

Licenses, under Section 6 of the Act, are to be issued for not more than fifty years. They shall, under Sections 6 and 10, include as conditions, *inter alia:* (a) acceptance by the licensee of all the terms and conditions of the Act and such further conditions as the Commission shall prescribe in conformity with the Act (Section 6); (b) maintenance of amortization reserves by the licensee after the twentieth year of operation out of surplus accumulated in excess of a reasonable rate of return, the reserves to be applied in reduction of net investment should the project be taken at the expiration of the license (Section 10(d);[1] and (c) payment by the licensee of reasonable annual charges to reimburse the United States for the cost of administration (Section 10(e)).[2]

To serve the purposes of the Act and to cause Niagara Mohawk to assume some of the obligations it would have borne had it obtained the licenses when it should have, the Commission, in prescribing the terms and conditions of each license, took into consideration the prior unlicensed construction and operation by, *inter alia*, (a) limiting the term of the licenses, and (b) imposing obligations to pay annual charges and set up amortization reserves based on the retroactive date of each license.

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[1] The amortization reserve requirement, as explained by the Supreme Court, is as follows (*Federal Power Commission* v. *Niagara Mohawk Power Corp.*, 347 U.S. 239, 242): "Section 10(d) of the Act requires each licensee, after 20 years of operation under such a license, to establish and maintain amortization reserves out of any surplus thereafter earned and accumulated in excess of a reasonable return upon the licensee's net investment. Section 14 makes such net investment, plus severance damages a principal measure of the price the Government is to pay when and if it takes over all or part of the property. [Citing to a footnote in which the Court said, "In the instant case the Commission explains that — 'Section 10(d) is part of a larger pattern of fairness set up by the act to induce water-power development. Licensees are assured a 'fair return', but the public is safeguarded against profiteering by a licensee through profits beyond a fair return. At the end of the license period and upon 'recapture' by the Federal Government, earnings throughout the license period are to be tested against a fair return standard set up in section 3(13).' 9 FPC at 248"]"

[2] Section 10. "All licenses issued under this Part shall be on the following conditions: * * * (e) That the licensee shall pay to the United States reasonable annual charges in an amount to be fixed by the Commission for the purpose of reimbursing the United States for the costs of the administration of this Part, * * * and in fixing such charges the Commission shall seek to avoid increasing the price to the consumer of power by such charges, and any such charges may be adjusted from time to time by the Commission as conditions may require * * *. In the event an overpayment of any charge due under this section shall be made by a licensee, the Commission is authorized to allow a credit for such overpayment when charges are due for any subsequent period."

Contentions Of Niagara Mohawk

For the projects covered by the three accepted licenses the Commission billed Niagara Mohawk a total of $174,259.05 for annual charges for administration for the 1949–1963 period. Niagara Mohawk contends that the accepted licenses do not by their terms require payment of annual charges from retroactive effective dates but only call for the payment of such charges from the license order issuance dates, or, at the earliest, April 25, 1962 (date of the Commission's licensing opinion in *Public Service Company of New Hampshire*, 27 FPC 830, herein referred to as the *Androscoggin* decision, which enunciated the policy to be followed with respect to constructed hydroelectric projects.)[3]

As to the license tendered for Project 2424, which has not yet been accepted, Niagara Mohawk contends that this license should be modified to indicate that its effective date for all purposes should be December 9, 1964, *i.e.*, the date of the licensing order, or in any event, no earlier than *Androscoggin* day—April 25, 1962

The Examiner has determined that the arguments advanced by counsel for Niagara Mohawk, considered *infra*, pp. 1309–1317, do not warrant any change in the original license orders which reasonably imposed the license conditions here challenged.

Scope Of Review Available To The Examiner

This case presents for consideration the scope of review available to the Examiner—on rehearing ordered by the Commission—of the previously established and consistently adhered to policy announced in *Androscoggin*, that being a decision which the Act commits to the sound discretion of the Commission.

In view of the right and duty of the Commission to establish what its policy should be as to projects constructed without federal authorization, the Examiner must accept the expressly declared policy set forth in *Androscoggin* as binding upon him, for neither an Examiner nor the courts may invade the domains of action reserved exclusively for the Commission. The Commission may, of course, change its policy at such times as circumstances and its statutory authority warrant.[4]

It may be observed in passing that it is possible to conceive of more than one method of dealing with unlicensed projects and the Commission undoubtedly considered several in arriving at its *Androscoggin* decision. But the Commission's action does not become suspect because in the opinion of others a method other than the one adopted by the Commission in *Androscoggin* would be preferable. The Commission may clearly adopt one method as opposed to another so long as the one adopted does not represent an abuse of discretion.

Proceedings Before The Commission

The applications for rehearing filed by Niagara Mohawk were consolidated for hearing by order of the Commission issued March 4, 1965. That order

[3] In *Androscoggin* the Commission considered a problem which had "perplexed the Commission for many years, *i.e.*, the appropriate license term to be accorded a project constructed prior to the 1935 amendments to the Act and operated thereafter in navigable waters without requisite federal authorization" (27 FPC at 832).

[4] It should also be pointed out that the facts and circumstances to be considered by the Examiner are the same as those available for the Commission's consideration in issuing the licenses—on the basis of the applications and without hearing—to Niagara Mohawk. As the Supreme Court has said, "There must be a limit to individual argument in such matters if government is to go on" (*Bi-Metallic Investment Co. v. Colorado*, 239 U.S. 441, 445).

fixed April 19, 1965—later changed to April 20—as the date for prehearing conference.

The four licenses had been issued upon applications of Niagara Mohawk without an initial hearing. The consolidated rehearing record, consisting of an 82-page transcript, one exhibit and one item by reference, was made by stipulation between counsel for Niagara Mohawk and the Commission staff at the conference held April 20, 1965.

Main and reply briefs were filed on June 8 and 22, 1965, respectively.

Part I Of The Act

Part I of the Act vests in the Commission jurisdiction over the licensing, regulation and control of hydroelectric projects subject to federal jurisdiction. It limits the term of licenses to not more than fifty years and reserves to the United States the right of recapture at the end of the lease period. Upon expiration of the franchises the Government has the option of (1) taking over the license upon payment of the net investment not to exceed fair value, plus reasonable severance damages; (2) renewing the old license; or (3) granting a new one. That is to say, Part I "proceeds upon the theory of private development with ultimate public ownership possible" (S. Rep. No. 180, 66th Cong., 1st Sess., p. 3).

With the establishment of the Commission in 1920 it was no longer necessary for Congress to consider each project separately and enact special legislation in granting the consent of Congress, where appropriate, to construct and operate individual projects. Under the Act, once the Commission's jurisdiction to issue a license is determined; the only questions remaining are whether a license should issue, and, if so, the conditions under which it should be issued, the intent of the Act being to assure through the imposition of appropriate conditions, the accomplishment of its purposes.

1935 Amendment To Section 23(b) Of The Act

In 1935 the original Federal Water Power Act of June 10, 1920—which had created the Commission—was generally revised and perfected and made Part I of the present Act. Among other things, the 1935 amendments changed Section 23(b) to make it unlawful for any person for the purpose of developing electric power to construct, operate, or maintain any dam across or in any navigable waters of the United States "except under and in accordance with the terms of a permit or valid existing right-of-way granted prior to June 10, 1920, or a license granted pursuant to this Act"[5] As stated in *First Iowa Hydro-Electric Cooperative* v. *Federal Power Commission*, 328 U.S. 152, 172, n. 17, the 1935 amendments, *inter alia*, changed Section 23(b) so—

> * * * as expressly to require a federal license for every water power project in the navigable waters of the United States. It also made mandatory, instead of discretionary the filing * * * of a declaration of intention by anyone intending to construct a project in non-navigable waters over which Congress had jurisdiction under its authority to regulate commerce.

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[5] The reference in Section 23(b) to "a permit or valid existing right-of-way granted prior to June 10, 1920," is to those granted under federal, not state, law. *Niagara Falls Power Co.* v. *Federal Power Commission*, 137 F. 2d 787, cert. den., 320 U.S. 792. *Wisconsin Public Service Corp.* v. *Federal Power Commission*, 147 F. 2d 473, cert. den., 325 U.S. 880. See also *United States* v. *Appalachian Power Co.*, 311 U.S. 377, 428–29; *First Iowa Hydro-Electric Cooperative* v. *Federal Power Commission*, 328 U.S. 152.

In *Androscoggin* the Commission emphasized the fact that "any uncertainty there might have been as to the legal status of an unlicensed power project occupying a navigable stream vanished with the adoption of Section 23(b) in 1935. From that point on, if not earlier, a license from this Commission was clearly mandatory. Unfortunately, the Commission has lacked sufficient funds or man power to enforce general compliance with the statute * * *." (27 FPC at 833)

Application Of Androscoggin *Criteria To Licenses Issued To Niagara Mohawk*

As previously mentioned, the Commission in 1963 and 1964 issued licenses for Niagara Mohawk's four projects. Three of those projects (2318, 2320 and 2330) were pre-1935 and one (2424) was constructed in its present form after 1935.

In *Androscoggin* the Commission fixed the effective date of the license for that pre-1935 project at July 1, 1958, that being the first day of the month in which the Commission had held the Androscoggin River to be a navigable water of the United States.[6] Each of the licenses issued to Niagara Mohawk recites that its effective date was fixed in "accordance with the criteria set forth in" *Androscoggin*.

Niagara Mohawk's Project 2318 is located on the Scandaga River. Its Projects 2320 and 2330 are located on the Raquette River. The licenses for these projects were made effective from the first day of the month in which the Commission had determined these rivers to be navigable waters (8 FPC 231, 390).

The other Niagara Mohawk project (2424) was constructed in its present form in 1941 on the Erie Canal (now known as the New York State Barge Canal) by the company's predecessor. The license for this development was made effective July 1, 1941, that being the approximate date when construction was initiated. In *Androscoggin* the Commission explained (27 FPC at 834) that—

> * * * if Applicant, subsequent to 1935, had built an entirely new project without securing the requisite authorization, we would not hesitate to adopt the date of such construction as the effective date of its license. We see no reason for different treatment merely because the unauthorized construction took the form of a replacement of an existing facility. * * *

In *Androscoggin* the Commission discussed three principal factors to be taken into account in licensing constructed projects.

(1) The first was that persons who continued to maintain and operate existing projects after the 1935 amendment of Section 23(b) without obtaining a license should not be rewarded for their failure to timely apply for licenses (27 FPC at 833):

> * * * If a company whose project has enjoyed three or more decades of unregulated operation were granted a full 50-year license term from date of issuance, it would reap a substantial windfall from its prolonged delay in filing. Equally important, it would obtain an unmerited advantage over those companies which complied at an earlier date, inasmuch as projects of the latter will be subject to recapture well within the next

[6] The project involved in *Androscoggin* had been constructed on the Androscoggin River in 1894, with various parts thereof being replaced and some added at various times—1903, 1909, 1917, 1923, 1927, 1928, 1937 and 1958–59 (27 FPC at 832). Public Service Company of New Hampshire acquired the project in 1943 and applied for a license in 1960 after the Commission, in another proceeding involving the Androscoggin River had found that the river was a navigable water of the United States on the basis of the transportation of logs and other forest products.

50 years. To the extent feasible, it is the burden of sound licensing policy to minimize such inequities.

(2) On the other hand, the Commission determined not to adopt a harsh policy as to pre-1935 projects but one recognizing that the full extent of its jurisdiction had not always been understood (27 FPC at 833–34).

(3) In fixing the effective date of the *Androscoggin* license at July 1, 1958, when the Commission had first held the Androscoggin River to be a navigable water of the United States, the Commission took into account as a third factor the possible effect of backdating the license on the incentive of other owners of unlicensed projects to apply for licenses (27 FPC at 834):

> In deciding not to impose retrospective charges for the period prior to July 1, 1958, we have given some weight to the possibility that imposition of such charges might seriously deter potential applicants from coming forward to comply with the statute. If, however, our experience during the next twelve months indicates that voluntary cooperation will in any event not be forthcoming, we may well wish to reconsider the position we now take on the question of backdating.

But the considerations which support the Commission's policy of leniency with respect to setting the effective date for pre-1935 projects are not controlling with respect to projects, such as Niagara Mohawk's Project 2424, constructed *after* 1935. For as the Commission expressly stated in *Androscoggin* (27 FPC at 832, n. 2):

> The construction of any project works *subsequent* to the enactment of Section 23(b) of the Act of 1935 without the concurrent filing of a license application or declaration of intention plainly violates this section. There is little room for dispute that licenses for such projects should be made effective not later than the date of construction of such project works.

The Commission's approach to the licensing of the pre-1935 projects, insofar as it differs from the policy with respect to post-1935 projects, appears to reflect its awareness of the distinction between lawful conduct and unlawful conduct. As to the pre-1935 projects the Commission assumes in the owner's favor, that the owner had been reasonable in all its conduct in constructing and operating its unlicensed project, and that it would therefore be an improper penalty to require a license effective as of the date of construction. But as the Commission's staff observed in their court brief in the recent *Central Maine* case discussed *infra*, p. 1310, "anyone seeking to construct a project * * * *after* 1935 was plainly required to seek and obtain Commission authorization, either by license or by a finding that the project did not affect the interests of interstate or foreign commerce. A person in this position could not lawfully remain silent while proceeding with construction, operation, and maintenance of his project. For those who followed such a course of action, the Commission's policy seeks to remedy the violation of Section 23(b) by conditioning the license so as to treat the project as though it had been constructed in compliance with the Act."

As the foregoing makes clear, the Commission, in licensing Niagara Mohawk's four hydroelectric projects, adhered to its *Androscoggin* criteria. Nothing in the record or in the decisions of the Courts justify Niagara Mohawk's undertaking to nullify that criteria. In this connection it seems appropriate to quote the words of the Court in *Portland General Electric Co.* v. *Federal Power Commission*, 328 F. 2d 165, 173:

> * * * In applying for a major license * * *, petitioners seek rights they do not now have. In order to gain those rights they must accept the license upon such terms as Congress has determined should be imposed in the public interest. See *United States* v. *Appalachian Elec. Power Co.*,

311 U.S. 377, 427–428, 61 S. Ct. 291, 85 L. Ed. 243, *Fox River Paper Co.* v. *Railroad Comm. of Wisconsin*, 274 U.S. 651, 656–657, 47 S. Ct. 669, 71 L. Ed. 1279. It is not a taking for the Government to withhold a benefit it is not contractually or constitutionally obligated to confer. Nor is it a taking for the Government to impose financial obligations upon the recipient of a benefit if, as here, the benefit may be declined.

Commission's Backdating Authority

Reference has been made to the fact that the statutory provision with respect to the term of the license is found in Section 6, with respect to annual charges in Section 10(e), and with respect to amortization reserves in Section 10(d). But there is no section specifically governing the effective date of the license, the Commission's power in this respect being found in (1) Section 10(g) which authorizes the Commission to impose, as a condition for obtaining a license, "Such further conditions not inconsistent with the provisions of this Act as the Commission may require", and (2) Section 309 of Part III of the Act (which also relates to licensees) which expressly confers upon the Commission broad power "to perform any and all acts * * * it may find necessary or appropriate to carry out the provisions of this Act." The provisions of Section 309 are identical to those of Section 16 of the Natural Gas Act considered in *Public Service Commission of the State of New York* v. *Federal Power Commission*, 327 F. 2d 893, 897, where the court points out that—

> All authority of the Commission need not be found in explicit language. Section 16 demonstrates a realization by Congress that the Commission would be confronted with unforeseen problems of administration in regulating this huge industry and should have a basis for coping with such confrontation. While the action of the Commission must conform with the terms, policies and purposes of the Act, it may use means which are not in all respects spelled out in detail. * * *

While instances abound in which the Commission has backdated or otherwise limited the license term and imposed obligations to pay annual charges and set up amortization reserves based on the effective date of the license, its authority so to do has rarely been challenged in the courts. The challenges made have been unsuccessful insofar as the questions here raised are concerned.

The court cases now to be reviewed, together with the statutory authority contained in Sections 6 and 309 of the Act, clearly show the lack of merit to Niagara Mohawk's contention that the Commission erred in assigning retroactive dates to be used in fixing its obligations to pay annual charges and set up amortization reserves.

In *Montana Power Corp.* v. *Federal Power Commission*, 330 F. 2d 781, 788–9, the court upheld the Commission's order fixing a term of seven years for a license for a project constructed prior to June 10, 1920, saying:

> * * * Section 6 * * * provides that the term of a license is within the sound discretion of the Commission. In our opinion it has not been shown that the Commission abused its discretion in fixing the term * * *.

Metropolitan Edison Co. v. *Federal Power Commission*, 169 F. 2d 719, like the instant proceeding, involved a project where the construction, operation and maintenance of a project were originally not legally authorized. The court there upheld the issuance of a license on November 7, 1944, backdated to January 1, 1938, and terminating June 30, 1970 (*i.e.*, 50 years after the enactment of the Federal Water Power Act in 1920). The project had been constructed in 1904 but application for license was not made until 1942. Among the conditions attached to the *Metropolitan Edison* license were condi-

tions like those involved here—one requiring the payment of annual charges "starting January 1, 1938, for purposes of reimbursing the United States for the costs of administration of Part I of the Act," and another requiring the establishment of an amortization reserve after the first twenty years of operation under the license "namely after December 31, 1957."[7] The retroactive effective date and the 1970 termination date (which resulted in an actual license period of approximately 26 years) were not challenged on appeal. Nor did the company object to the retroactive imposition of annual charges or to the 1938 starting date utilized in computing the first twenty years of operation under the license.

In *Metropolitan Edison* the court recognized that the Commission was not required to allow the company to enjoy a more favorable regulatory position by reason of its failure to obtain a license at the time of the passage of the Water Power Act in 1920. In affirming the Commission's order the court explained (169 F. 2d at 723–24):

> It is clear from the Act that Congress contemplated the licensing of new projects: see Section 3(13); and of old projects in existence under permit; see Section 23(a). Congress must also have had in mind the fact that there were many projects already in existence, not under permit. We think it was the Congressional intent by the enactment of Section 10(g) to give to the Commission wide latitude and discretion in the performance of its licensing and regulatory functions and that Congress must have contemplated the licensing by the Commission of old projects, * * * not under the provisions of Section 10(g). We think it is clear that the conditions of Paragraph (A) (viii) are not inconsistent with the Federal Power Act, are not in the least arbitrary or unreasonable, and that therefore the Commission possessed the authority to impose them on Metropolitan. * * *
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> * * * We may not conclude that an existing project, not under permit, should be put in a better position as to value for regulatory purposes under a federal license than an existing project under permit. * * * The Act must receive a practical construction, one which will enable the Commission to perform the duties required of it by Congress. See *Clarion River Power Co.* v. *Smith*, 61 App. D.C. 186, 59 F. 2d 861, 863. We think that Section 10(g) authorized the Commission to impose the formula * * * and we so rule.

The most recent court decision is *Central Maine Power Co.* v. *Federal Power Commission*, 345 F. 2d 875 (CA1–1965). In this case the Court upheld the issuance of a license retroactively dated January 1, 1938 (the project having been constructed without a license in 1937), and expiring December 31, 1978. The effect of the Commission order was to shorten the maximum 50-year term to an effective term of 24 years and, like the conditions involved in the instant proceeding and in *Metropolitan Edison*, *supra*, to impose retroactively requirements for the payment of annual charges for the purpose of reimbursing the United States for the cost of administration and for the establishment of an amortization reserve after the twentieth year of operation. Central Maine contended—

> * * * that it has been discriminated against because if it had constructed its plant prior to 1935 no such retroactivity, admittedly, see * * * [the Commission's *Androscoggin* opinion] * * * would have been imposed upon it. The Commission's response is that in 1937 petitioner knew, or should have known that it was obliged to apply for a license

[7] The Commission's order setting forth the license terms is not reported but may be officially noticed by the Examiner.

forthwith, or, at least file a declaration of intention to build, and that, under the cited case, all parties who neglected to do what they reasonably should have done were properly treated by having retroactivity imposed upon them.

The Court ruled that—

> * * * it is neither discriminatory nor a true penalty for the Commission to treat petitioner in the terms of its license as it would have treated it * * * had it complied with the statute when it should have. It is a familiar principle of equity itself to regard as being done that which should have been done. Any possible discrimination would be the other way. Were petitioner to prevail, parties * * * who had complied with the law would be worse off than those who did not.

The Licenses For Projects 2318, 2320 and 2330 By Their Terms Provide For Retroactive Imposition Of Annual Charges

As the following excerpt from the order issuing license for Project 2318, which is typical of the others, clearly demonstrates, Niagara Mohawk's contention that the three accepted licenses do not prescribe payment of administrative charges prior to the date of license issuance will not stand analysis:[8]

> * * * In accordance with the criteria set forth in * * * [Androscoggin] * * * we are making the effective date of this license April 1, 1949 * * *.
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> * * * * * * *

The Commission orders:

(A) This license is hereby issued to Niagara Mohawk * * * for a period effective as of April 1, 1949 * * * for the continued operation and maintenance of Project No. 2318 * * *.

Not only does paragraph (A) of the ordering clause of each of the license orders expressly make the license retroactively effective from a stated date, but each license also contains an article specifying the method for fixing annual charges (Article 21 for Project 2318; Article 20 for Projects 2320 and 2330).

Whether the licenses for Projects 2318, 2320 and 2330 provide for retroactive imposition of annual charges depends upon their terms. From a review of the terms of these licenses, the Examiner is unable to see how the answer could possibly be otherwise than in the affirmative. The terms of these licenses are intended to, and do, carry to completion the statutory duty of causing Niagara

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[8] Niagara Mohawk's argument is based on a divergence in the wording of its licenses from the wording in the license issued in *Androscoggin* (and, incidentally, also in the wording for Niagara Mohawk's Project 2424). The article of the *Androscoggin* license relating to annual charges reads in pertinent part (27 FPC at 838):

> *Article 18*: The Licensee shall pay to the United States the following annual charges, effective as of July 1, 1958 * * *.

The parallel provision of the license for Projects 2318, 2320 and 2330 deletes the phrase "effective as of [date]." Niagara Mohawk contends that this deletion indicates the Commission's intention to waive the payment of annual charges for the retroactive period of the license. But Niagara Mohawk cannot ignore the clear, unassailable language of paragraph (A) of the licensing orders with which it is also acquainted. These licenses, like statutes, are to be construed in their entirety, not in isolated parts. Repetition of the effective date in any article, in addition to the initial ordering clauses, could only have served the unnecessary purpose of emphasis. In this connection it is of interest to also point out that Niagara Mohawk applications for license were filed after, and pursuant to the invitation contained in, *Androscoggin* which made plain the significance of effective dates of licenses: "Applicant would be liable for annual charges commencing on such date and would be required [twenty years thereafter] to establish amortization reserves provided for in Section 10(d) of the Act" (27 FPC at 834).

Mohawk to contribute to the costs of administration. Sharing in the costs of administration from the effective date of a license is an obligation which no licensee should be permitted to shirk.

Niagara Mohawk's Contention That The Commission's Statements Of Administrative Charges Are Not Supported By The Cost Determination Criteria Of Part 11 Of The Commission's Regulations

As shown *supra*, p. 1304, n. 2, Section 10(e) of the Act obligates a licensee to pay a reasonable annual charge to the United States in amounts to be fixed by the Commission to reimburse the United States "for the costs of the administration" of Part I of the Act. It permits the Commission to adjust charges from time to time "as conditions may require." Part 11.20 of the Regulations, which proceeds upon the assumption that all projects subject to the Commission's jurisdiction are under license and will share in administrative costs, states that "a determination shall be made for each fiscal year of the costs of administration of Part I of the * * * Act chargeable of such licensees," *i.e.*, other than State or municipal licensees, and of more than 2000 horsepower installed capacity.

Niagara Mohawk received statements of annual charges for Projects 2318, 2320 and 2330 aggregating $174,259.05. It argues that even if retroactive charges can be imposed, the statements it received "are not supported by the required 'determination * * * for each fiscal year of the costs of administration of Part I' of the Act required in Part 11.20 of the Regulations"; that in the absence of such a showing, "the statements presented with respect to Projects 2318, 2320 and 2330 are not enforceable or collectable bills."

Staff counsel is of the view that the supporting information sought by Niagara Mohawk is not material to the resolution of the issues in this case. He contends that the court in the *Central Maine* case (*supra*, pp. 1310, 1311) made it clear that a prime objective of backdating licenses is to prevent, insofar as possible, those who have violated the Act from enjoying a better position than those who timely complied. He further points out that the Commission, by its Order Nos. 272 and 272-A, amended its regulations in 1963 for the express purpose of increasing annual charges to cover administrative costs;[9] that for reasons developed in Order 272-A annual charges even now do not cover all administrative costs.

The Commission is faced here, as it has been on other occasions, with the licensing of projects constructed and maintained without the requisite federal authority. Such cases cause the Commission to adjust its administrative machinery and actions to the necessity of dealing with such projects so as to (1) enable their continued operation in compliance with the law, and (2) keep those who ignored the law from obtaining unmerited advantage over those who complied therewith. In meeting this responsibility the Commission has, with court approval, *supra*, pp. 1309, 1311, considered it just and reasonable to, *inter alia*, impose annual charges from and after the retroactive effective date of a license. In this connection it recognized that it "may make the pragmatic adjustments called for by particular circumstances", *Federal Power Commission* v. *Natural Gas Pipeline Company of America*, 315 U.S. 575, 586, because this harmonizes with the purposes of the Act.

The only practical and reasonable procedure that the Commission can follow in assessing annual charges is to provide, as it has, a formula to be uniformly

[9] These orders were issued in Docket R-228 on November 20, 1963, 30 FPC 1333, and June 18, 1964, 31 FPC 1555, respectively. The notice of proposed rulemaking in this docket, issued on December 28, 1962, indicates that for the years 1960 through 1962 the Commission's collections fell short of its costs by $854,785.

applied to all licensees. It hopes that the formula will reimburse the United States for the costs of administration which vary from year to year. When the formula devised does not meet this objective, the costs not recovered from licensees must be paid for out of annual appropriations by Congress.

Congress clearly intended that the owners of all hydroelectric projects subject to the Commission's jurisdiction would share proportionately in the Commission's costs of administration and this is what the regulations also contemplate. Here instead of following the procedure for obtaining licenses and paying annual charges on a current basis, Niagara Mohawk rather tries to utilize a violation of the Act so as to nullify the annual charge requirement (*Cf. Pennsylvania Water & Power Co.* v. *Federal Power Commission*, 343 U.S. 414, 424). It cannot be permitted to succeed in this attempt. Compliance with the annual charge requirement is part of "the price which [Niagara Mohawk] must pay to secure the right to maintain" its projects (*United States* v. *Appalachian Electric Power Co.*, 311 U.S. 377, 427–28). The "bite of the law is in its enforcement" *Fisher* v. *United States*, 328 U.S. 463, 484.

In fairness to those who have timely complied with the law and paid annual charges according to the Commission's formula, and in order to avoid discriminating against non-violators in favor of violators, the Commission must cause violators to pay annual charges on the same basis on which the non-violators were assessed. If it can thereafter be determined that the aggregate amount assessed exceeds the total of the Commission's costs of administration to a significant degree, then all licensees would seem to be entitled to recoup a proportionate part of the overpayment. Section 10(e) so provides (see *supra*, p. 1304, n. 2). By way of contrast to what the statute requires, Niagara Mohawk is here in effect seeking a determination of Commission costs of administration for the 1949–1963 period upon the chance that it might disclose that the Commission has already recouped its costs for that period, thereby making any assessment against Niagara Mohawk unjustified. But since Niagara Mohawk must pay its fair share of such costs no matter what the situation is with respect to past reimbursements, the Examiner concludes that Niagara Mohawk's contention that the Commission, as a condition of retroactively imposing annual charges, must at least show that it has not fully recovered its administrative costs for the past period of the licenses, is wholly untenable.

Niagara Mohawk is also clearly in error in claiming that "Prior to actual license issuance there is no cost to the United States in having the Commission administer the statutory responsibilities incumbent on it by Part I of the Act." Under this approach, and contrary to the intent of the Act, the cost of dealing with the noncompliance problem and processing license applications up to the date of issuance of the licensing order would go unreimbursed.

Niagara Mohawk's delay in complying with the law cannot be said to have lightened the Commission's administrative burden or expense in administering Part I of the Act. Nor has it in any equitable sense entitled Niagara Mohawk to the relief it here seeks. It is common knowledge much of the Commission's administrative costs are attributable to the entire non-compliance problem, including Niagara Mohawk's projects.

Furthermore, Niagara Mohawk's argument that its projects have not occasioned administrative costs for the years 1949–1963, for which the amount of $174,259.05 was assessed under Section 10(e), ignores the fact that the Commission's formula for determining annual charges does not attempt to relate specific expenses to specific licensees. Instead, the total administrative expenses are apportioned each year among all licensees. The end result is that one licensee reimburses the Commission for expenses caused by other

licensees in a particular year. Over the long run, however, the variations should tend to balance out.

Niagara Mohawk calls attention to the fact that Section 10(e) directs that "in fixing such charges, the Commission shall seek to avoid increasing the price to the consumers of power by such charges." It says that the "Levy of retroactive charges for 16 or 24 years on a licensed project does not smack of such avoidance." While Niagara Mohawk is obligated to pay the annual charges even if they result in a rate increase, there is no apparent reason why a rate increase will occur. Niagara Mohawk is one of the largest utilities in the country. Accordingly, in view of its vast sales and revenues, it is wholly unreasonable to believe that the assessed charges, which by comparison with its total revenues are indeed minuscule in amount, could justify a rate increase. That is to say, Niagara Mohawk is unquestionably in a position to absorb the annual charges without increasing its rates.

Niagara Mohawk's Predecessor Was Unreasonable And Recalcitrant In Not Filing A Declaration Of Intention For Project 2424

Niagara Mohawk next contends that its predecessor in interest was excused from filing a declaration of intention for Project 2424 because this project is "the successor user at Lockport, New York, of water excepted from licensing by the Commission in a proceeding [Project 15] in 1926."

The Project 15 license authorized the diversion, for the purpose of producing hydroelectric power, of 275 cfs of water from the Niagara River through the New York State Barge Canal (formerly known as the Erie Canal) into Eighteen Mile Creek. Article 1 of that license, upon which Niagara Mohawk relies, is quoted in the margin.[10]

Apparently Project 2424, for which Niagara Mohawk has not accepted the license tendered by the Commission, uses waters under the Kennedy and Hatch lease referred to in Article 1. In Niagara Mohawk's view, this article recognizes that any project using such water does not require a license. In disagreeing with Niagara Mohawk's position, staff counsel points out, among other things, that if Niagara Mohawk construed the language of Article 1 to have the meaning now attributed to it "it is difficult to understand why Niagara Mohawk applied for a license for" Project 2424 in 1963. In other words, the filing of the application for license was, in effect, an admission that the company was fully aware of the fact that the Act required a license for this development.

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[10] Article 1 of the Project 15 license reads as follows:

The authority to divert, carry, redivert and use the aforesaid 275 cubic feet per second, is limited to the place, amount, manner and agencies of diversion, carriage, rediversion and use described herein: *Provided,* however, that nothing contained herein shall be construed as affecting the rights of the said Hydraulic Race Company to use of the so-called "Surplus waters" of said Barge Canal to be taken and drawn from said canal at the head of the locks in the city of Lockport and to be discharged into the lower level of said canal, under the terms of a certain indenture between Richard Kennedy and Junius H. Hatch and the Canal Commissioners of the State of New York executed on January 25, 1826, and known as the "Kennedy and Hatch" lease, or any modifications thereof, or under other lease or agreement now existing or hereafter made with the State of New York respecting such surplus waters; and such surplus may be used either separately or in connection with the waters herein authorized to be diverted: *Provided, further,* that the carriage of the waters herein authorized to be diverted, or of any part thereof, and the time, place, amount and manner of the rediversion thereof from said Barge Canal, shall be wholly within the option of the State of New York, as expressed in the State permit, or in any renewal or amendment thereof, or otherwise; and that neither this license nor the authority granted hereunder shall be deemed to place any obligation whatsoever upon the State of New York with respect to the carriage or rediversion of said water.

Assuming, however, that the language of Article 1 purported to exempt the canal water from the Commission's licensing authority, that action can be of no help to Niagara Mohawk for the Supreme Court, in 1903, had declared the canal to be a navigable water of the United States (*The Robert W. Parsons*, 191 U.S. 17, 27) and the Commission could not ignore or attempt to override that decision. "When once found to be navigable, a waterway remains so," *United States* v. *Appalachian Electric Power Co.*, 311 U.S. 377, 408 (1940). Equally applicable in this situation is the holding in *United States* v. *City and County of San Francisco*, 310 U.S. 16, 31–32 (1940), for the Commission's licensing authority insofar as navigable waters are concerned has never been in doubt:

> A substantial part of the City's argument rests upon its claim that the Department of the Interior in the period from 1913 to 1937 construed § 6 to forbid no more than sale of power for resale. We are asked to accept these administrative interpretations. And in addition the City suggests that conduct of the Department, of which these interpretations were a part, is sufficient to create an estoppel against the Government. Whether the Department at any time ever did more than merely to tolerate sale and distribution of Hetch-Hetchy power by the Company as a temporary expedient is doubtful. Certain it is, however, that in 1935 the Secretary of the Interior declared the City's disposition of power through the Company to be a violation of § 6, demanded discontinuance of this violation without success and thereafter instigated this proceeding. We cannot accept the contention that administrative rulings—such as those here relied on—can thwart the plane purpose of a valid law. As to estoppel, it is enough to repeat that "* * * the United States is neither bound nor estopped by acts of its officers or agents in entering into an arrangement or agreement to do or cause to be done what the law does not sanction or permit" [Citing *Utah Power & Light Co.* v. *United States*, 243 U.S. 389, 409].

As put in *Securities and Exchange Commission* v. *Morgan, Lewis, and Bockius, et al.*, 209 F. 2d 44, 49, "the Commission may not waive the requirement of an act of Congress nor may the doctrine of estoppel be invoked against the Commission." Indeed the Commission recognized in *Androscoggin* that the applicant there involved could not rely upon "decisions rendered on the basis of the outmoded criteria of the 1920's" (27 FPC at 835–36). The Examiner should hasten to add, however, that the Supreme Court's 1903 determination of navigability in *The Robert W. Parsons* case does not constitute part of the "outmoded criteria" referred to by the Commission in *Androscoggin*.

In the circumstances, the Exmainer disagrees with the contention of counsel for Niagara Mohawk that the company's "predecessor was neither unreasonable or recalcitrant in not filing a declaration of intention." The Examiner's view coincides with the Commission's view in the *Central Maine* case, as to which the Court found that it could not "possibly condemn the Commission's determination that petitioner was unreasonable, if not even recalcitrant, in not recognizing and complying with the second portion of the statute by filing a declaration of intention."

License Issued To New York State Electric & Gas Corporation For Project 2438

Niagara Mohawk makes a forceful argument in contending that its Project 2424 is entitled at least to treatment, as respects administrative charges, equivalent to that accorded Project 2438 of New York State Electric & Gas Corporation (New York State Electric) the latter project being constructed

without a federal permit in 1915 and 1917 on what is now known as the New York State Barge Canal, the Supreme Court having declared the canal to be a navigable water of the United States in 1903. As has already been pointed out (*supra*, pp. 1314, 1315), Niagara Mohawk's Project 2424 is located on this same canal.

New York State Electric applied for a license for Project 2438 in 1964. The license for this project, issued on March 5, 1965, 33 FPC 413, was made effective from April 1, 1962, the first day of the month in which the Commission issued its *Androscoggin* decision establishing criteria for backdating licenses. Counsel for Niagara Mohawk contends that the—

> * * * lack of rationale in the Commission's demarcation in its *Androscoggin* opinion (1) between projects constructed prior to August 26, 1935 and (2) projects constructed post-1935 with a possible interpolation of a finding as to navigability at any time is illustrated most graphically by the contradictory action of the Commission in the issuance of licenses for [Niagara Mohawk's] Project 2424 and for [New York State Electric's] Project 2438. Each occupies portions of the New York State Barge Canal System. Project 2424 was built "in its present form" in 1941. Project 2438, consisting of two separate stations, was built in 1915 and 1917, respectively. The Commission would retroactively impose administrative charges on Project 2424 from July 1, 1941, but on Project 2438, only from April 1, 1962. This is patently unreasonable and arbitrary discrimination. If a license is required for each project, it was required with equal necessity both at and after June 10, 1920 or at and after August 26, 1935. * * *

In issuing the license for New York State Electric's Project 2438 the Commission stated that it was issuing it in "accordance with the criteria set forth in * * * [Androscoggin] * * *", and therefore "the license herein granted shall have an effective date of April 1, 1962 and a termination date of December 31, 1933." While the Examiner recognizes that he must give due deference to the Commission's conception of the scope of its *Androscoggin* criteria, the Examiner deems it not inappropriate in this instance to indicate for the Commission's reconsideration the fact that the situation it faced in licensing New York State Electric's project may have been different from what it thought it was. If an unwitting mistake was made the Commission may want to correct New York State Electric's license. In this connection the answer to Niagara Mohawk's position does not lie in changing the terms of the license for Project 2424 to coincide with those of New York State Electric's Project 2438, but in correcting the terms of the latter if they were granted through error.

For reasons now to be explained, it appears to the Examiner that the type of situation involved in New York State Electric's project is outside any category of unlicensed projects considered by the Commission in *Androscoggin*. In *Androscoggin* the Commission was primarily concerned with projects located on streams found to be navigable on the basis of their use for the transportation of logs, as to which the full extent of its jurisdiction had not always been understood. The Commission therefore properly drew a distinction between lawful and unlawful conduct in licensing pre-1935 and post-1935 projects (see *supra*, pp. 1307, 1308).

However, in view of the fact that the Supreme Court determined in 1903 that the New York State Barge canal was a navigable water of the United States, any construction of a project on that waterway after that date, without a federal authorization, can only be regarded as a knowing and wilful violation. That Supreme Court decision was as much, if not more, notice than the

amendment of Section 23(b) in 1935, that there could be no lawful construction of projects thereon without a federal permit.

The Examiner submits that for the Commission to retroactively impose administrative charges, etc., on New York State Electric's Project 2438 only from April 1, 1962, disregards the basis on which *Androscoggin* has set the pattern for governing lawful and unlawful conduct. The Examiner therefore recommends to the Commission that, through a show cause proceeding, the Commission retroactively impose administrative charges on that project from the date of the passage of the original Federal Water Power Act, *i.e.*, June 10, 1920. In this connection the Examiner calls attention to the decision *In the Matter of Foreman and Company, Inc.*, 3 SEC 132, 135, in which the Securities and Exchange Commission summarized the applicable law relating to wilful conduct:

> A finding of willfullness need not, of course, be predicated upon the express admission of a registrant that he purposely undertook an illegal course of action. Such a finding may properly rest upon inference drawn from all circumstances surrounding the registrant's conduct, and indeed, must so rest in most cases. *Cf. Pierce* v. *United States*, 252 U.S. 239 (1920); *Marrash* v. *United States*, 168 Fed. 225 (C.C.A. 2d, 1909); *Ryan* v. *United States*, 216 Fed. 13 (C.C.A. 7th, 1914); *Commonwealth* v. *Robinson*, 146 Mass. 571, 16 N.E. 452 (1882). Nor is it essential, in order to establish a willful violation within the meaning of Section 15(b), that the proof point to the registrant's having intentionally committed an unlawful act with a 'bad purpose.' While proof of these facts is clearly sufficient to establish 'willfulness' (see *United States* v. *Murdock*, 290 U.S. 389 (1933); *Potter* v. *United States*, 155 U.S. 438 (1894); *State* v. *Morgan*, 136 N.C. 628, 48 S.E. 670 (1904)), the term embraces a wider category of activities. 'Conduct marked by careless disregard of whether or not one has the right so to act' likewise may be deemed willful. (*United States* v. *Murdock, supra*, at p. 395; see also *Spurr* v. *United States*, 174 U.S. 728, 735 (1899); *Oregon-Washington R. & Nav. Co.* v. *United States*, 205 Fed. 337, 340 (C.C.A. 9th, 1913); *State* v. *Savre*, 129 Iowa 122, 105 N.W. 387 (1905)). * * *

In *United States* v. *Illinois Central Railroad Co.*, 303 U.S. 239, 244, the Court also pointed out that "whether respondent knowingly and willfully failed is to be determined by the acts and omissions which characterize its violation of the statute * * *." And in distinguishing between an act declared *malum prohibitum* and an act *malum in se*, the Court in *United States* v. *Union Pacific R. Co.*, 169 F. 65, 67, stated:

> * * * Counsel for defendant contend that the word 'willfully' as employed by the statute necessarily implies an evil purpose or bad motive, and have in their brief collected and reviewed many cases dealing with the meaning of this word. We find no occasion, however, to follow them through this maze of authority. The word is here employed in connection, not with a crime or offense malum in se, but with an offense purely statutory subjecting the offender to a civil action only. In view of our former rulings on this question, we are of the opinion and so hold that as here employed the word means only the intentional doing of an act forbidden by the statute.

FINDING AND CONCLUSION

Upon consideration of the record made in this proceeding it is found and concluded that Niagara Mohawk's contentions do not warrant any modification of (1) the Commission's orders issuing licenses for Projects 2318, 2320, 2330 and 2424, or (2) the amount of $174,259.05 heretofore billed Niagara Mohawk

for annual charges for administration for the periods April 1, 1949–December 31, 1963 (for Project 2318) and November 1, 1949–December 31, 1963 (for Projects 2320 and 2330), the beginning dates for such charges being the retroactive effective dates of the licenses. This is to say, since "there is warrant in the record for the judgment [heretofore exercised by the Commission], it must stand" (*Rochester Telephone Co.* v. *United States*, 307 U.S. 125, 145–46).

ORDER

WHEREFORE, *it is ordered*, subject to review by the Commission:

Within fifteen days after this order becomes the final act of the Commission, Niagara Mohawk shall (1) pay the annual charges assessed in the total amount of $174,259.05, plus interest at the rate of 6 percent "from the dates of the statements of annual charges" as required by the Commission's order issued May 17, 1965, 33 FPC 1025, and (2) accept and return to the Commission the license issued on December 9, 1964, 32 FPC 1404, for Project 2424.

FRANCIS L. HALL,
Presiding Examiner.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

NORTHERN NATURAL GAS COMPANY, DOCKET NO. CP66–44

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued November 15, 1965)

On August 9, 1965, Northern Natural Gas Company (Applicant) filed in Docket No. CP66–44 an application, as supplemented on September 22, 1965, pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of additional horsepower at two existing compressor stations, as more fully set forth in the application.

Applicant will install 2,000 additional horsepower at its Holcomb Station located in Finney County and 3,000 additional horsepower at its Hugoton Station in Stevens County, both located in the Hugoton Field, Kansas.

Applicant states that the additional horsepower is required for the following reasons: (1) to offset the declining wellhead flowing pressures behind both stations due to diminuation of reservoir pressure which has historically averaged approximately 7 psi per year, (2) to enable Applicant to purchase its gas requirements from the field consistent with the allowable assigned or the provisions in its gas purchase contracts, and (3) to allow for a geographic shift in the allowables assigned to the wells connected to Applicant's system from the northern portion of the Hugoton Field to the southern portion.

Applicant further states that the 3,000 horsepower proposed at the Hugoton Station will be utilized as the second stage of compression for gas going north to Holcomb Station and that it consists of portable units which can be transferred readily in a minimum of time and cost. The 2,000 horsepower addition proposed at the Holcomb Station will be utilized to compress gas from Hugoton-Tate line.

The estimated cost of the additional facilities is $1,604,400, which will be financed from cash on hand. The incremental cost of service is $270,750, which is 0.14 percent of Applicant's total operating expenses of $196,133,085 for the year ended December 31, 1964. The proposed construction appears to be economically feasible.

Due notice of the filing of the application was published in the Federal Register on August 18, 1965 (30 F.R. 10258). No protest, petition to intervene, or notice of intervention has been filed in this proceeding.

At a hearing held on November 10, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Northern Natural Gas Company, a Delaware corporation having its principal place of business in Omaha, Nebraska, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order issued on April 6, 1943, in Docket No. G–280 (3 FPC 967).

(2) The facilities hereinbefore described and as more fully described in the application in this proceeding are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (b), (c)(1), (c)(3), (c)(4), and (e) of Section 157.20 of said Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Applicant, Northern Natural Gas Company, authorizing the construction and operation of the facilities, as hereinbefore described and as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (b), (c)(1), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities authorized shall be completed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within one year from the date of this order.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

UNITED GAS PIPE LINE COMPANY, DOCKET NO. CP65-119

ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued November 15, 1965)

On September 29, 1965, United Gas Pipe Line Company (Petitioner) filed in Docket No. CP65-119 a petition to amend the Commission's order issued January 5, 1965, 33 FPC 21, in said docket to authorize a total expenditure of $2,000,000 during the calendar year 1965 in lieu of the $1,000,000 authorized to be expended during said calendar year, all as more fully set forth in the petition to amend in this proceeding.

The order of January 5, 1965, authorized Petitioner, pursuant to its "budget-type" application, during the three years commencing January 1, 1965, to construct and operate natural gas pipeline facilities and compression facilities for the testing and development of under ground reservoirs for the storage of natural gas located near the route of Applicant's pipeline system. In accordance with the provisions of Subparagraph (4)(i) of Section 157.7(d) of the Commission's Regulations under the Natural Gas Act, total expenditures for any one year were limited to $1,000,000 with a $3,000,000 limitation for the entire three year period.

Petitioner states herein that it has been actively engaged in making studies and acquiring rights and options in connection with a proposed underground storage project to be known as the Bistineau Gas Storage Field, Bossier and Bienville Parishes, Louisiana. Petitioner states further that numerous options which have been obtained must be exercised prior to January 1, 1966, and it appears that in the exercise of such options the amount of money expended under its present authorization would exceed the sum of $1,000,000 for the calendar year 1965. Petitioner believes that it would be in the public interest to exercise these options and not be faced with renegotiations for such rights with the present owners of such options expired.

Accordingly, Petitioner requests that the order of January 5, 1965, be amended to authorize a total expenditure of $2,000,000 during the calendar year 1965.

Due notice of the filing of the petition to amend and opportunity for hearing thereon has been given by publication in the Federal Register on October 13, 1965 (30 F.R. 13029). No protest or petition to intervene has been filed in this proceeding.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued January 5, 1965, in Docket No. CP65-119 be amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order issued January 5, 1965, in Docket No. CP65-119 is amended to authorize Petitioner to expend a total of $2,000,000 during the calendar year 1965 in lieu of the $1,000,000 heretofore authorized to be expended during said calendar year, all as hereinbefore described and as set forth in the petition to amend.

(B) The condition limiting total expenditures during the three calendar years to $3,000,000 shall remain unchanged.

(C) In all other respects said order shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

WISCONSIN MICHIGAN POWER COMPANY, PROJECT NO. 2394

ORDER ISSUING LICENSE (MAJOR)

(Issued November 15, 1965)

Application was filed on August 12, 1963 and supplemented on January 14 and February 5, 1965 by Wisconsin Michigan Power Company (Applicant) of Appleton, Wisconsin, for a license under Section 4(e) of the Federal Power Act (Act) for constructed major Project No. 2394, known as the Chalk Hill Project, located on the Menominee River in Menominee County, Michigan, and Marinette County, Wisconsin, in the vicinity of Amberg, Wisconsin, and the Village of Stephenson, Michigan.

The Chalk Hill Project was constructed in 1926 and commenced operation in 1927. The project has been operating since the latter date without any substantial changes. Applicant acquired the project works in 1937.

The Menominee River, on which Applicant's Chalk Hill project is located, was held to be a navigable river of the United States by this Commission on July 27, 1943,[1] in an opinion on a declaration of intention filed by the Applicant with respect to certain hydroelectric developments now licensed as Project No. 1759.[2] Thus, the Chalk Hill project is on a stream within the Commission's jurisdiction. Unlike Applicant's White Rapids project[3] (now designated as Project No. 2357) the Chalk Hill project was never the subject of a previously filed application for preliminary permit in which the Commission declined to take jurisdiction. Thus, any doubt that may have existed before 1943 about the need for a Federal license for the Chalk Hill project ceased to exist after that date, when this Commission held the Menominee navigable.

Under these circumstances, Applicant's contention that it is entitled to a 50-year license effective as of the date of issuance is without merit. Instead, we think that it is proper to make the license effective as of July 1, 1943 (the first day of the month in which the Menominee was declared to be navigable) with a termination date of June 30, 1933. In so stating we are merely follow-

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[1] *In the Matter of Wisconsin Michigan Power Company*, 3 FPC 449 (1943). This opinion was one of the first to hold that evidence of log-driving and rafting on a stream could be sufficient to support a finding that the stream was navigable. This and several other similar opinions were cited and relied upon in the Commission's opinion in *Public Service Company of New Hampshire (Androscoggin)*, 27 FPC 830 (1962) which is discussed below.

[2] All parts of Project No. 1759 are located upstream from the Chalk Hill project, on the upper reaches of the Menominee and upon its tributary the Michigamme River.

[3] Application for a preliminary permit for the White Rapids project was filed by Applicant's predecessor in interest, the White Rapids Paper Company, in April 1922. The project was initially designated Project No. 302. The Commission elected to treat the application as a Declaration of Intention under Section 23 and declined to take jurisdiction. Second Annual Report of the Federal Power Commission, p. 151.

Pursuant to an application filed April 8, 1963, a license has been issued for the White Rapids project, Project No. 2357, by order dated March 10, 1965, 33 FPC 526. That license is effective as of January 1, 1965 and will terminate on December 31, 1993.

ing the policy enunciated in *Public Service Company of New Hampshire (Androscoggin)* 27 FPC 830 (1962). In that case, after noting that the Androscoggin River on which the constructed project was located had been declared navigable by this Commission in an order issued July 24, 1958, 20 FPC 99, we declared that:

> Our discretion * * * should not be so exercised as to ignore either of the two more flagrant breaches of statutory duty committed by Applicant in 1958 when it (a) failed to apply for a license even after our determination of jurisdiction over the Androscoggin in Docket No. E-6807; and (b) replaced its dam without filing either a license application or a declaration of intention * * * Since the Application now before us does not indicate the precise date upon which the construction was commenced, we are content to make the license effective as of July 1, 1958, the first day of the month in which we determined jurisdiction in Docket No. E-6807 (27 FPC 830, 834).

Application of this line of reasoning leads us to choose July 1, 1943 as the date on which the license for the Chalk Hill project should be deemed effective. After our July 27, 1943 decision finding the Menominee River navigable, the Applicant's duty to apply for a license for the Chalk Hill project was clear and unmistakable.

Similar reasoning prompts us to choose June 30, 1993 as an appropriate termination date for this license. In *Androscoggin* we cited, our July 27, 1943 decision regarding the navigability of the Menominee River and similar decisions, and said:

> At least as early as the 1943 decisions, the owner of every project located in a stream capable of being used for the transportation of logs was placed on notice of the perils of further unlicensed operation. * * * For the reasons stated, it is in our view appropriate that the license tendered herein be for a term ending December 31, 1993. (27 FPC 830, 833–34).

The Secretary of the Army and the Chief of Engineers have reported that the plans of the project structures affecting navigation have been approved pursuant to Section 4(e) of the Federal Power Act insofar as the interests of navigation are concerned.

The Department of the Interior, in reporting on the application, recommended for inclusion in any license for the project, conditions in the interests of fish and wildlife and recreation, as set forth in attached Form L-3.

The Department of Health, Education, and Welfare, has advised that the project does not significantly affect water supply or water quality control and the Department does not expect that the granting of a license will increase or intensify vector problems.

The Public Service Commission of Wisconsin has advised that the project dam was authorized by permit issued in 1926 under Wisconsin law.

Applicant filed a revised Exhibit R (3) showing the present recreational and public access areas developed within the project boundary, which, to this extent, we are herein approving. However, by Article 33 herein, we are requiring Applicant to cooperate with State and local agencies in the interest of recreation in connection with the use of project lands and waters by the public, and requiring Applicant to file within two years of the date of issuance of this license a revised Exhibit R to show the planned development of additional recreational facilities as project works.

Since the application for license included only a 10,000 kva capacity substation and appurtenant facilities and 2.32 miles of 138 kv transmission line as parts of the project works but does not include other transmission facili-

ties associated with the project, we are reserving in Article 32 herein the Commission's right to determine at a later date what additional transmission facilities, if any, shall be included in this license as parts of the project works.

The Commission finds:

(1) The project affects navigable waters of the United States.

(2) Applicant is a corporation organized under the laws of the State of Wisconsin, and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effectuate the purposes of a license for the project.

(3) Public notice of the filing of the applicaton has been given. No protests or petitions to intervene have been received. No conflicting application is before the Commission.

(4) The project does not affect a Government dam, nor will the issuance of a license therefor, as hereinafter provided, affect the development of any water resources for public purposes which should be undertaken by the United States.

(5) Subject to the terms and conditions hereinafter imposed, the project will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, and for other beneficial public uses, including recreational purposes.

(6) The installed horsepower capacity of the project hereinafter authorized for the purpose of computing the capacity component of the administrative annual charge is 10,400 horsepower, and the amount of annual charges, based on such capacity, to be paid under the license for the project, for the costs of administration of Part I of the Act is reasonable.

(7) The exhibits designated and described in paragraph (B) below conform to the Commission's rules and regulations and should be approved as part of this license, except that Exhibit K (FPC No. 2394–2) may be subject to revision, as provided in Article 31 herein.

(8) Exhibit R (3) Sheet 1 (FPC No. 2394–15) Recreational Area, conforms to the Commission's rules and regulations and should be approved as a part of this license insofar as it indicates present recreational use.

The Commission orders:

(A) This license is hereby issued to Wisconsin Michigan Power Company (Licensee) of Appleton, Wisconsin, under Section 4(e) of the Federal Power Act (Act) for a period effective as of July 1, 1943, and terminating June 30, 1993, for the continued operation and maintenance of Chalk Hill Project No. 2394, located on the Menominee River, a navigable water of the United States, subject to the terms and conditions of the Act, which is incorporated herein by reference as a part of this license, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) Chalk Hill Project No. 2394 consists of:

(i) all lands constituting the project area and enclosed by the project boundary or the limits of which are otherwise defined, and/or interest in such lands necessary or appropriate for the purposes of the project, whether such lands or interest therein are owned or held by the Licensee or by the United States; such project area and project boundary being more specifically shown and described by the following exhibits which formed a part of the application for license:

Exhibit J: Sheet 1 (FPC No. 2394–1) General Map Showing the Entire Project Area

Exhibit K: Sheet 1 (FPC No. 2394–2) Detail Map Covering Project Area and Showing Project Boundary

(ii) project works consisting of: (1) a dam comprised of a concrete gravity and earth embankment section about 38 feet high with an overall length of 1,936 feet containing an intake section 123 feet long, a gated spillway 300 feet long including eleven tainter gates 12 feet high and 24 feet wide, an earth embankment section 140 feet long located west of the powerhouse on the Michigan shore and an earth embankment section about 1,373 feet long located east of the spillway section; (2) a reservoir of about 882 acres at a normal water surface elevation of 745 feet; (3) a powerhouse integral with the dam containing three turbines each rated 3,750 hp at a head of 28-feet directly connected to three generators each rated 2,600 kw; (4) an operator's village; (5) one 10,000 kva capacity substation; (6) a 138-kv transmission line about 2.32 miles long; and (7) appurtenant electrical and mechanical facilities. Location and character of the works are shown in the above-cited exhibits and others designated as follows:

Exhibit L: Sheet 1 (FPC No. 2394–3) General Layout, Sheet 2 (FPC No. 2394–12) Cross Section of Plant, Sheet 3 (FPC No. 2394–5) Foundation Boring Exploration, Sheet 4 (FPC No. 2394–13) Plant Floor Sectional Plans, Sheet 5 (FPC No. 2394–14) Plant Elevations Sheet 6 (FPC No. 2394–8) Tainter Gate & Spillway Details, Sheet 7 (FPC No. 2394–9) Abutment Walls, Sheet 8 (FPC No. 2394–10) Additional Data; and

Exhibit M: Three typewritten pages, "General Description of Project and Equipment", filed in the Commission August 12, 1963.

(iii) all other structures, fixtures, equipment or facilities used or useful in the maintenance and operation of the project and located on the project area, including such portable property as may be used or useful in connection with the project or any part thereof, whether located on or off the project area, if and to the extent that the inclusion of such property as part of the project is approved or acquiesced in by the Commission; also, all riparian or other rights, the use or possession of which is necessary or appropriate in the maintenance or operation of the project.

(C) This license is also subject to the terms and conditions set forth in Form L–3 (Revised August 1, 1964), entitled "Terms and Conditions of License for Constructed Project Affecting Navigable Waters of the United States" (32 FPC 1114), which terms and conditions, designated as Articles 1 through 29, are attached hereto and made a part hereof, except Article 25 thereof, and subject to the following special conditions set forth herein as additional articles:

Article 30. The Licensee shall pay to the United States the following annual charge, effective as of July 1, 1943:

For the purpose of reimbursing the United States for the costs of administration of Part I of the Act, a reasonable annual charge as determined by the Commission in accordance with the provisions of its regulations, in effect from time to time. The authorized installed capacity for such purposes is 10,400 horsepower.

Article 31. The Licensee shall, upon a determination of United States ownership of unsurveyed islands by the Department of the Interior, file with the Commission an amended Exhibit K (FPC No. 2394–2) to include such islands under this license.

Article 32. The Commission reserves the right to determine at a later date what additional transmission facilities, if any, shall be included in this license as part of the project works.

Article 33. The Licensee shall cooperate with State and local agencies in the development and maintenance of access areas and roads, sanitary and waste disposal facilities, and such other facilities as may be necessary for full recreational utilization by the public of project lands and waters consistent with the terms of the license and the operation of the project, and shall within two years of the date of issuance of this license file for Commission approval a revised Exhibit R in conformance with the requirements of Section 4.41 R of the Regulations under the Federal Power Act.

Article 34. On the application of any person, association, corporation, Federal agency, State or municipality, the Licensee shall, after notice and opportunity for hearing, permit such reasonable use of its reservoirs or other project works or parts thereof as may be ordered by the Commission in the interest of comprehensive development of the waterway or waterways involved and the conservation and utilization of water resources of the region for water supply for steam electric, irrigation, industrial, municipal or similar purposes, consistent with the primary objective of the project. The Licensee shall receive such reasonable compensation as may be appropriate for use of its reservoirs or other project works or parts thereof for such purposes, any such compensation to be fixed either by Commission approval of an agreement between the Licensee and the party or parties benefiting or by the Commission in the event the parties are unable to agree. Applications shall contain information in sufficient detail to afford a full understanding of the proposed use, including satisfactory evidence that the applicant possesses necessary water rights pursuant to applicable State law, or a showing of cause why such evidence cannot be submitted, as a statement as to the relationship of the proposed use to any State or municipal plans or orders which may have been adopted with respect to the use of such waters.

(D) The Commission reserves the right to determine at a later date the annual charge, for the use, occupancy and enjoyment of lands of the United States, if any, by the project.

(E) The exhibits designated and described in paragraph (B) above are hereby approved as part of this license.

(F) The revised Exhibit R (3) designated in finding (8) above is hereby approved as a part of this license to the extent indicated in the finding.

(G) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgment of the acceptance of this license, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

ATLANTA GAS LIGHT COMPANY AND SOUTH GEORGIA NATURAL GAS COMPANY, DOCKET NO. CP66-84

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued November 16, 1965)

On September 27, 1965, Atlanta Gas Light Company (Applicant) filed in Docket No. CP66-84 an application pursuant to Section 7(a) of the Natural

Gas Act for an order of the Commission directing South Georgia Natural Gas Company (Respondent) to establish physical connection of its natural gas transmission facilities with the distribution facilities to be installed by Applicant and to sell and deliver to Applicant an additional 681 Mcf of natural gas per day for resale and distribution in the City of Hahira, Georgia, and its environs, as more fully set forth in the application.

Applicant proposes that Respondent construct a tap, meter and regulating station on its 4-inch Nashville lateral southeast of Hahira. Applicant's distribution system will be connected at that point.

Hahira is located approximately seven miles north of Valdosta, Georgia, Applicant's existing distribution system, serving Valdosta, is presently connected to Respondent's transmission system.

The total estimated volumes of natural gas necessary to meet Applicant's annual and peak day requirements for the initial three year period of proposed operations are stated to be as follows:

	First year	Second year	Third year
Annual (Mcf)	27,075	34,494	40,020
Peak day (Mcf)	511	618	681

The estimated cost of construction of Applicant's distribution system is $99,491, which will be financed from current construction funds. The third year anticipated net income from the project is $5,561 (after income taxes), resulting in a 6.16 percent incremental rate of return. The proposal appears to be economically feasible.

Applicant's proposed distribution project to serve the City of Hahira was approved by the Georgia Public Service Commission on December 2, 1964.

Respondent filed an answer to the application on September 29, 1965, stating that, in its opinion, the proposal will not impair its ability to render adequate service to its other customers and will place no undue burden upon it. Respondent has no objection to the proposal.

Due notice of the filing of the application and opportunity for hearing thereon was published in the Federal Register on October 14, 1965 (30 F.R. 13105). No protest, petition to intervene or notice of intervention has been filed.

The Commission finds:

(1) South Georgia Natural Gas Company, a Georgia corporation having its principal place of business in Thomasville, Georgia, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of August 3, 1954, in Docket No. G-1915 (13 FPC 666).

(2) Applicant is a public utility company in the State of Georgia and is authorized to construct and operate facilities to distribute and sell natural gas to inhabitants of the communities along its system.

(3) It is necessary and desirable in the public interest that Respondent be directed to establish a physical connection of its transportation facilities with the facilities proposed to be constructed by Applicant and to render natural gas service to Applicant, as hereinbefore described and as more fully set forth in the application, as hereinafter ordered and conditioned.

(4) The requirement that Respondent serve Applicant, as requested, will not place an undue burden upon Respondent nor impair its ability to render adequate service to existing customers.

The Commission orders:

(A) Respondent is directed to establish a physical connection of its natural gas transmission system with the facilities to be constructed by Applicant and to sell and deliver natural gas to Applicant for resale and distribution within the City of Hahira, Georgia, and its environs all as hereinbefore described and as more fully described in the application.

(B) Applicant shall be prepared to receive natural gas from Respondent at the proposed new connection within one year from the date of this order.

(C) Respondent shall notify the Commission of the commencement of service within 10 days thereof.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

MIDWESTERN GAS TRANSMISSION COMPANY, DOCKET NOS. RP61–19, RP62–7; NATURAL GAS PIPELINE COMPANY OF AMERICA, RP63–6

ORDER DENYING REHEARING

(Issued November 16, 1965)

On October 25, 1965, Fuels Research Council, Inc., National Coal Association, Mid-West Coal Producers Institute, Inc., and United Mine Workers of America (Coal Interests), interveners in the above-captioned proceeding, filed a joint application for rehearing of the Commission's Opinion No. 477 and order issued September 28, 1965, 34 FPC 973. In Opinion No. 477 we determined that, subject to certain conditions not material herein, the existing rates of Midwestern Gas Transmission Company (Midwestern) and Natural Gas Pipeline Company of America (Natural) were just and reasonable and not unduly discriminatory or preferential.

The Coal Interests base their request for rehearing on numerous grounds. They contend that the Commission erred in determining that the rate designs are just and reasonable under Sections 4 and 5 of the Natural Gas Act. They also argue that the Commission erred in failing to find that the present rate designs of Midwestern and Natural subject the Coal Interests and their members to undue prejudice or disadvantage.

The arguments are similar to those previously advanced by the Coal Interests in their briefs before the Examiner. All points raised in the application have been discussed and were disposed of in our opinion and order. No further discussion is necessary.

The Commission finds:

The assignments of error and grounds for rehearing set forth in the application for rehearing filed by the Coal Interests in this proceeding present no facts or legal principles which would warrant any change or modification in the Commission's Opinion No. 477 and accompanying order.

The Commission orders:

The application for rehearing filed by Fuels Research Council, Inc., National Coal Association, Mid-West Coal Producers Institute, Inc. and United Mine Workers of America on October 25, 1965, is denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

THE MONTANA POWER COMPANY, PROJECT NO. 2301

ORDER APPROVING REVISED PROJECT EXHIBIT AND FIXING ANNUAL LAND CHARGE

(Issued November 16, 1965)

On August 9, 1965, The Montana Power Company, licensee for Project No. 2301, filed for Commission approval revised Exhibit K: (FPC No. 2301–13), pursuant to Article 28 of the license, which was issued for a period effective as of December 1, 1961.

Project No. 2301, known as the Mystic Lake Hydroelectric Development, is situated on Mystic Lake and West Rosebud Creek in Stillwater County, Montana, and affects lands of the United States within the Custer National Forest. The revised exhibit shows the project boundary around Mystic Lake Reservoir and the project area within the National Forest as comprising 517.43 acres.

The Chief, Forest Service, acting for the Secretary of Agriculture, who has supervision over Custer National Forest, has advised that the project boundary shown on the revised exhibit will not interfere or be inconsistent with the purposes for which Custer National Forest was created or acquired.

The Commission finds:

(1) Revised Exhibit K: (FPC No. 2301–13) conforms to the Commission's rules and regulations and should be approved as part of the license for the project, and Exhibit K: (FPC No. 2301–3), now part of the license and which has been superseded, should be eliminated from the license.

(2) The amount of annual charges under the license for recompensing the United States for the use, occupancy and enjoyment of its lands by the project is reasonable as hereinafter fixed and specified.

The Commission orders:

(A) The revised Exhibit K described in finding (1) above is hereby approved as part of the license for Project No. 2301, and the exhibit described in the same finding as being superseded is hereby eliminated from the license for the project.

(B) Subparagraph (b) of Article 24 of the license for the project is hereby revised to read as follows:

> (b) For the purpose of recompensing the United States for the use, occupancy and enjoyment of its lands, exclusive of those used for transmission line right-of-way, $1,241.83, effective as of December 1, 1961; and

(C) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this order. In acknowledgment of the acceptance of this order, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

SOUTHERN CALIFORNIA EDISON COMPANY, PROJECT NO. 372

ORDER APPROVING REVISED PROJECT EXHIBITS J AND K

(Issued November 16, 1965)

Southern California Edison Company, licensee for major Project No. 372, located on the Middle Fork of the Tule River in Tulare County, California, affecting lands of the United States within Sequoia National Forest, filed on June 28, 1965, an application for approval of revised Exhibit J and K maps to indicate certain changes in the location of transmission line rights-of-way.

According to the application, the two lines involved, known as the Tule River Transmission and Telephone Lines, have been rerouted in Sections 13 and 14, T. 21 S., R. 28 E., and in Section 18, T. 21 S., R. 29 E., M.D.B. & M., to accommodate the construction by the U.S. Corps of Engineers of its Success Reservoir, and the revised Exhibits J and K maps show the relocations. The relocated lines are primary lines. The changes in the location of the rights-of-way will not affect lands of the United States.

The Commission finds:

(1) The following described revised exhibits conform to the Commission's rules and regulations and should be approved as part of the license for the project:

Exhibit J: (FPC No. 372–50) entitled "General Map of Tule Project—Southern California Edison Company" signed by Robert N. Coe, Vice President for Southern California Edison Company on June 21, 1965.

Exhibit K: (FPC No. 372–51) entitled "Detail Map of Tule Project of the Southern California Edison Company LTD." signed by Robert N. Coe, Vice President for Southern California Edison Company on June 21, 1965.

Exhibit K: (FPC No. 372–52) entitled "Detail Map of Tule Project of the Southern California Edison Company" signed by Robert N. Coe, Vice President for Southern California Edison Company on June 21, 1965.

(2) The following described exhibits, now part of the license and which have been superseded, should be eliminated from the license for the project:

Exhibit K: (FPC No. 372–25) entitled: "Detail Map of Tule Project of the Southern California Edison Company LTD.", and approved by the Commission on April 15, 1941.

Exhibit K: (FPC No. 372–41) entitled: "Detail Map of Tule Project of the Southern California Edison Company" approved by the Commission on June 1, 1949.

Exhibit J: (FPC No. 372–46) entitled: "General Map of Tule Project—Southern California Edison Company" approved by the Commission on February 13, 1962.

The Commission orders:

The revised exhibits described in finding (1) above are hereby approved as part of the license for Project No. 372, and the superseded exhibits described in finding (2) above are hereby eliminated from the license for the project.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

H. L. HAWKINS & H. L. HAWKINS, JR., OPERATOR, ET AL., DOCKET NO. G–18077, ET AL.*

ORDER DENYING REHEARING AND GRANTING STAY

(Issued November 17, 1965)

The Hunt Interests[1] on October 15, 1965, W. S. Kilroy (Operator), *et al.* and Kilroy Properties Incorporated (Kilroy) on October 18, 1965, Sun Oil Company and Shell Oil Company on October 21, 1965, and Skelly Oil Company, The Superior Oil Company, Callery Properties, Inc. and the Public Service Commission of the State of New York on October 22, 1965, have filed applications under Section 19 of the Natural Gas Act for rehearing of our Opinion No. 475 and order issued September 22, 1965, 34 FPC 897, in these proceedings. Motions for stay have been filed by Callery, Superior and Hunt.

In Opinion No. 475 and order we granted permanent certificates of public convenience and necessity under Section 7 of the Natural Gas Act to a number of producers in Texas Railroad District No. 3, conditioned on a price of 16.0 cents per Mcf at 14.65 psia for the producers whose contracts were made before issuance of the Commission's Statement of General Policy No. 61–1 on September 28, 1960 (24 FPC 818) and 17.0 cents per Mcf at 14.65 psia for the producers whose contracts were dated after the issuance of the Policy Statement. Little more need be said about the basic problem of the proper initial rate, but further comments and corrections are appropriate with respect to some of the subsidiary issues.

Several of the producers point out that their initial rates for the sales here in question have been superseded by later, increased rate filings which have gone into effect under suspension and argue that the requirement in paragraph (D) of our order that they file rate schedule supplements reflecting the conditioned price is contrary to the Natural Gas Act and the Commission's orders in the other proceedings permitting the increased rates to go into effect. On the contrary we think that supplemental rate schedule filings should be made by all producers whose initial rates exceed the levels found proper here in order to establish the appropriate filed initial rate for each producer. Where no superseding rates have become effective the producers will commence charging the initial rates prescribed here from the date of filing the rates prescribed here. Where superseding rates have been permitted to go into effect, the producers will continue to charge the superseding rates.

In the case of such producers having no express refund provisions in their temporary certificates, the question of whether there should be refunds for the period prior to their putting their superseding rates into effect will be determined upon completion of the proceeding contemplated by paragraph (I) of Opinion No. 475. As for Superior in Docket No. CI63–584 and Pan American in Docket No. CI63–1445, which do have refund provisions in their certificates but have not filed superseding rates, the refund period would extend from the date service commenced until the date the rates prescribed here are filed. Paragraphs (D) and (E) will be amended to clarify these points.

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* For additional parties see Opinion No. 475 and order issued September 22, 1965, 34 FPC 897.

[1] H. L. Hunt, Operator, *et al.*, H. L. Hunt, Hassie Hunt Trust, Operator, *et al.*, Caroline Hunt Sands, Caroline Hunt Trust Estate, Lamar Hunt Trust Estate, Nelson Bunker Hunt, Placid Oil Company, Operator, *et al.*

The producers also contend that the 19-cent moratorium level is not supported by the record. The 19 cents was originally determined in our order of February 24, 1964 (*Hassie Hunt Trust, Operator, et al.*, 31 FPC 447) as the lowest of the three highest prices in the area, because price redetermination clauses customarily provide for the rate to be redetermined on the basis of the highest prices to three different purchasers in a given area. See *Hassie Hunt Trust, Operator, et al.*, 31 FPC 946, 947. We believe the moratorium line should not have to be readjusted upward with each proceeding, for otherwise producers would be subject to varying moratorium levels within the same periods, and the moratorium would afford little protection to the public.

Sun makes the point that in its Docket No. G–8288, *et al.*, 32 FPC 894, we approved a settlement providing for a moratorium period until August 1, 1967 for increased rate filings including the Sun rate schedule involved in this proceeding. We shall amend the moratorium period with respect to Sun to conform to the settlement.

Several producers have asked for stays of paragraphs (B) through (I) of our previous order until completion of judicial review or alternatively until after the decision of the Supreme Court in *U.G.I., et al.* v. *Callery Properties, Inc., et al.*, S. Ct. October Term 1964, Nos. 21, *et al.** Paragraph (B) conditions the certificate with respect to price; (C) provides the moratorium; (D) provides for filing new rates; (E) through (H) provide for refunds by Superior and Pan American and the escrow procedure; and (I) provides for deferring the question of refunds where there is no refund condition in the temporary certificates. In our opinion stay of paragraph (B), the rate condition, is unnecessary. Stay of paragraph (C), the moratorium, would defeat the purpose for which it is included. Paragraph (D), rate filings, should be stayed pending judicial review. Paragraphs (E) through (H), relating to refunds, need not be stayed because the amounts to be refunded will not be paid over until further order of the Commission. In view of the pending proceedings in *U.G.I.* v. *Callery, supra*, paragraph (I) should be stayed until after the Supreme Court decision. Those who have already made filings in accordance with paragraph (I) will be given opportunity to supplement them when paragraph (I) becomes effective.

The Commission further finds:

The assignments of error and grounds for rehearing set forth in the applications for rehearing filed in this proceeding present no fact or legal principles which would warrant any change or modification in the Commission's Opinion No. 475 and order except as specified below.

The Commission orders:

(A) The applications for rehearing filed by the Hunt Interests, Kilroy, Sun, Shell, Skelly, Superior, Callery and the Public Service Commission of the State of New York are denied.

(B) Paragraph (C) is amended to read as follows:

Each certificate issued in paragraph (A), is further conditioned to provide for a moratorium on the filing of all price increases in excess of 19 cents per Mcf at 14.65 psia, inclusive of tax reimbursement until January 1, 1968, or until issuance of a final decision in Docket No. AR64–2, whichever is earlier, but in the case of Sun Oil Company, Docket No. CI60–348, the moratorium imposed by the agreement in Docket No. G–8288 shall apply.

(C) Paragraph (D) is amended to read as follows:

Within 60 days from the date of issuance of this order each of the applicants receiving certificates in paragraph (A) hereof, whose proposed total

*380 U.S. 931 (1965).

initial price exceeds the limits set forth in paragraph (B) shall file a supplement to its presently filed rate schedule, related to its respective application, reflecting the conditioned price as the total initial price in lieu of the higher initial price provided in the contract. The filings of Superior Oil Company in Docket No. CI63-584 and Pan American Petroleum Corporation in Docket No. CI63-1445 shall be effective from the date delivery began until lawfully changed in the manner provided by the Natural Gas Act. The filings of all other producers shall set forth the initial rate here prescribed, and shall be effective from the date of this order until lawfully changed in the manner provided by the Natural Gas Act, and subject to any such lawful changes which are the subject of other proceedings before the Commission. In making the required filings, applicants need not comply with the detailed submittal provisions of Section 154.94(f) of the Regulations under the Gas Act.

(D) In the second sentence of Paragraph (E) change "until the date of this order." to "until the rates prescribed by paragraph (D) are effective. In the fourth sentence of Paragraph (E) after "the date of this order" add "for the period before the date of this order." Add the following sentence to Paragraph (E): "Within 90 days after judicial affirmance of Opinion No. 475, Superior and Pan American shall submit a supplemental report applicable to the excess charges collected between the date of issuance of Opinion No. 475 and the effective date of the reduced rate filings, with interest computed at the rate of 7 percent per annum to the date of such rate filings."

(E) The date for making the filings required by paragraph (D) is postponed until 60 days after judicial review of Opinion No. 475 and order becomes final. The time limit for filing initial briefs and statements of evidence as provided in paragraph (I) is stayed until 60 days after the decision of the United States Supreme Court in *U.G.I.* v. *Callery, supra*, becomes final. Those who have already filed such briefs or statements may file supplemental briefs and statements within the extended time limit prescribed here.

(F) In all other respects the motions for stay are denied.

Commissioners Black and Ross *dissenting* for the reasons set forth in the dissenting statement accompanying Opinion No. 475 and order issued September 22, 1965, 34 FPC at p. 909.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

AREA RATE PROCEEDING, ET AL. (SOUTHERN LOUISIANA AREA), DOCKET NO. AR61-2, ET AL.

ORDER DENYING MOTION TO OMIT INTERMEDIATE DECISION, AND ALTERNATIVE REQUEST FOR AN INTERIM ORDER, BUT GRANTING OTHER RELIEF

(Issued November 19, 1965)

On November 4, 1965, the Associated Gas Distributors group (AGD) of intervenors in the above-entitled proceedings filed a motion to omit the intermediate decision.[1] The Public Service Commission of the State of New York has joined in this motion. As an alternative to its request that the intermediate decision be omitted in its entirety, AGD asked that the Commission

[1] A number of respondents have requested that the Commission summarily reject the motion filed by AGD, or, in the alternative, grant a time extension within which they might respond to the motion. In view of the action we are taking here, particularly with respect to the revised briefing schedule, it is important to issue this order as soon as possible. It is therefore not appropriate to grant the requested time extension.

adopt an interim order procedure whereby it would promptly decide the limited issue of the cost of new gas and would set a price for new gas by an interim order which would be applicable to all gas produced in the South Louisiana Area pending the establishment of a ceiling price by final order for old gas.[2] As a further alternative, AGD urges a shortening of the briefing time schedule heretofore established by the Presiding Examiner.

AGD in support of its motion to omit the intermediate decision points to the financial impact on producers and consumers which would ensue from any delay in the issuance of a final decision by the Commission. As support for the interim order proposal, AGD claims that the record in these proceedings is similar to the record in the Docket No. AR61–1, *et al.*, proceedings on which we based our "new gas ceilings" in Opinion No. 468, 34 FPC 159.

In considering the AGD motion, we do so in the context of our awareness that the public interest calls for the expeditious submission of these proceedings to us for final decision. The Commission has expressed itself to this effect on a number of occasions and as recently as in our order of August 26, 1965. However, we do not believe that elimination of the Examiner's decision would be conducive to our arrival at an early informed judgment. We think that the Examiner who is familiar with the lengthy record here is best equipped to pass initially on the various factual and legal issues which have been or will be raised by the parties and we are confident that he will be able to provide us with an initial decision within a short time after he receives briefs from the parties. We do not believe that it would be appropriate for us at this stage of the proceedings and prior to the Examiner's evaluation of the evidence, to make any interim determination of any of the ultimate issues in the proceeding.

We believe however AGD's request for a shortening of the briefing schedule is meritorious. Accordingly, we are ordering that the service of initial briefs by the parties, interveners and the staff shall be made on or before January 17, 1966, with reply briefs to be served on or before March 7, 1966. This period for initial and reply briefing should provide the parties with an adequate opportunity to fully brief the various issues.

Accordingly, the Commission denies the motion made by AGD for the omission of the intermediate decision and its alternative request for an interim order, but the briefing schedule prescribed by the Examiner is revised as indicated above.

Commissioner Ross *concurring* stated that his agreement with the denial of waiver of the Examiner's initial decision should not be interpreted as indicating his position in future area rate cases.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr. and Carl E. Bagge.

CITY OF AUBURN, KANSAS AND CITIES SERVICE GAS COMPANY, DOCKET NO. CP65–327

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued November 19, 1965)

On April 12, 1965, City of Auburn, Kansas (Applicant), filed in Docket No. CP65–327 an application as supplemented on June 9, 1965 and September 30,

[2] Public Service Electric and Gas Co., one of the AGD group, does not join in this alternative proposal.

1965, pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Cities Service Gas Company (Respondent) to establish physical connection of its natural gas transmission facilities with the facilities proposed to be constructed by Applicant and to sell and deliver natural gas to Applicant, all as more fully set forth in the application.

Applicant proposes to construct and operate a municipal gas distribution system within its own borders, and 12 miles of 4½-inch O. D. and 3½-inch O. D. lateral pipeline facilities extending westward from a point of interconnection with the Respondent's main transmission line south of Topeka, Kansas, to Applicant's town border. Applicant also proposes to render natural gas service to customers situated along the route of and in close proximity to the proposed lateral transmission line and will construct the facilities which will enable it to render such service.

Total volumes of natural gas involved to meet Applicant's anticipated annual and peak day requirements are stated to be:

	First year	Second year	Third year
Annual (Mcf)	28,800	33,500	38,500
Peak day (Mcf)	370	430	493

The total estimated cost of Applicant's proposed construction, including the described lateral, is estimated to be $170,000, which will be financed by general obligation bonds and gas revenue bonds issued by Applicant. Based on data in the application, as supplemented, Applicant's project appears to be economically feasible.

On April 23, 1965, as supplemented on September 13, 1965, Respondent filed comments stating that it has no objections to rendering the proposed service and is able to do so with existing line capacity.

Due notice of the filing of the subject application and opportunity for hearing thereon have been given by publication in the Federal Register on April 27, 1965 (30 F.R. 5869). Notice of intervention was filed by the Kansas State Corporation Commission on April 30, 1965, and was withdrawn on September 24, 1965. The Gas Service Company after having filed a petition for leave to intervene on April 30, 1965, filed a Notice of Withdrawal thereof on September 27, 1965. No other protest, petition to intervene, or notice of intervention or request for hearing has been filed in this proceeding.

The Commission finds:

(1) Respondent, Cities Service Gas Company, a Delaware corporation having its principal place of business in Oklahoma City, Oklahoma, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of December 28, 1943, in Docket No. G–298 (4 FPC 471).

(2) Applicant is legally authorized to engage in the local distribution of natural gas to the public within the meaning of Section 7(a) of the Natural Gas Act.

(3) It is necessary and desirable in the public interest to direct Respondent to establish physical connection of its transmission facilities with the facilities proposed to be constructed and operated by Applicant, and to sell and deliver to Applicant under a service agreement to be executed by Applicant with Respondent in accordance with the Commission's Regulations, up to 493 Mcf per day of natural gas for distribution and resale as hereinbefore described and as more fully described in the application and supplements in this proceeding.

(4) Applicant should be prepared to receive natural gas from Respondent for distribution in Auburn, Kansas, and environs, and along the lateral thereto within one year from the date of the issuance of this order.

(5) The requirement that Respondent serve Applicant, as requested, will not place an undue burden upon it nor impair its ability to render adequate service to its existing customers.

The Commission orders:

(A) Respondent, is directed to establish physical connection of its facilities with the facilities proposed to be constructed and operated by Applicant, as herein described, and to sell and deliver up to 493 Mcf of natural gas daily to Applicant under a service agreement to be executed by Applicant with Respondent in accordance with the Commission's Regulations for distribution and resale as hereinbefore described and as more fully described in the application and supplements in this proceeding. Such service shall be rendered pursuant to Respondent's presently filed appropriate rate schedule.

(B) Respondent shall report to the Commission in writing the date of commencement of service to Applicant within 10 days thereof.

(C) Applicant shall be prepared to receive natural gas as directed herein within one year from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

THE CALIFORNIA COMPANY, A DIVISION OF CHEVRON OIL COMPANY, DOCKET NO. CI65-560

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued November 19, 1965)

On December 11, 1964, The California Company, a Division of California Oil Company[1] (Applicant) filed in Docket No. CI65-560 an application, as supplemented on April 28, 1965, pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce to Natural Gas Pipeline Company of America (Natural) from acreage in the West Cameron Blocks 17-49 Field Area, offshore Cameron Parish, Louisiana, all as more fully set forth in the application as supplemented.

Applicant proposes to sell gas to Natural at initial rates of 19.0 cents per Mcf at 15.025 psia for gas produced from the Federal Domain and 20.625 cents per Mcf at 15.025 psia for gas produced from acreage subject to the taxing jurisdiction of the State of Louisiana. The related gas sales contract provides for reimbursement by Natural of any future taxes at a rate of 100 percent for any increase of 0.5 cent Mcf through 1.0 cent per Mcf and at a rate of 50 percent for any remainder over 1.0 cent per Mcf. Applicant is required to deliver pipeline quality gas with a downward Btu adjustment for gas below 1,000 Btu's and no upward Btu adjustment.

The related gas sales contract, as amended, indicates that Applicant has proven reserves of approximately 653,685,000 Mcf of gas and probable reserves of 247,360,000 Mcf of gas at 14.73 psia in the dedicated acreage. Most of the reserves are located within the state taxing jurisdiction. The contract

[1] Now The California Company, a Division of Chevron Oil Company.

provides that Natural purchase a daily quantity of gas averaged over each year of the lesser of the quantity listed in column (a) below, or after a reserve determination, a quantity equal of 1,000 Mcf of gas for each 8,000,000 Mcf of recoverable reserves in place. The maximum daily quantity is shown in column (b).

Year	(a) Contract quantity (Mcf)	(b) Maximum daily quantity (Mcf)
1	50,000	100,000
2	75,000	125,000
3	100,000	150,000
4	125,000	187,500
5	150,000	225,000
6	175,000	262,500
7 and thereafter	200,000	300,000

In its original application filed on December 11, 1964, applicant had proposed a composite initial price for production from both onshore and offshore acreage along with other contract provisions similar to those included in most contracts in this area. On January 18, 1965, the Public Service Commission of the State of New York intervened in opposition to the application. Thereafter, on April 28, 1965, the application was amended to provide the prices and more favorable contract conditions described above. On May 10, 1965, the New York Commission indicated that the proposal was now acceptable to it by withdrawing its intervention. No other protests have been received. Thus, this application is presented to us in the nature of a settlement concurred in by the applicant, our staff and the intervenor. While the prices are in excess of our recent in-line determinations they are below our guidelines and are packaged with other contract provisions more favorable than those usually provided in this area. We shall, therefore, grant this application.

At a hearing held on October 28, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, as supplemented, and exhibits thereto, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission.

(2) The sale of natural gas hereinbefore described, as more fully described, in the application herein, will be made in interstate commerce, subject to the jurisdiction of the Commission, and such sale by Applicant, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, is subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The sale of natural gas by Applicant, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, is required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

The Commission orders:

(A) A certificate of public convenience and necessity is issued upon the terms and conditions of this order, authorizing the sale by Applicant of natural gas in interstate commerce for resale, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary for such sale, all as hereinbefore described and as more fully described in the application in this proceeding.

(B) The certificate granted in paragraph (A) above is not transferable and shall be effective only so long as Applicant continues the acts or operations hereby authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations and orders of the Commission.

(C) The grant of the certificate issued in paragraph (A) above shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act or of Part 154 or Part 157 of the Commission's Regulations thereunder, and is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against Applicant. Further, our action in this proceeding shall not foreclose nor prejudice any future proceedings or objections relating to the operation of any price or related provisions in the gas purchase contract herein involved. Nor shall the grant of the certificate aforesaid for service to the particular customer involved imply approval of all of the terms of the contract, particularly as to the cessation of service upon termination of said contract, as provided by Section 7(b) of the Natural Gas Act. Nor shall the grant of the certificate aforesaid be construed to preclude the imposition of any sanctions pursuant to the provisions of the Natural Gas Act for the unauthorized commencement of any sale of natural gas subject to said certificate.

(D) The grant of the certificate issued herein is upon the condition that no increase in rate shall be filed prior to July 1, 1967, at any price which would exceed the ceiling prescribed for the given area by paragraph (d) of the Commission's Statement of General Policy No. 61–1, as amended.

Ross, *Commissioner, dissenting:*

Only a few days ago, in the *Sohio* case,[1] the Commission again considered the policy under which it grants certificates to commence sales from Southern Louisiana. In that matter, an intervenor argued that the Staff's recommendation of 18.25¢ as a just and reasonable price in the South Louisiana Area Rate Proceeding (AR61–2) should be used as a refund floor in issuing new certificates. The Commission unanimously rejected this argument, stating that it would be

> inconsistent with the Commission's uniform practice of fixing initial producer rates on an in-line basis and of ordering refunds, where otherwise appropriate, only to the extent the rates previously charged were higher than the in-line price.

Specifically, the Commission stated:

> Nothing in the Southern Louisiana area rate proceeding, to say nothing of the just and reasonable price levels advocated therein by the various parties, suggests that the in-line price level presently applicable in South Louisiana differs from the 18.5¢ price we have previously found to be appropriate.

Thus, despite the approach of area pricing for Southern Louisiana, the Commission said that it will stick to its interim pricing scheme until it finally decides a just and reasonable rate. This is a consistent policy and a

[1] *Sohio Petroleum Co.*, Docket No. CI66–193, letter-order dated November 5, 1965.

fair one—that is, so long as the Commission sticks to the rules of interim pricing.

This recent action of the Commission in *Sohio* merely reiterates a policy consistently followed by the Commission during the last four or more years. This policy evolved from the Supreme Court's reversal of the Commission's unconditioned grant of a certificate for a South Louisiana sale at 21.4¢ per Mcf, in *CATCO*, decided in 1959.[2] Since that time the Commission has decided *five* litigated producer certificate cases covering sales of gas from Southern Louisiana under contracts executed in 1956, 1957, 1958, 1959, 1960, 1961, 1962, and 1963.[3] In each and every situation, 18.5¢ (offshore) and 20.0¢ (onshore) were found to be the line price—the ceiling price—irrespective of contract conditions. No producer and no contract, regardless of its terms, was granted a permanent certificate at a price in excess of these in-line levels (with the exception of settlements accepted by the Commission *before* the *Union Texas* and *Superior* opinions were issued.[4]

Since *Superior*, the Commission, in April of this year, again considered its in-line policy in Southern Louisiana.[5] In that determination, the Commission explicitly reaffirmed its in-line finding of 18.5¢ per Mcf for offshore Louisiana (p. 867). However, it recognized that the producer undertook the obligation of delivering the gas onshore—a distance of 76 miles. In the Commission's opinion, this substantial service merited a 0.5¢ per Mcf premium. Significantly, the Commission distinguished the *Superior* sale, which involved 28 miles of transportation by the producers, which the Commission conditioned to 18.5¢ per Mcf. The Commission concluded:

> The Commission will allow this same initial base price [19.0¢ per Mcf] to producers having production in such distant offshore fields but who as part of the transaction agree to transport the gas for substantial distances for delivery to a pipeline on shore.[6]

To summarize, over the last four or more years the Commission has granted one permanent certificate at a price above the in-line level where unique premium factors were involved, features not present here nor alleged to be found here. All the others, with the exception of certain genuine settlements, were granted at the in-line level.

Against this impressive and consistent background, the majority attempts to rationalize its action in three ways. First, it claims that the producer made certain "favorable" changes in his contract with the pipeline. I agree, but this Commission has never held that these "favorable" conditions were entitled to a premium. To the contrary, it is my understanding that there are several Southern Louisiana contracts containing similar "favorable" conditions, and they have all been conditioned at the same in-line level; 18.5¢ offshore; 20.0¢ onshore.

The majority also emphasize that there are no protests to this application. Are we to assume from this that the majority is attempting to wash its hands of responsibility for making an independent determination of whether appli-

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[2] *Atlantic Refining Co.* v. *F.P.C.*, 360 U.S. 378.

[3] *CATCO*, 27 FPC 96 (1962); *Placid Oil Co.*, 30 FPC 283 (1963); *United Gas Pipe Line Company*, 30 FPC 329 (1963); *Union Texas Petroleum*, 32 FPC 254 (1964); *Superior Oil Co.*, 32 FPC 241 (1964).

[4] Significantly, these settlements involved refunds under so-called unconditioned temporaries—an issue the majority has thus far decided not to decide.

[5] *Hassie Hunt Trust*, Docket No. CI65-596, *et al.*, issued April 23, 1965, 33 FPC 866.

[6] *Ibid.*

cations are consistent with the public interest? Is the majority proclaiming that it will now assume an application meets the public interest standard if no outside party objects? Is the majority assuming that the directives of the Supreme Court in *CATCO* to hold the line applies to possible intervenors—but not to the Commission itself? Who determines the price: intervenors or the Commission? If intervenors, which ones?

If nothing else, this application indicates the necessity of the participation by interested parties in Commission proceedings and the clear and present danger of leaving the Commission to its own devices. Had there been a continuing intervention here, no certificate would have been granted without the usual refund condition. As it is, permanent certificates at out of line prices would be routinely granted in derogation of the policy developed by the Commission over the last four years—a state of affairs I find profoundly unimpressive.

Based on the solid precedent of the last four years, there is at least a reasonable possibility that this sale, were it to be examined in an in-line proceeding would be conditioned to the in-line level. This being the case, what is the *quid pro quo* for the settlement? What is the producer giving up? I had assumed, as had Commissioner Black, that the essence of a *bona fide* settlement is a *quid pro quo* exchange.[7]

In this connection, it is a bit of a distortion to characterize this application as a settlement. A settlement generally involves negotiations by interested parties, including Staff, the result of which is an offer of settlement, executed by all the parties and presented to the Commission. Here, there is simply a withdrawal of intervention and submittal of an amended contract. At no time was Staff a party to any negotiations, assuming there were any.

Finally, the majority suggests that the grant of a permanent certificate at a price above the in-line level is justified because it is lower than the guideline ceiling. Really! It is of course true that the Commission, concurrent with the adoption of the *Union Texas* and *Superior* opinions, failed to adjust the guideline levels as it had done in other areas following in-line determinations. However, it has followed a policy of universally conditioning temporary certificates at higher levels to provide for a refund down to the in-line level—a policy explicitly emphasized in its recent order in *Sohio*.[8]

To conclude: When intervenors seek a refund floor below the in-line price, the Commission indignantly says "no" because our policy is to adhere to in-line pricing. Yet, when a producer wants a permanent certificate at a higher price, the majority somehow forgets its in-line policy and grants it.

For these reasons, I dissent to the unprecedented and unconditioned grant of this permanent certificate above the in-line level.

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[7] *Roy M. Huffington, Inc., et al.*, Docket No. G–18680, dissenting statement of Commissioner David S. Black, *supra*, p. 1278.

[8] The following list includes all the new Southern Louisiana sales certificated by the Commission at prices above the in-line level since the *Union-Texas* and *Superior* opinions were adopted; CI65–20, CI62–1504, CI65–224, CI64–112, CI65–127, CI65–393, CI65–349, CI65–384, CI63–179, G–10122, G–10139, G–10143, G–10146, CI62–73, CI62–102, G–8817, CI65–1362, G–19437, G–19838, G–13680, G–13827, G–13948, G–19707, G–19719, G–20020, CI65–718, CI65–727, CI65–596, CI65–597, CI65–598, CI65–803, CI65–862, CI65–812, CI65–833, CI65–838, G–8817, CI64–502, CI63–1309, CI65–825, CP65–282. In each of these cases but two, a refund condition down to the in-line level was included in the certificate. The two exceptions comprise the *Hassie Hunt* case, *supra*, where a 0.5¢ per Mcf premium was justified, and *Consolidated Gas Supply Corp.*, Docket No. CP65–282, granted September 3, 1965, 34 FPC 733 (to which I dissented) where an out-of-line certificate was granted without explanation.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr. and Carl E. Bagge.

CENTRAL MAINE POWER COMPANY, DOCKET NO. E-7244

ORDER AUTHORIZING ACQUISITION OF FACILITIES

(Issued November 19, 1965)

Central Maine Power Company (Central Maine), filed an application with the Federal Power Commission on September 9, 1965, seeking an order, pursuant to Section 203 of the Federal Power Act, authorizing the acquisition of all of the assets of Casco Bay Light and Power Company (Casco).

Central Maine is incorporated under the laws of the State of Maine and has its principal place of business at Augusta, Maine. It is engaged in the generation, purchase, transmission, distribution and sale of electric energy serving all of the 16 counties in the State of Maine except the Counties of Aroostook and Washington.

Casco is incorporated under the laws of the State of Maine and has its principal business office at Portland, Maine. It is engaged in the generation, purchase, transmission, distribution and sale of electric energy serving 7 islands in Casco Bay with power generated by three diesel-driven generators on Peaks Island and distributed over 20 miles of distribution lines located on the seven islands, interconnected by 10 miles of cable. Casco serves approximately 1,500 customers.

According to the application, Central Maine proposes to acquire all of the assets of Casco except the franchise to be a corporation, including three diesel generators, distribution lines, cables interconnecting the islands, real estate, automotive equipment and all other related facilities. Central Maine states that Casco's facilities will be fully integrated with its operations in contiguous areas and it will assume full obligations to serve all customers in the area now being served by Casco and to serve the territories authorized but not presently served by Casco.

Central Maine's consideration for Casco's assets will be: (a) The amount of cash which will be equivalent to the per share market price on the settlement date of Central Maine's Common Stock, multiplied by four on the basis of four shares of Central Maine's Common Stock for each share of Casco's Common Stock, and then multiplied by twenty-two hundred fifty for the number of shares of Casco's Common Stock outstanding; plus (b) The amount of cash sufficient to enable Casco to call for redemption all of its outstanding 1,230 shares of 6% Preferred Stock and all of its $250,000 5½% First Mortgage Bonds; plus (c) The amount of cash sufficient to discharge a note payable by Casco, $83,671 as of July 31, 1965; plus (d) The amount of $7,150 for liquidating expenses of Casco. As of July 31, 1965, this consideration would have totaled $665,606. This amount would have been $22,348 less than Casco's net assets of $687,954 as of the same date. Central Maine proposes to credit the difference of $22,348 to Accumulated Provision for Depreciation. Any debit acquisition adjustment should be eliminated by a debit to Miscellaneous Debits to Surplus.

According to the application, Casco is faced with the necessity of providing additional generating capacity or an interconnection with the mainland system to insure adequate service to its customers. Loss of its largest generating unit at time of the system peak in summer would result in severe curtailment in electric service. Load growth on the islands has also made necessary an increase in the capacity of some of the distribution facilities.

Upon completion of the acquisition, Central Maine proposes to interconnect Casco's system with its own, improve the distribution system, and put the diesel generating units on standby with provision for full depreciation of the units at the end of five years. Major maintenance, customer accounting, system engineering and purchasing would be shifted to Central Maine's larger organization. These factors are expected to result in substantial improvement in service rendered to the customers and to provide operating economies not available to the small isolated Casco system.

Central Maine represents that the present management of Casco is of the opinion that the expenditures necessary to improve the system will require a rate increase. The present rates of Casco are significantly higher than those of Central Maine except for 18 commercial and combination power and lighting customers.

Central Maine proposes to change the Casco rates in five equal steps to conform them to its own filed rates. Central Maine maintains that the proposed transaction would give the customers of Casco improved service at lower rates.

Written notice of the application has been given to the Public Utilities Commission of Maine and to the Governor of that State. Notice was also published in the Federal Register on September 24, 1965 (30 F.R. 12257), stating that any person desiring to be heard or to make any protest with reference to said application should on or before October 8, 1965, file with the Federal Power Commission, Washington, D.C. 20426, petitions or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). No protest or petition or request to be heard in opposition to the granting of the application has been received.

The Commission finds:

(1) Central Maine, a corporation, is a public utility within the meaning of Section 203 of the Federal Power Act, subject to the jurisdiction of the Commission as heretofore described and set forth in the Commission's order issued June 2, 1965, *Central Maine Power Company* in Docket No. E-7215 (33 FPC 1157).

(2) By the proposed transaction, Central Maine will merge or consolidate its facilities subject to the jurisdiction of the Commission with those of Casco, another person, within the meaning and subject to the requirements of Section 203 of the Federal Power Act.

(3) The proposed acquisition of facilities by Central Maine, as described above, upon the terms and conditions set forth in the application, and subject to the provisions of this order will be consistent with the public interest as expressed in Section 203 of the Federal Power Act.

The Commission orders:

(A) The proposed acquisition by Central Maine of the aforementioned electric facilities, all as described above, is authorized and approved upon the terms and conditions and for the purposes set forth in the application subject to the provisions of this order.

(B) Central Maine shall record the proposed transaction herein authorized and the facilities and properties referred to above as provided in the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees. Any credit acquisition adjustment shall be transferred to Accumulated Provision for Depreciation and any debit acquisition adjustment be eliminated by a debit to Miscellaneous Debits to Surplus.

(C) This authorization shall expire unless the transaction herein authorized and approved is consummated within 90 days from the date of issuance of this order.

(D) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determination of cost, or any matter whatsoever now pending or which may come before this Commission or any other regulatory body and nothing herein shall be construed as an acquiescence by this Commission in any estimate or determination of cost or any valuation of property claimed or asserted.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr. and Carl E. Bagge.

NATURAL GAS PIPELINE COMPANY OF AMERICA, DOCKET NOS. CP65–425 AND CP66–1

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

(Issued November 19, 1965)

On June 30, 1965, and July 1, 1965, Natural Gas Pipeline Company of America (Applicant) filed in Docket Nos. CP65–425 and CP66–1, respectively, applications for certificates of public convenience and necessity authorizing the acquisition from Humble Oil & Refining Company (Humble) and the construction and operation of certain facilities to enable Applicant to take into its interstate natural gas pipeline system natural gas purchased from Humble, all as more fully set forth in the applications.

In Docket No. CP65–425 Applicant proposes to acquire from Humble 5.2 miles of 8-inch high pressure pipeline at a cost of $84,639 and to construct a measuring station and tap at an estimated cost of $24,000, all to be financed from funds on hand. The proposed acquisition and construction will enable Applicant to purchase and receive gas produced by Humble in the Santa Fe, Santa Fe East, Santa Fe South and Todos Santos Fields in Brooks and Hidalgo Counties, Texas. Remaining recoverable reserves in said areas are estimated to be 197,683 MMcf at 14.65 psia, and Humble has filed an application in Docket No. CI65–1369 for a certificate of public convenience and necessity authorizing the sale and delivery of said gas to Applicant.

In Docket No. CP66–1 Applicant proposes to acquire from Humble 7.4 miles of 10-inch high pressure pipeline at a cost of $152,000 and to construct a measuring station and tap at an estimated cost of $29,000, all to be financed from funds on hand. The proposed acquisition and construction will enable Applicant to purchase and receive gas produced by Humble in the Tomball Field, Harris County, Texas. Remaining recoverable reserves in said area are estimated to be 160,000 MMcf at 14.65 psia, and Humble has filed an application in Docket No. CI65–1363 for a certificate of public convenience and necessity authorizing the sale and delivery of said gas to Applicant.

Applicant states that it has examined the facilities proposed to be acquired from Humble and that they are suitable for the proposed transportation of natural gas. Construction of a suitable pipeline in lieu of the acquisition proposed in Docket No. CP65–425 is estimated to cost $124,000, and construction of a suitable pipeline in lieu of the acquisition proposed in Docket No. CP66–1 is estimated to cost $200,000. In view of Applicant's continuing need

to acquire new supplies of gas and in view of the cost of the facilities proposed to be acquired and constructed, it appears that Applicant's proposals are economically feasible and required by the public convenience and necessity.

Concurrently herewith temporary certificates are being issued to Humble in Docket Nos. CI65–1363 and CI65–1369.

After due notice no petition to intervene, notice of intervention or protest to the granting of the applications has been received.

At a hearing held on November 17, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the applications and exhibits thereto, submitted in support of the authorizations sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Natural Gas Pipeline Company of America, a Delaware corporation having its principal place of business in Chicago, Illinois, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of October 13, 1942, in Docket No. G–235 (3 FPC 830).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, will be used for the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the acquisition, construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The cost of the facilities proposed to be acquired by Applicant is properly includible in Applicant's plant accounts.

(5) The proposed acquisition, construction and operation of facilities by Applicant are required by the public convenience and necessity, and certificates therefor should be issued as hereinafter ordered and conditioned.

(6) Public convenience and necessity require that the certificates issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), (d) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) Certificates of public convenience and necessity are issued authorizing Applicant, Natural Gas Pipeline Company of America, to acquire, construct and operate facilities as hereinbefore described, all as more fully described in the applications in this proceeding, upon the terms and conditions of this order.

(B) The certificates issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), (d) and (e) of Section 157.20 of such Regulations.

(C) The acquisitions and construction authorized in paragraph (A) above shall be completed and the operation of the facilities shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within three months from the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., David S. Black and Carl E. Bagge.

FRANK E. PEACOCK, PROJECT NO. 2427

ORDER ISSUING LICENSE (MAJOR)

(Issued November 19, 1965)*

Application was filed on January 7, 1965, by Frank E. Peacock (Applicant) of Wilmette, Illinois, for a license under Section 4(e) of the Federal Power Act (Act) for proposed Project No. 2427, known as the Woods Falls Project, to be located on the Black River, in the Village of Glen Park in Jefferson County, New York. The project will not affect lands of the United States.

The Secretary of the Army and the Chief of Engineers have advised that the plans of the project structures affecting navigation are satisfactory insofar as the interests of navigation are concerned.

The Department of the Interior, in reporting on the application, has recommended for inclusion in any license for the project the terms and conditions in the interests of fish and wildlife resources set forth in attached Form L–4.

The Department of Health, Education, and Welfare has advised that the project is not expected to have any adverse effects on water supply, water pollution control, or vector control.

According to the application for license, Applicant has contracted a 30-year lease with Niagara Mohawk Power Corporation for necessary water rights, a lease of the lands for the proposed project, and the purchase of project power. In the circumstances, the license herein granted shall be for a period of 30 years, effective as of October 1, 1965. It should be noted that Article 22 of Form L–4 (Revised June 1, 1964, 32 FPC 839) which is being included among the conditions upon which this license is being issued, requires that the licensee shall make good any defective title to project lands in the event that the project is recaptured by the United States at the end of the license term. Consequently, we are including a license condition (Article 33) requiring the licensee, to obtain an option from Niagara Mohawk permitting him, or his successors or assigns to acquire land within the project boundary in the event the United States should exercise its rights to recapture the project at the end of the license term.

In our order of October 14, 1964, issuing a preliminary permit to Applicant for the proposed subject project (32 FPC 1101, 1102) we found that the Black River from its mouth in Lake Ontario to a point upstream at least to Lyons Falls at river-mile 72, is a navigable waterway of the United States. Proposed Project No. 2427 is to be located in this stretch of the river.

The Commission finds:

(1) Applicant is a citizen of the United States and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effectuate the purposes of a license for the project.

(2) Public notice of the filing of the application has been given. No protests or petitions to intervene have been received. No conflicting application is before the Commission.

(3) The project does not affect a Government dam, nor will the issuance of a license therefor, as hereinafter provided, affect the development of any

*Modified by order issued December 15, 1965, 34 FPC 1473.

water resources for public purposes which should be undertaken by the United States.

(4) Subject to the terms and conditions hereinafter imposed, the project will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water power development, and for other beneficial public uses, including recreational purposes.

(5) The installed horsepower capacity of the project hereinafter authorized for the purpose of computing the capacity component of the administrative annual charge is 12,000 horsepower, and the amount of annual charges, based on such capacity, to be paid under the license for the project, for the costs of administration of Part I of the Act is reasonable.

(6) Exhibit R (FPC No. 2427–7), filed with the Commission on March 8, 1965, conforms to the Commission's rules and regulations and should be approved as part of this license.

(7) The exhibits designated and described in paragraph (B) below conform to the Commission's rules and regulations and should be approved as part of this license.

The Commission orders:

(A) This license is hereby issued to Frank E. Peacock (Licensee) of Wilmette, Illinois, under Section 4(e) of the Federal Power Act (Act) for a period of 30 years, effective as of October 1, 1965, and terminating September 30, 1995, for the construction, operation and maintenance of Project No. 2427, located on the Black River, navigable waters of the United States, subject to the terms and conditions of the Act which is incorporated herein by reference as a part of this license, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) Woods Falls Project No. 2427 consists of:

(i) all lands constituting the project area and enclosed by the project boundary or limits which are otherwise defined, and/or interest in such lands necessary or appropriate for the purposes of the project, whether such lands or interests therein are owned or held by the Licensee or by the United States—such project area and project boundary being more specifically shown and described by a certain Exhibit of the application for license which is designated as follows:

Exhibit J (FPC No. 2427–2) General Plan.

(ii) project works as follows: (1) a diversion dam about 13 feet high; (2) a 15 foot diameter penstock about 125 feet long; (3) a powerhouse containing a 13,000 hp turbine driving a 10,000 kva generator; (4) a substation; (5) a 23 kv transmission line about 4,500 feet long; and (6) appurtenant facilities; the location, nature and character of which are more specifically shown and described by the exhibit hereinbefore cited and by certain other exhibits which also formed part of the application for license and which are designated and described as follows:

Exhibit L	FPC No.	Title, Woods Falls Development
1	2427–3	Dam.
2	2427–4	Intake.
3	2427–5	Excavation and gates.
4	2427–6	Penstock and powerhouse.

Exhibit M: consisting of a typewritten paragraph entitled, "Equipment Description" on page 4, revised 8/25/65, of the application.

(iii) all of the structures, fixtures, equipment or facilities used or useful in the maintenance and operation of the project and located on the project area, including such portable property as may be used or useful in connection with the project or any part thereof whether located on or off the project area, if and to the extent that the inclusion of such property as part of the project is approved or acquiesced in by the Commission; also, all riparian or other rights the use or possession of which is necessary or appropriate in the maintenance or operation of the project.

(C) This license is subject to the terms and conditions set forth in Form L–4 (Revised June 1, 1964) entitled "Terms and Conditions of License for Unconstructed Project Affecting Navigable Waters of the United States", (32 FPC 839) which terms and conditions, designated as Articles 1 through 29, are attached hereto and made a part hereof, and subject to the following special conditions set forth herein as additional articles:

Article 30. The Licensee shall pay to the United States the following annual charge effective October 1, 1965:

For the purpose of reimbursing the United States for the costs of administration of Part I of the Act, a reasonable annual charge as determined by the Commission in accordance with the provisions of its regulations, in effect from time to time. The authorized installed capacity for such purposes is 12,000 horsepower.

Article 31. The Licensee shall commence construction of the project works not later than June 1, 1966, shall thereafter in good faith and with due diligence prosecute such construction and shall complete construction of such works not later than May 31, 1968.

Article 32. Licensee shall provide shear between the base of the dam and the foundation. The foundation shall be approved by an authorized Commission representative before commencing placement of concrete for the dam.

Article 33. The Licensee shall submit for Commission approval the terms of an option with Niagara Mohawk before commencing construction of the project works. This option shall provide a method whereby the Licensee, its successors and assigns, may purchase the lands within the project boundary at a price based on Niagara Mohawk's net investment in such lands if at the end of the license term the United States exercises its right to takeover the project pursuant to Section 14 of the Federal Power Act.

Article 34. Licensee shall design and maintain the flashboard system on the dam in such manner that it will fail when subjected to a load equivalent to five and one-half feet of surcharge or less.

(D) The Exhibit R designated in finding (6) above is hereby approved as part of this license.

(E) The exhibits designated and described in paragraph (B) above are hereby approved as part of this license.

(F) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgment of the acceptance of this license, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr. and Carl E. Bagge.

ST. JOSEPH LIGHT & POWER COMPANY AND MICHIGAN WISCONSIN PIPE LINE COMPANY, DOCKET NO. CP66–46

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued November 19, 1965)

On August 11, 1965, St. Joseph Light & Power Company (Applicant), filed in Docket No. CP66–46 an application as supplemented on September 3, 1965 and October 11, 1965, pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Michigan Wisconsin Pipe Line Company (Respondent) to extend its gas transportation facilities, make physical connection of its facilities with those proposed by Applicant and sell natural gas to Applicant, all as more fully set forth in the application.

Applicant seeks delivery of natural gas to be purchased from Respondent pursuant to the SGS–1 rate schedule of the effective tariff of Respondent for distribution at retail in the City of Skidmore, Missouri. Applicant states that Respondent's transmission pipeline passes within six miles of the south city limits of Skidmore.

Applicant proposes to construct and operate a distribution system in the City of Skidmore, and to construct approximately 4.3 miles of 3.5 inch transmission line which will extend from the end of Respondent's proposed 1.72 miles of lateral to Skidmore.

In lieu of a metering station costing an estimated $16,200 and .91 mile of lateral costing an estimated $18,200, or a total of $34,400, Respondent will utilize its existing Maitland Metering Station and construct 1.72 miles of lateral costing approximately $34,400. The lateral cost of $34,400 will be consistent with Respondents obligation under its 10 cent formula for lateral costs.

The estimated natural gas requirements for the City of Skidmore are as follows:

	First year	Second year	Third year
Annual (Mcf)	20,300	25,400	27,300
Peak day (Mcf)	211	263	282

The total estimated cost of Applicant's proposed facilities is $114,100, which will be financed by internally generated funds. The 1.72 miles of 4½-inch lateral to be constructed by Respondent is estimated to cost $34,400.

On June 22, 1965, the City of Skidmore, Missouri, granted Applicant a franchise to sell and distribute natural gas in said City. The Public Service Commission of the State of Missouri has been requested to grant Applicant a certificate authorizing the construction and operation of the necessary facilities and service to the public in the City of Skidmore, Missouri.

On August 24, 1965, Respondent filed an answer to the application stating that it has no objections to providing the proposed service and constructing the proposed facilities. Respondent states that in view of the *de minimis* nature of the volumes involved, it can provide the requested service from

existing sources of gas supply without the construction of additional main line facilities.

Due notice of the filing of the application and opportunity for hearing thereon was published in the Federal Register on August 27, 1965 (30 F.R. 11118). No protest, petition to intervene or notice of intervention has been filed.

The Commission finds:

(1) Respondent, Michigan Wisconsin Pipe Line Company, a Delaware corporation having its principal place of business in Detroit, Michigan, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of November 30, 1946, in Docket No. G-669 (5 FPC 953).

(2) Applicant is a public utility company in the State of Missouri and is authorized to construct and operate facilities to distribute and sell natural gas to inhabitants of the State of Missouri.

(3) It is necessary and desirable in the public interest that Respondent be directed to extend its lateral facilities 1.72 miles and establish physical connection of its transportation facilities with the facilities proposed by Applicant as hereinbefore described and as more fully set forth in the applicaton, as hereinafter ordered and conditioned.

(4) The requirement that Respondent serve Applicant as requested, will not place an undue burden upon Respondent nor impair its ability to render adequate service to existing customers.

The Commission orders:

(A) Respondent is directed to extend its lateral facilities 1.72 miles and to establish physical connection of its natural gas transmission system with the facilities to be constructed by Applicant and to sell and deliver up to 282 Mcf of natural gas per day to Applicant, all as hereinbefore described and as more fully described in the application.

(B) The order against the Respondent is made contingent upon the approval of Applicant's pending application before the Public Service Commission of the State of Missouri.

(C) Applicant shall be prepared to receive natural gas from Respondent within one year from the date of this order.

(D) Respondent shall notify the Commission of the commencement of service within 10 days thereof.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

SKELLY OIL COMPANY, ET AL., DOCKET NO. G-18638, ET AL.; SOUTH TEXAS NATURAL GAS GATHERING COMPANY, DOCKET NO. G-18907

ORDER DIRECTING COMPLIANCE WITH PARAGRAPH (D) OF OPINION NO. 362 REJECTING SUPPLEMENT NO. 56 TO SOUTH TEXAS NATURAL GAS GATHERING COMPANY FPC GAS RATE SCHEDULE NO. 2 AND RESCINDING A LETTER OF THE SECRETARY DATED JULY 15, 1964

(Issued November 19, 1965)*

South Texas Natural Gas Gathering Company (South Texas) by letter dated June 16, 1964, transmitted to the Secretary of the Commission Supple-

* Rehearing denied by order issued January 14, 1966, 35 FPC 68.

ment No. 56 to its FPC Gas Rate Schedule No. 2 entitled "Notice of Change in Rate For Sale of Gas by South Texas Natural Gas Gathering Company to Transcontinental Gas Pipe Line Corporation." This supplement purportedly was filed in compliance with ordering paragraph (D) of the Commission's Opinion No. 362 and order in *Skelly Oil Company, et al.*, Docket No. G–18638, *et al.*, 28 FPC 401.[1]

South Texas was advised by letter dated July 15, 1964, from the Secretary of the Commission that said Supplement No. 56 was accepted for filing and that it constituted satisfactory compliance with paragraph (D) of the Commission's Opinion No. 362 noted above. On December 9, 1964, Consolidated Edison Company Incorporated, of New York, Long Island Lighting Company, and The Brooklyn Union Gas Company (Movants) filed a motion with this Commission requesting that the Commission reject South Texas Supplement No. 56 and that it rescind the letter of July 15, 1964, which stated that this filing constituted satisfactory compliance with paragraph (D) of its Opinion No. 362.

Movants contend that Supplement No. 56 does not comply with paragraph (D) of the Commission's Opinion. They further claim that they were not served with copies of Supplement No. 56 to South Texas' Rate Schedule No. 2, nor were they appraised of the Secretary's letter stating that it constituted satisfactory compliance with paragraph (D). They claim that they first became aware of the method employed by South Texas in computing the rate reflected by Supplement No. 56 on November 10, 1964.

Movants contend and South Texas admits that it predicated the rate in Supplement No. 56 upon its over-all gas purchases in the year 1963. South Texas argues that, contrary to the Movants claims, the language in ordering paragraph (D) of Opinion No. 362 requires that it compute its rates to Transco upon the average cost of the over-all volume of gas that it purchases.

Historically, at the time the application in the captioned proceeding was before the Commission, South Texas purchased and transported gas for Texas Illinois Natural Gas Pipeline Company (presently Natural Gas Pipeline Company of America). It was to receive 19.5¢ per Mcf for gas which it purchased in the fields in Texas District 4 and delivered to Texas Illinois at the La Gloria meter station. It was also certificated to transport and deliver at La Gloria, gas purchased by Texas Illinois from Shell Oil, receiving a transportation charge of 1.5¢ per Mcf.

In addition, in the present dockets South Texas was authorized to sell a minimum of 50,000 and a maximum of 70,000 Mcf of gas per day to Transco. This gas was to be delivered to Transco at a specified delivery point in Texas Railroad District No. 1 at a price of 20¢ per Mcf. It is apparent from the parties' contracts that the Transco transaction was not intended to be integrated with the Texas Illinois transaction for the purposes of fixing South Texas' rates to Transco. And, there is nothing in Opinion No. 362 which contemplates a modification of this concept.

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[1] Ordering paragraph (D) of the aforementioned Opinion and order provides:

(D) As a condition to the certificate hereby issued to it, South Texas, on the date of issuance of this order, shall commence charging, and shall continue to charge until lawfully changed in accordance with the Natural Gas Act, a rate for the sale of gas to Transco that shall represent its present initial charge of 20 cents per Mcf at 14.65 psia, less the reduction in its average cost of purchased gas effected by this order. Such average cost of purchased gas shall be computed as of the date of issuance of this order by using the rates ordered herein for producers as provided in paragraph (C).

The language in *Skelly* (Opinion No. 362) makes it apparent that the reduction in rate to Transco was to be predicated upon the gas purchased by South Texas for its performance of the Transco contract:

> The proper rate for the South Texas sale to Transco is an important issue in these proceedings, for this rate reflects the producer prices and the costs of South Texas and The Joint Venture. *South Texas' cost of service presentation, as discussed below, is based on its average purchased gas costs from the producers, which has risen with each succeeding phase of its expansion.* Conditioning the producer certificates that are above 15 cents (with the exception of the four dockets referred to at page 412, *supra*) will, of course, lower the average cost of purchased gas and will require a lower price to Transco. (*Skelly*, pp. 414, 415). [Emphasis added]

It seems clear that the above language did not envision the utilization of the over-all volumes of gas that South Texas purchases in computing the required reduction. Accordingly, we find that South Texas's Supplement No. 56 filing does not comply with ordering paragraph (D) of our Opinion No. 362.

The contention of South Texas that Movants' motion is untimely is without merit. South Texas in its answer to the motion indicates that it made its purported compliance filing on June 16, 1964. It does not deny the allegation of the Movants that this filing was *ex parte* in nature. This fact gives support to Movants' claim that they obtained copies of the data submitted by South Texas for the first time after September 4, 1964. Under these circumstances the action that the Movants took with respect to this complicated matter on December 9, 1964, cannot be considered untimely. Clearly, Movants could not take appropriate action with respect to a particular situation until they had gained knowledge of its existence.

Sections 154.23 and 154.101 of the Commission's Regulations make it manifest that the "acceptance for filing of any tariff contract or part thereof is not to be considered as approval by the Commission" nor is it "to serve in lieu of any requirements under Section 7 of the Natural Gas Act." Since South Texas' Supplement 56 did not comply with and can be shown to be inconsistent with ordering paragraph (D) of the Commission's Opinion No. 362, its mere acceptance for filing cannot serve as an amendment to the certificate which had been issued to it in Opinion No. 362. (*Cf. Sunray Mid-Continent Oil Company* v. *F.P.C.*, 290 F. 2d 552 (1961), and *Pan American Petroleum Corporation*, 31 FPC 616).

The facts disclosed by the Movants show that they had not been advised of the course of events that had transpired commencing with the acceptance for filing of Supplement No. 56 of South Texas' FPC Gas Rate Schedule No. 2 on June 16, 1964, and the Secretary's letter dated July 15, 1964, advising that the latter filing constituted a satisfactory compliance with paragraph (D). The facts disclosed by the Movants also show that the filing made by South Texas on June 16, 1964, was, contrary to the Secretary's letter of July 15, 1964, not in compliance with paragraph (D) of the Commission's Opinion No. 362.

The Commission finds:

(1) The motion filed by The Consolidated Edison Company, *et al.*, Long Island Lighting Company, and Brooklyn Union Gas Company on December 9, 1964, in connection with the aforementioned matter, was timely and appropriate.

(2) The filing made by South Texas Natural Gas Gathering Company of Supplement No. 56 to its FPC Gas Rate Schedule No. 2 on June 16, 1964, entitled "Notice of Change in Rate For Sale of Gas by South Texas Natural Gas

Gathering Company to Transcontinental Gas Pipe Line Corporation" did not comply with the requirements of paragraph (D) of Opinion No. 362.

(3) The public convenience and necessity requires that South Texas Natural Gas Gathering Company be required to file an appropriate rate schedule that is consistent with paragraph (D) of Opinion No. 362, as hereinbefore described, and that South Texas make appropriate refunds consistent with this amended filing as of the date specified in Opinion No. 362.

The Commission orders:

(A) South Texas Natural Gas Gathering Company shall within 90 days from the issuance of this order file an amended rate schedule that is consistent with paragraph (D) of Opinion No. 362.

(B) South Texas Natural Gas Gathering Company shall make appropriate refunds to Transco from this amended filing as of the date specified in Opinion No. 362.

(C) Supplement No. 56 to South Texas Natural Gas Gathering Company FPC Gas Rate Schedule No. 2 is rejected.

(D) The letter of the Secretary dated July 15, 1964, accepting the above supplement as constituting compliance with paragraph (D) of Opinion No. 362 is rescinded.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr. and Carl E. Bagge.

TRANSCONTINENTAL GAS PIPE LINE CORPORATION, DOCKET NO. CP66-91

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued November 19, 1965)

On October 5, 1965, Transcontinental Gas Pipe Line Corporation (Applicant) filed in Docket No. CP66-91 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing additional firm pipeline service to eight existing customers commencing with the 1965-66 winter season, all as more fully set forth in the application in this proceeding.

Specifically, Applicant proposes to sell and deliver the following additional quantities of natural gas:

Customer	Rate schedule	Mcf per day at 14.7 psia
Eastern Shore Natural Gas Co	CD-3	2,000
Avis Gas Co	OG-3	777
Fort Hill Natural Gas Authority	CD-2	500
Butler, Ala., Town of	G-1	250
Lawrenceville, Ga., City of	G-1	200
Roanoke, Ala., City of	G-1	110
Royston, Ga., City of	G-1	60
Sugar Hill, Ga., Town of	G-1	25
Total proposed additional firm service		3,922

Applicant states that with the exception of Eastern Shore, all of the above customers will require the additional gas commencing November 1965; in the case of Eastern Shore of the proposed additional quantities, 1,350 Mcf will

be required commencing January 1, 1966, with the remaining 650 Mcf commencing May 1, 1966.

No additional facilities will be required in order to render the proposed service.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on November 17, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Transcontinental Gas Pipe Line Corporation, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of November 18, 1948, in Docket No. G–1143 (7 FPC 139).

(2) The sales and delivery of natural gas hereinbefore described, as more fully described in the application in this proceeding, are to be made in interstate commerce, subject to the jurisdiction of the Commission, and are, therefore, subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The proposed sales and delivery of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is issued authorizing Applicant, Transcontinental Gas Pipe Line Corporation, to sell and deliver natural gas as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3) and (e) of Section 157.20 of such Regulations.

(C) The sales and delivery of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within six months from the date on which this order issues.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr. and Carl E. Bagge.

PERRY R. BASS (OPERATOR), ET AL., DOCKET NO. RI66-174

ORDER GRANTING APPLICATION FOR REHEARING, AND PROVIDING FOR HEARING ON AND SUSPENSION OF PROPOSED CHANGE IN RATE

(Issued November 22, 1965)

Perry R. Bass (Operator), *et al.* (Bass) filed an application for rehearing on October 25, 1965, of the Commission's undocketed order issued September 23, 1965, rejecting a proposed rate increase from 16.0¢ to 17.0¢ per Mcf[1] tendered on August 24, 1965, by Bass for the sale of residue gas from gas-well gas to El Paso Natural Gas Company under its FPC Gas Rate Schedule No. 1 in the Permian Basin Area of Texas. The contract involved here was executed on December 16, 1961, and thus covers a sale for new gas under Opinion No. 468, 34 FPC 159. The proposed rate of Bass, which exceeds the applicable just and reasonable rate ceilings determined in Opinion No. 468 for the sale of gas in the Permian Basin Area, was rejected for the reasons set forth in the order issued August 26, 1965, in *Socony Mobil Oil Company, Inc. (Operator), et al.*, 34 FPC 595.

On October 20, 1965, subsequent to the issuance of our rejection order, the Tenth Circuit in *Skelly Oil Co.* v. *F.P.C.* (CA10 No. 8385, *et al.*) stayed through January 20, 1966, the effectiveness of Opinion Nos. 468 and 468-A (34 FPC 1068) as to Skelly, Phillips and Warren. The Court's order further provided that any member of the Court may grant a similar stay if other petitions for review are filed in or transferred to that Court. Argument was also set for January 7, 1966 on the question of further stay.

Bass in Case No. 23123 has filed in the Fifth Circuit a petition for review of Opinion Nos. 468 and 468-A together with a motion to transfer its appeal to the Tenth Circuit. Bass also filed a motion for stay in the Tenth Circuit. Under these circumstances, it is appropriate to grant Bass' application for rehearing and to suspend its proposed increase for five months from the time it would have become effective had it not been rejected (*i.e.*, September 24, 1965). However, we wish to make it clear that we will reject this increase *ab initio* in the event the stay is dissolved or Opinion Nos. 468 and 468-A are upheld upon judicial review.

The proposed changed rate and charge may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds:

It is in the public interest and consistent with the Natural Gas Act that the Commission enter upon a hearing regarding the lawfulness of the proposed change, and that Supplement No. 1 to Bass' FPC Gas Rate Schedule No. 1 herein be suspended and its use be deferred as ordered below.

The Commission orders:

(A) Under the Natural Gas Act, particularly Sections 4 and 15, the Regulations pertaining thereto [18 CFR, Chapter I], and the Commission's Rules

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[1] The proposed increased rate is designated herein as Supplement No. 1 to Bass' FPC Gas Rate Schedule No. 1. Details of the proposed increase are set forth in Appendix A hereof.

of Practice and Procedure, a public hearing shall be held concerning the lawfulness of the change proposed by Bass.

(B) Pending hearing and decision thereon, Supplement No. 1 to Bass' FPC Gas Rate Schedule No. 1 is suspended and its use deferred until February 24, 1966, and thereafter until made effective as prescribed by the Natural Gas Act.

(C) Unless otherwise ordered by the Commission, neither the suspended supplement, nor the rate schedule sought to be altered, shall be changed until disposition of this proceeding or expiration of the suspension period.

(D) Notices of intervention or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C. 20426, in accordance with the Rules of Practice and Procedure [18 CFR 1.8 and 1.37(f)] on or before January 4, 1966.

APPENDIX A

Docket No.	Respondent	Rate schedule No.	Supplement No.	Purchaser and producing area	Amount of annual increase	Date filing tendered	Effective date unless suspended	Date suspended until	Cents per Mcf		Rate in effect subject to refund in docket Nos.
									Rate in effect	Proposed increased rate	
RI66-174.....	Perry R. Bass (Operator), *et al.*, 12th floor, Fort Worth National Bank Building, Fort Worth, Tex. 76102, Attn: Mr. Roy T. Durst.	1	1	El Paso Natural Gas Co., (Brown-Bassett Field, Terrell County, Tex.) (R.R. District No. 7–C) (Permian Basin area).	$22,474	8–24–65	[1] 9–24–65	2–24–66	[4] 16.0	[2] [3] [4] 17.0	.....

[1] The stated effective date is the 1st day after expiration of the required statutory notice.
[2] Periodic rate increase.
[3] Pressure base is 14.65 psia.
[4] Less processing cost of 3.3 cents per Mcf for pipeline quality gas remaining after processing for removal of carbon dioxide diluent (processing cost shall not exceed 4.5 cents per Mcf in any event).
[4] Initial rate.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr. and Carl E. Bagge.

LANDS WITHDRAWN IN POWER SITE RESERVE NO. 117, DOCKET NO. DA–578—IDAHO, CITY OF IDAHO FALLS

ORDER DENYING APPLICATION UNDER SECTION 24 OF THE FEDERAL POWER ACT

(Issued November 22, 1965)

Application (Idaho 016238) was filed by City of Idaho Falls (Applicant), Idaho, through the Bureau of Land Management, Boise, Idaho, seeking a determination under Section 24 of the Federal Power Act for the purpose of restoring the following described lands of the United States withdrawn for power purposes:

Boise Meridian, Idaho

T. 3 N., R. 37 E., section 25, lot 3 (comprising 9.86 acres)

Applicant desires to acquire the lands under the Act of June 14, 1926 (44 Stat. 791) to be used as a public recreational area and overnight camp grounds for the Boy Scout program and to maintain ready access to Applicant's unlicensed and otherwise unauthorized hydroelectric power project occupying parts of the lands.

The lands, which lie on the left bank of the Snake River 5 miles upstream from the City of Idaho Falls, are withdrawn in Power Site Reserve No. 117 of July 2, 1910.

On January 31, 1963, in Docket No. DA–561–Idaho, the Commission denied an application by the Bureau of Land Management, Department of the Interior, for revocation of power withdrawals or a determination under Section 24 of the Federal Power Act because of the use of portions of the subject lands by Applicant herein for power purposes. It appears that applicant is continuing to operate and maintain hydroelectric facilities on portions of the subject lands, in violation of Section 23(b) of the Federal Power Act (16 U.S.C. 817).

The Commission expects that the Applicant will promptly take the necessary steps to file an application for a license for its project. In the meantime, however, the proposed use of the land appears to be consistent with an appropriate recreational plan at such a licensed project and the Commission has no objection, therefore, to the issuance of a special land-use permit by the Department of the Interior to Applicant for other than hydroelectric purposes, pursuant to the letter agreement dated September 29, 1950, between this agency and the Bureau of Land Management, Department of the Interior, subject to the following condition:

> The permittee further agrees that the United States, its permittees or licensees, for purposes of power development, shall not be held liable for any damages to crops, buildings or other improvements of the permittee resulting from the construction, operation or maintenance of any power project works upon the lands herein described.

The Commission finds:

The subject lands are valuable for power purposes.

The Commission orders:

The aforesaid application is hereby denied.

OPINION NO. 476-A

SINCLAIR OIL & GAS COMPANY, ET AL., DOCKET NO. G-16760, ET AL.*

MEMORANDUM OPINION AND ORDER MODIFYING OPINION NO. 476, DENYING APPLICATIONS FOR REHEARING, AND GRANTING IN PART MOTION FOR STAY

(Issued November 22, 1965)

Syllabus

Upon reconsideration, Commission *makes minor modifications* in prior opinion; *grants* motion for stay, in part; *denies* applications for rehearing and otherwise *affirms* said opinion.

Commissioner Black *dissenting.*

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., David S. Black and Carl E. Bagge.

On September 22, 1965, 34 FPC 930, the Commission issued Opinion No. 476 and accompanying order in the above-entitled proceeding. Applications for rehearing of this Opinion and order have been filed under Section 19 of the Natural Gas Act by the following producers: Sinclair Oil & Gas Company, *et al.*, Docket No. G-16760; Lamar Hunt (Operator), *et al.*, Docket No. CI61-1736; MPS Production Co. (Operator), *et al.*, Docket No. CI62-314; Shell Oil Company, Docket No. CI62-653; The Jupiter Corporation (Operator), *et al.*, Docket No. CI62-698; Continental Oil Company, Docket No. CI62-961; and H. D. Bruns (Operator), *et al.*, Docket No. CI63-820. The following interveners have also filed applications for rehearing: Public Service Commission of the State of New York, Long Island Lighting Company, Philadelphia Electric Company, and the Philadelphia Gas Works Division of The United Gas Improvement Company. Lamar Hunt has moved to stay the Commission's order.

The Commission provided in Opinion No. 476 and order that permanent certificates of public convenience and necessity under Section 7 of the Natural Gas Act be granted to certain named producers in Texas Railroad Commission District No. 2, conditioned on a price no greater than 15.0 cents per Mcf at 14.65 psia for those producers whose initial contracts were executed on or before September 28, 1960, and on a price no greater than 16.0 cents per Mcf at 14.65 psia for those producers whose initial contracts were executed after September 28, 1960. The certificates were conditioned to provide for a moratorium on the filing of all price increases in excess of 18 cents per Mcf at 14.65 psia, inclusive of tax reimbursement, pending the issuance of a final decision in the Texas Gulf Coast Area Rate Proceeding, Docket No. AR64-2, or until January 1, 1968, whichever is earlier, and for possible revision of the take-or-pay for requirement in each contract on the basis of the final order in the Docket No. R-199 proceeding. Also, with respect to those dockets where the temporary authorization had a refund condition, the order requires the computation of and report of the amount of the refund and its sequestration pending further Commission direction. Where the temporary authorizations had no refund condition, the question as to a refund order was deferred.

In general, the applications for rehearing advance the same arguments and the same citations of authority which were relied upon in the original presentations before the presiding examiner or in the exceptions to the examiner's initial decision. These contentions were carefully considered by the Commis-

* For additional parties see Opinion No. 476 and order issued September 22, 1965, 34 FPC 930.

sion in its deliberations which culminated in Opinion No. 476 and order. Upon full reconsideration the Commission is convinced that Opinion No. 476 and accompanying order are correct, and should be adhered to except for certain minor modifications explained below.

Shell Oil Company asserts that ordering paragraph (N) of Opinion No. 476, which requires Shell to file a supplement to its presently filed rate schedule, should not be applicable to its Rate Schedule 264 (Docket No. CI62–653) for the reason that Shell has filed and is collecting a rate increase on this Rate Schedule, designated RI62–509, which is now in hearing as a part of the Texas Gulf Coast Area Rate Case, Docket No. AR64–2. It is our view that supplemental rate schedule filings should be made by all producers whose initial rates exceed the levels found proper here in order to establish the appropriate filed initial rate for each producer. In Shell's case, where a superseding rate has been permitted to go into effect, Shell may continue to charge the superseding rate. Since it does not appear that Shell has a refund provision in its temporary certificates, the initial rates prescribed here will only be effective prospectively as to Shell, and then only if no superseding rates have become effective. Should it be determined that refunds are proper after completion of the proceedings suggested in paragraph (I), Shell will be ordered to make a further rate filing putting the prescribed initial rates in effect from the date of commencement of service.

Lamar Hunt has coupled his application for rehearing with a motion for stay of ordering paragraphs (C), (J), and (N) of the order accompanying Opinion No. 476. Ordering paragraph (C) conditions the certificates with respect to price; paragraph (J) imposes the moratorium; and paragraph (N) provides for the filing of new rates. Consistent with our action in previous in-line proceedings the motion for stay should be granted as to paragraph (N). Stay of the other paragraphs is not warranted. In fact, stay of the moratorium provisions of paragraph (C) would defeat the very purpose for which the paragraph is included.

It may be further observed that the present consideration by the United States Supreme Court of the petition for writ of certiorari in *Callery Properties, Inc.* v. *F.P.C.*, 335 F. 2d 1004 (CA5–1964), does not require any specific stay with respect to the refund provisions in Opinion No. 476 and order since ordering paragraphs (F) through (H) merely provide that the producers, whose temporary authorizations contained refund provisions, shall sequester and retain the amount of the refund pending further order of the Commission. Ordering paragraph (I) defers consideration of refund conditions as to the other certificate holders and should be stayed pending a decision in *Callery* to avoid repeated brief filings.

It has been pointed out that Opinion No. 476 and accompanying order should be amended to reflect succession in interest by the following applicants:

(1) Producing Properties, Inc., Docket Nos. CI61–1236 and CI63–814, is now succeeded by Reserve Oil & Gas Company.

(2) H. B. Zachary Company, Gasoline Production Division, Docket No. CI62–1023, is now succeeded by Houston Natural Gas Production Company.

(3) Montego Oil Company (Operator), *et al.*, Docket No. CI63–790, is now succeeded by Southern Minerals Corporation.

It does not appear, however, that the above transactions imposed upon the successor companies' liability to assume the refund obligations for amounts sold prior to the succession. Accordingly, in each of these three instances, as well as in other cases where there has been a succession of interest in these proceedings, both the predecessors and the successors in interest shall be re-

tained in the proceeding under their respective docket numbers until the Commission has disposed of the applicable refund obligation.

It may further be noted that the temporary authorization of Tidewater Oil Company, Docket No. CI64-788, did not contain refund conditions, and accordingly that the name of this Company should not have been included in ordering paragraph (E). An appropriate deleting correction will be made to this paragraph.

The Commission further finds:

The assignments of error and grounds for rehearing set forth in the applications for rehearing filed in this proceeding present no fact or legal principles which would warrant any change or modification in the Commission's Opinion No. 476 and order except as specified below.

The Commission orders:

(A) The applications for rehearing filed by Sinclair Oil & Gas Company, *et al.*, Lamar Hunt (Operator), *et al.*, MPS Production Co. (Operator), *et al.*, Shell Oil Company, The Jupiter Corporation (Operator), *et al.*, Continental Oil Company, H. D. Bruns (Operator), *et al.*, the Public Service Commission of the State of New York, Long Island Lighting Company, Philadelphia Electric Company, and the Philadelphia Gas Works Division of the United Gas Improvement Company are denied.

(B) Paragraph (E) is amended by deleting therefrom the following: "CI64-788, Tidewater Oil Company", and by adding thereto a new final sentence to read as follows:

In the event that judicial review of Opinion No. 476 and order is sought and the Commission's order is affirmed, each of the above-named applicants shall compute the additional amounts to be refunded to their respective purchasers, calculated as to principal and interest as described above from the date of this order until the date on which judicial review of this Opinion No. 476 and order becomes final, and within 90 days from this latter date each applicant shall submit a report of such additional refund to the Commission, and serve a copy on his respective purchaser, subject to the requirements and conditions set forth in the preceding sentence.

(C) Paragraph (I) is amended to read as follows:

The decision as to whether refunds should be ordered as a condition to the remaining certificates herein issued is, in accordance with the Commission's order issued herein on October 5, 1964, deferred to the further order of the Commission, which order shall be postponed until after the decision of the United States Supreme Court in *U.G.I., et al.* v. *Callery Properties, Inc., et al.*, S. Ct. October Term 1964, Nos. 21, *et al.*, becomes final.*

(D) Paragraph (N) is amended to read as follows:

Within 30 days from the date of issuance of this order, each of the applicants receiving certificates in paragraph (A) above who now have rate schedules on these dockets filed with the Commission shall file supplements to such presently filed rate schedules reflecting the conditioned price as the initial price in lieu of the initial price provided in the contract. The filings of these producers, setting forth the initial rate here prescribed, shall be effective from the date of this order unless lawfully changed in the manner provided by the Natural Gas Act, and subject to any lawful changes which are ordered in other proceedings before the Commission. The notice provisions of Section 154.94(f) of the Commission's Regulations Under the Natural Gas Act are waived insofar as they apply to the reductions in rates hereby ordered.

*380 U.S. 931 (1965).

(E) The date for making the filings required by Paragraph (N) is postponed until 60 days after judicial review of Opinion No. 476 and order becomes final.

(F) In all other respects the motion for stay filed by Lamar Hunt (Operator), *et al.*, is denied.

(G) The name of applicant, Producing Properties, Inc., Docket Nos. CI61–1236 and CI63–814, is amended to read: Producing Properties, Inc., and its successor, Reserve Oil & Gas Company.

(H) The name of applicant, H. B. Zachry Company, Gasoline Production Division, Docket No. CI62–1023, is amended to read: H. B. Zachry Company, Gasoline Production Division, and its successor, Houston Natural Gas Production Company.

(I) The name of applicant, Montego Oil Company (Operator), *et al.*, Docket No. CI63–790, is amended to read: Montego Oil Company (Operator), *et al.*, and its successor, Southern Minerals Corporation.

Commissioner Black *dissenting* as stated in Opinion No. 476 issued September 22, 1965, 34 FPC at p. 945.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr. and Carl E. Bagge.

BEN BOLT GATHERING COMPANY, CP65–313; SOUTH TEXAS NATURAL GAS GATHERING COMPANY, CP65–314; COASTAL STATES GAS PRODUCING COMPANY, G–2557, ET AL.; NATURAL GAS PIPELINE COMPANY OF AMERICA, CP65–318

FINDINGS AND ORDER AFTER STATUTORY HEARING AMENDING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY, PERMITTING AND APPROVING ABANDONMENT, CANCELLING RELATED RATE SCHEDULES AND ACCEPTING FOR FILING AN EXCHANGE AGREEMENT AS A RATE SCHEDULE

(Issued November 23, 1965)

On April 5, 1965, Ben Bolt Gathering Company (Ben Bolt) filed in Docket No. CP65–313 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon the transportation and sale of natural gas to Natural Gas Pipeline Company of America at two delivery points located in Nueces and San Patricio Counties, Texas, all as more fully set forth in the said application to abandon.

On April 6, 1965, Coastal States Gas Producing Company (Coastal) filed in Docket No. G–2557, *et al.*, an application to amend the orders of the Commission issued in Docket No. G–2557 on June 15, 1955, as amended on June 27, 1960, and May 21, 1965, issued in Docket No. G–9870 on January 7, 1958, and issued in Docket No. G–17477 on June 19, 1963, which orders authorized sales of natural gas by Coastal from production in the Orange Grove Field, Jim Wells County, Texas, the Riverside Field, San Patricio County, Texas, and Reynolds Ranch Field, Jim Wells County, Texas, to Natural Gas Pipeline Company of America. By the application to amend Coastal seeks authorization to continue the deliveries of natural gas to Natural Gas Pipeline Company of America under the terms of a gas exchange agreement dated January 1, 1965, rather than under separate sales contracts covering the three fields, and filed as Coastal States Gas Producing Company's FPC Gas Rate Schedule Nos. 24, 29 and 55 (formerly Orange Grove Gas Gathering Company's FPC Gas Rate Schedule No. 1), as more fully set forth in the said application to amend.

On April 6, 1965, Natural Gas Pipeline Company of America (Natural) filed in Docket No. CP65–318 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon two side taps on its 26-inch pipeline and two gas purchase meter stations located in Nueces and San Patricio Counties, Texas, respectively, used exclusively for the receipt of natural gas from Ben Bolt as more fully set forth in the application to abandon.

Ben Bolt proposes to abandon the transportation and sale of natural gas to Natural for the reason that the daily delivery quantity based on 1 Mcf for each 8,000 Mcf of reserves, has decreased from 10,000 Mcf per day in 1960 to less than 3,000 Mcf per day at the present time, and resulted in a loss of $904.00 to Ben Bolt during the year 1964. Ben Bolt states that its reserves dedicated to Natural under the contract dated April 20, 1959, are now estimated to be 24,000,000 Mcf. Ben Bolt proposes to sell and deliver the remaining volumes of gas to its affiliate, Coastal States Gas Producing Company for sale in the intrastate market.

Coastal, an independent producer affiliate of Ben Bolt and South Texas Natural Gas Gathering Company, states that the reserves dedicated to the three contracts covering production from the Orange Grove Field, the Riverside Field and the Reynolds Ranch Field have never attained the volumes that were estimated to be in place at the time the contracts were executed (between June 1954 and September 1956), and that the reserves are presently depleted to the point (8,000,000 Mcf) that deliveries can no longer be made economically pursuant to the contract terms (which provide for 1 Mcf per day per 8,000 Mcf of reserves). Coastal asserts that under the terms of the proposed exchange agreement it would be able to withdraw the gas at a much faster rate (maximum of 8,000 Mcf per day) and thereby make the sale economically worthwhile. The exchange agreement provides that the deliveries shall continue to Natural from the Orange Grove and Reynolds Ranch Fields, in Jim Wells County, and from the Riverside Field, in San Patricio County, Texas (Texas District No. 4). Natural will return an equivalent volume of gas to Coastal in the Hagist Ranch Field, in Duval County, Texas, also in Texas District No. 4.

Coastal has filed an agreement whereby Natural's daily take requirement will be reduced from 4,500 Mcf to 3,500 Mcf under the contract comprising Coastal's FPC Gas Rate Schedule No. 7, for sales in the Duval Area. In addition the parties have agreed to exclude a volume of 8,000,000 Mcf of recoverable reserves from any future reserves redetermination during the life of the contract, thereby reducing Natural's required daily take still further under the subject contract at that time.

South Texas Natural Gas Gathering Company (South Texas), an affiliate of Ben Bolt, filed on April 5, 1965, an application in Docket No. CP65–314 pursuant to Section 7(c) of the Natural Gas Act authorizing South Texas to sell an additional 3,000 Mcf of natural gas daily to Natural to replace the volumes of natural gas presently being delivered to Natural by Ben Bolt, and proposed by Ben Bolt to be abandoned, as set forth in the application filed in Docket No. CP65–313.

In a tariff supplement filed September 21, 1965, South Texas proposes to replace the reserves to be abandoned by Ben Bolt by dedicating equivalent reserves (24,000,000 Mcf) to Natural under the above mentioned rate schedule No. 1. South Texas and Natural have agreed that the above dedication will not increase the daily quantity of gas which Natural is required to purchase unless such increase is required by a reserve study made subsequent to the date of the supplement and in accordance with the terms and conditions of

the contract. South Texas proposes that the tariff supplement be made effective on the "Date of Authorization".

By letter received October 27, 1965, South Texas agreed that until such time as there shall be a redetermination of gas reserves pursuant to the gas sales contract dated November 1, 1958, between Natural and South Texas (South Texas' FPC Gas Rate Schedule No. 1) and South Texas is authorized by the Commission to increase its daily quantities of gas sales as a result of such reserve redetermination, any gas prepayments which South Texas might incur under the gas purchase contract of August 7, 1964, will be absorbed by South Texas, and it will not use such prepayments as the basis for any future rate increase.

The subject reserves are those attributable to a gas purchase contract dated August 7, 1964, between South Texas, as Purchaser and Mokeen Oil Company and Coastal, as Seller; under which contract South Texas is required to take or pay for gas at the rate of 1 Mcf per day for each 8,000 Mcf of reserves. A contract quantity of 3,000 Mcf per day would be associated with the proposed 24,000,000 Mcf reserve addition.

The current proposal by South Texas would replace the reserves abandoned by Ben Bolt with the added advantage to Natural that its minimum daily purchase obligation under the South Texas contract will not be increased. The sale by South Texas is at 19.5¢ per Mcf or 0.5¢ per Mcf less than the Ben Bolt price to Natural; however, Natural must haul the South Texas gas approximately 50 miles farther. South Texas' FPC Gas Rate Schedule No. 1 specifically provides for the addition of reserves as now proposed. This rate schedule was a part of the certificate application in Docket No. G–17050 in which South Texas was originally authorized to sell and deliver a contract quantity of 30,000 Mcf per day to Natural at Natural's La Gloria meter station in Jim Wells County, Texas.

After due notice, no petition to intervene, notice of intervention other than the notice filed by the Public Service Commission of the State of New York in Docket No. CP65–314, or protest to the granting of the respective applications has been filed.

Upon the filing of a notice of intervention by the Public Service Commission of the State of New York in Docket No. CP65–314 on May 10, 1965, South Texas, on August 12, 1965, filed a notice of withdrawal of its said application in Docket No. CP65–314. The withdrawal became effective on September 10, 1965, and the application is not now pending.

At a hearing held on November 17, 1965, the Commission on its own motion received and made a part of the record in these proceedings all evidence, including the applications and exhibits, submitted in support of the authorizations sought, and upon consideration of the record,

The Commission finds:

(1) Applicant, Ben Bolt Gathering Company, a Texas corporation having its principal place of business in Corpus Christi, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of December 12, 1961, in Docket No. G–20032 (26 FPC 825).

(2) Applicant, Coastal States Gas Producing Company, having its principal place of business in Corpus Christi, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of July 14, 1965, in Docket No. CI65–1203.

(3) Applicant, Natural Gas Pipeline Company of America, a Delaware corporation having its principal place of business in Chicago, Illinois, is a "nat-

ural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of October 13, 1942, in Docket No. G–253 (3 FPC 830).

(4) The transportation and sale of natural gas proposed to be abandoned by Ben Bolt, and facilities proposed to be abandoned by Natural as hereinbefore described and as more fully described in the applications filed in these proceedings, are subject to the jurisdiction of the Commission, and such abandonments are subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(5) The proposed abandonment of service by Ben Bolt and of facilities by Natural are permitted by the public convenience and necessity and permission and approval therefor should be granted as hereinafter ordered.

(6) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued in Docket No. G–2557 on June 15, 1955, as amended on June 27, 1960, and May 21, 1965, in Docket No. G–9870 on January 7, 1958, and issued in Docket No. G–17477 on June 19, 1963, be amended as hereinafter ordered.

(7) The public convenience and necessity requires that Coastal's FPC Gas Rate Schedule Nos. 24, 29 and 55 be cancelled, said cancellation to be effective upon the date of the issuance of this order.

(8) Coastal's gas exchange agreement dated January 1, 1965, should be accepted for filing as a rate schedule to become effective on the day this order issues.

The Commission orders:

(A) Permission for and approval of the abandonment of transportation and sale of natural gas by Ben Bolt, and of facilities by Natural, as hereinbefore described, and as more fully described in the applications filed herein by Ben Bolt and Natural are granted.

(B) The Commission's order issued in Docket No. G–2557 on June 15, 1955, as amended on June 27, 1960, and May 21, 1965, in Docket No. G–9870 on January 7, 1958, and issued in Docket No. G–17477 on June 19, 1963 is amended to reflect (1) the substitution of the exchange agreement of Coastal dated January 1, 1965, for the contracts filed as Coastal's FPC Gas Rate Schedule Nos. 24, 29 and 55, and (2) authorization for the continued deliveries of natural gas to Natural in accordance with the said exchange agreement.

(C) Coastal's FPC Gas Rate Schedule Nos. 24, 29 and 55 are cancelled and the Gas Exchange Agreement dated January 1, 1965, is accepted for filing as a rate schedule in lieu of FPC Gas Rate Schedule Nos. 24, 29 and 55, effective on the date of issuance of this order.

(D) South Texas proposed tariff supplement to its FPC Gas Rate Schedule No. 1 be accepted for filing effective on the date of issuance of this order.

(E) Until such time as there shall be a redetermination of gas reserves pursuant to the gas sales contract dated Noveber 1, 1958, between Natural and South Texas is authorized by the Commission to increase its daily quantities of gas sales as a result of such reserve redetermination, any gas prepayments which South Texas might incur under the gas purchase contract of August 7, 1964, will be absorbed by South Texas, and it will not use such prepayment as the basis for any future rate increase.

(F) In all other respects the orders of the Commission referred to in paragraph (B) above shall remain in full force and effect.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr. and Carl E. Bagge.

MONTANA-DAKOTA UTILITIES CO., DOCKET NO. CP65-108

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued November 24, 1965)

On October 26, 1964, Montana-Dakota Utilities Co. (Applicant) filed in Docket No. CP65-108 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of natural gas facilities and the sale of natural gas, as more fully set forth in the application.

Applicant sought authorization to construct and operate a gas measurement station on its Riverton Dome to Worland, Wyoming, transmission line in Hot Springs County, Wyoming, to meter natural gas to be sold to Wyoming Gas Company (Wyoming Gas) for resale and distribution in Thermopolis and East Thermopolis, Wyoming. The estimated annual and peak day sales for the initial three year period of operations are as follows:

	First year	Second year	Third year
Annual (Mcf)	382,000	383,000	385,000
Peak day (Mcf)	3,250	3,250	3,250

By our letter dated April 30, 1965, Applicant's FPC Gas Tariff, Original Volume No. 4, was accepted for filing, effective December 1, 1964.

A temporary certificate of public convenience and necessity for the construction and operation of the measurement station and the sale of natural gas was issued by the Commission on November 24, 1964, and the temporary certificate was amended on December 22, 1964. Construction was begun on November 25, 1964, and completed on December 2, 1964. Service was commenced on December 2, 1964.

The actual cost of construction of the measurement station was $5,013, as shown in Applicant's filing of May 6, 1965, which filing was made pursuant to the requirements of paragraph (c)(4) of Section 157.20 of the Regulations under the Natural Gas Act. The construction was financed with internally generated funds. The project appears economically feasible.

Due notice of the filing of the application was published in the Federal Register on December 18, 1964 (29 F.R. 18023).

On October 28, 1964, Wyoming Gas filed a petition for leave to intervene which was in support of the application. Wyoming Gas explained in the petition that it sought natural gas service from Applicant due to the inability of another supplier to maintain service.

On December 23, 1964, the Public Service Commission of Wyoming filed a notice of intervention which was withdrawn on October 29, 1965.

No other protests, petitions to intervene, or notices of intervention have been filed in this proceeding.

At a hearing held on November 17, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Montana-Dakota Utilities Co., a Delaware corporation having its principal place of business in Minneapolis, Minnesota, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order issued March 22, 1946, in Docket Nos. G–220 and G–402 (5 FPC 64).

(2) The facilities hereinbefore described and as more fully described in the application in this proceeding are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the sale of natural gas for resale in interstate commerce by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the sale of natural gas, as described, by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraph (e) of Section 157.20 said Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Applicant, Montana-Dakota Utilities Co., authorizing the construction and operation of the facilities and the sale of natural gas as hereinbefore described and as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraph (e) of Section 157.20 of said Regulations.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr. and Carl E. Bagge.

ORANGE AND ROCKLAND UTILITIES, INC., DOCKET NO. E-7246

ORDER AUTHORIZING THE ISSUANCE OF PROMISSORY NOTES

(Issued November 24, 1965)

Orange and Rockland Utilities, Inc. (Applicant), a New York corporation qualified to do business in the State of New Jersey with its principal business office at Nyack, New York, filed an application on September 27, 1965, with the Federal Power Commission, seeking an order pursuant to Section 204 of the Federal Power Act, authorizing the issuance of short-term unsecured Promissory Notes in the maximum principal amount of $15,000,000 outstanding at any one time.

According to the application, the Notes are to be issued from time to time, they are to have maturities of not more than one year from the dates thereof and in any event not later than December 31, 1966. They are to be issued to commercial banks located in the territory served by the Applicant and to banks in New York City and Boston. The interest rate on the notes will not be over one-quarter of one per cent in excess of the prime interest rate in New York City. This New York prime rate has been 4½% per annum since August 23, 1960.

Subject to obtaining authorization from the Public Service Commission of New York, the Applicant plans to pay off the Notes not later than December 31, 1966, from funds derived from the sale of long-term debt and/or equity securities and from retained earnings.

The application indicates that the purposes for which the Notes are to be issued are for the construction, completion, extension or improvement of certain electric and gas facilities. This program calls for an expenditure of $6.3 million during the remainder of 1965 and of $11.9 million during 1966. The main items in this program are $3.7 million for completion of a 170 mw unit at the Lovett Steam Plant, $1.7 million for construction of a service building at Spring Valley, New York, $5.9 million for extensions and replacements of electric lines and other additions and replacements of plant and property.

Written notice of the application has been given to the Public Service Commission of the State of New York, the Board of Public Utility Commissioners of the State of New Jersey, the Public Utilities Commission of Pennsylvania, and to the Governor of each of those States. Notice was also published in the Federal Register on October 15, 1965 (30 F.R. 13178), stating that any person desiring to be heard or to make any protest with reference to said application should on or before October 29, 1965, file with the Federal Power Commission, Washington, D.C. 20426, petitions or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). No protest or petition or request to be heard in opposition to the granting of the application has been received.

The Commission finds:

(1) Applicant, a corporation, is a public utility within the meaning of Section 204 of the Federal Power Act, subject to the jurisdiction of the Commission as heretofore described and set forth in the Commission's order issued July 22, 1965, *Orange and Rockland Utilities, Inc.*, Docket No. E–7230 (34 FPC 107).

(2) The proposed issuance of Promissory Notes in the aggregate principal amount of $15,000,000, all as described above, will constitute an issuance of securities within the purview of Section 204 of the Act.

(3) The proposed issuance of Promissory Notes in the aggregate principal amount of $15,000,000, all as described above, will be in excess of 5% of the par value of the other securities of Applicant, and, therefore, will not be exempt by virtue of Section 204(e) from the requirements of Section 204(a) of the Act.

(4) Applicant is not organized and operating in a State, under the laws of which the issue here involved is regulated by a State Commission within the meaning of Section 204(f) of the Act, and the proposed issuance is, therefore, not exempt by virtue of that Section from the requirements of Section 204 of the Act.

(5) The proposed issuance of Promissory Notes will be exempt from the competitive bidding requirements of Section 34.1a of the Commission's Regulations under the Federal Power Act by reason of paragraph 34.1a(a)(2).

(6) The proposed issuance of securities, as hereinafter authorized will be for a lawful object within the corporate purposes of Applicant and compatible with the public interest, which is appropriate for and consistent with the proper performance of service by Applicant as a public utility, and which will not impair its ability to perform that service, and is reasonably necessary and appropriate for such purposes.

The Commission orders:

(A) The proposed issuance of Promissory Notes in the aggregate principal amount of $15,000,000, outstanding at any one time, upon the terms and conditions and confined to the purposes set forth in the application, all as described above, is hereby authorized, subject to the provisions of this order.

(B) This authorization is expressly conditioned upon the final maturity of said notes being not later than December 31, 1966.

(C) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations of cost or any other matter whatsoever now pending or which may come before this Commission.

(D) Nothing in this order shall be construed to imply any guarantee or obligation on the part of the United States in respect to any security to which this order relates.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

TURNBULL & ZOCH DRILLING CO. (OPERATOR), ET AL., DOCKET NO. G-17960, ET AL.

ORDER DENYING REHEARING AND GRANTING STAY

(Issued November 24, 1965)*

On September 30, 1965, the Commission issued its Opinion No. 478, 34 FPC 1001, in the above-entitled proceedings. A number of the parties, as listed below, have submitted applications for rehearing or reconsideration of our decision, the first application being filed on October 25.[1] In some cases motions for stay of certain actions required in the order accompanying Opinion No. 478 also have been submitted.[2] Additional filings presently made consist of briefs permitted by ordering paragraph (K) regarding the refund issue arising on the granting of the permanent certificates.

In our Opinion and order we determined the initial prices required by the public convenience and necessity for the sales involved in these proceedings. Stated briefly, certificates were granted under Section 7 of the Natural Gas Act for sales in Texas Railroad District No. 4 conditioned on an initial price of 15.0 cents per Mcf at 14.65 psia for the producers whose contracts

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* For additional parties see Opinion No. 478 and order issued September 30, 1965, 34 FPC 1001.

[1] On October 25 by Shell Oil Co.; jointly by Austral Oil Co., Inc., Appell Petroleum Corp., *et al.*, and K. D. Owen, *et al;* on October 28 by Continental Oil Co. and Bright & Schiff; on October 29 by H J Mosser; jointly by the eastern distributors; The Public Service Commission of the State of New York; jointly by Blanco Oil Co. (Operator), *et al.* and Killam & Hurd; McCurdy & McCurdy; on November 1 by Jonnell Gas, Inc. (Operator), *et al.;* Phillips Petroleum Co.; and American Petrofina Company of Texas.

[2] Austral, *et al.*, Continental, Bright & Schiff, H. J. Mosser, Blanco, *et al.* and American Petrofina.

were executed before issuance of the Commission's Statement of General Policy No. 61–1 on September 28, 1960 (24 FPC 818), and 16.0 cents per Mcf at 14.65 psia for those producers whose contracts or supplements were dated after the Policy Statement. The certificates were further conditioned to provide for a moratorium on the filing of price increases above 18.0 cents per Mcf for a stated period, and for possible revision of the take-or-pay requirement in each contract on the basis of the final order in the proceeding in Docket No. R–199. In those dockets where the temporary authorization contained a refund condition, the certificate order initiates a procedure leading to the refunding of excess amounts theretofore collected. The question of whether refunds should be required in those cases where no refund condition was included in the temporary authorization was deferred. As noted, no determination has yet been made as to whether refunds will be required in such cases or as to the procedure to be followed in alleging and making proof of the equities with respect to any such refunds. Determinations also were made with respect to individual dockets presenting special circumstances. To the extent further consideration is warranted, they are dealt with subsequently in this order.

Our review of the present applications gives us no basis to question the basic in-line price determinations or to doubt their correctness. The decision is affirmed for the reasons stated by us and by the Examiner.

A question has been raised with regard to superseding rate filings. This same matter was considered in the recent order in the *H. L. Hawkins* proceeding issued November 17, 1965, *supra*, p. 1330. As therein stated, supplemental rate filings should be made by all producers whose initial rates exced the level found proper in order to establish the appropriate filed initial rate for each sale. Where no superseding rate has become effective the producer will commence charging the prescribed initial rate from the date the supplement is filed and continue to do so until that rate is changed in accordance with the Natural Gas Act. Where a superseding rate has gone into effect, the producer will continue to charge the superseding rate. Where no refund condition was included in the temporary authorization, the question of whether there should be a refund for the period prior to putting the superseding initial rate into effect will be determined upon completion of the proceeding contemplated by our October 5, 1964, 32 FPC 914, order and by paragraph (K) of Opinion No. 478. Ramada and Tenneco in Docket Nos. CI63–304 and CI63–334, respectively, should file rate schedule supplements showing a 16-cent initial rate effective from the date their service commenced. This is so since, in their cases, refund provisions were included in the temporary authorization and no superseding rates have been filed to replace the initial rates.

Jonnell Gas points out that its basic contract was executed before the Policy Statement but that successive contract amendments were made throughout 1961, 1962 and 1963 adding acreage to the initial commitment. In this circumstance we agreed with the producer, as intended by ordering paragraph (B), that each such contract amendment constitutes a separate gas sale for the purpose of applying the in-line price differential date of September 28, 1960. No modification of the order, beyond this clarification, is deemed necessary.

We have considered the other items raised in the applications for rehearing and are convinced that no change of the Opinion or order is warranted thereby.

Several producers have asked for stay of paragraphs (B), (E), (F) and (K) of our order until completion of judicial review. Paragraph (B) condi-

tions the certificates as to price; stay thereof is unnecessary. (E) provides for the filing of new rates; its requirements will be stayed pending judicial review. (F) provides the moratorium; stay will be denied, since to grant the request would defeat the very purpose for which the condition has been instituted. Paragraph (G) through (J), relating to the refunds by Ramada and Tenneco, need not be stayed because the amounts to be refunded will not be paid over until further order of the Commission. These producers may continue for the present to charge their temporarily authorized rates in line with the stay herein granted to paragraph (E). Within 90 days after judicial affirmance of the Opinion, they shall submit a supplemental report of the type specified in paragraph (G) applicable to the excess charges collected between the date of Opinion No. 478 and the effective date of the reduced rate filings. Paragraph (K) defers the "refund under non-refund conditioned temporaries" issue and permits briefs; the paragraph will be stayed until the Supreme Court's decision in *U.G.I., et al.* v. *Callery Properties, Inc., et al.*, S. Ct. Oct. Term 1964, Nos. 21, *et al.** Those who have already made filings in accordance with the original direction will be given opportunity to supplement them when paragraph (K) is made effective.

The Commission further finds:

(1) The assignments of error and grounds for rehearing set forth in the applications for rehearing filed in this proceeding present no facts or legal principles which would warrant any change or modification in the Commission's Opinion No. 478 and order except as specified below.

(2) Good cause exists for granting, in part, the motions for amendment to the order issued herein on September 30, 1965, so as to stay the actions required by paragraphs (E) and (K).

The Commission orders:

(A) Paragraph (E) is amended to read as follows:

Within 60 days from the date of issuance of this order each of the applicants receiving certificates in paragraph (A) hereof, whose proposed total initial price exceeds the limits set forth in paragraphs (B) or (C) hereof, shall file a supplement to its presently filed rate schedule, related to its respective application, reflecting the conditioned price as the total initial price in lieu of the higher initial price provided in the contract or amendment. The filings of Ramada Oil and Gas Company in Docket No. CI63-304 and Tenneco Oil Company in Docket No. CI63-334 shall be effective from the date delivery began until lawfully changed in the manner provided by the Natural Gas Act. The filings of all other producers shall set forth the initial rate here prescribed, and shall be effective from the date of this order until lawfully changed in the manner provided by the Natural Gas Act, and subject to any such lawful changes which are the subject of other proceedings before the Commission. In making the required filings, applicants need not comply with the detailed submittal provisions of Section 154.94(f) of the Regulations under the Natural Gas Act.

(B) Paragraph (G) is amended by adding the following at the end thereof:

Within 90 days after judicial affirmance of Opinion No. 478, Ramada and Tenneco shall submit a supplemental report applicable to the excess charges collected between the date of issuance of Opinion No. 478 and the effective date of issuance of Opinion No. 478 and the effective date of the reduced rate filings, with interest computed at the rate of 7 percent per annum to the date of such rate filings.

(C) The date for making the filings required by paragraph (E) is postponed until 60 days after judicial review of Opinion No. 478 and order

*380 U.S. 931 (1965).

becomes final. The time limit for filing initial briefs and statements of evidence as provided in paragraph (K) is stayed until 60 days after the decision of the United States Supreme Court in *U.G.I.* v. *Callery*, *supra*, becomes final. Those who have already filed such briefs or statements may file supplemental briefs and statements within the extended time limit prescribed here.

(D) In all other respect the applications for rehearing and motions for stay are denied.

Commissioner Ross *dissenting* for reasons stated in his dissent to Opinion No. 478 issued September 30, 1965, 34 FPC at p. 1013.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr. and Carl E. Bagge.

ALABAMA POWER COMPANY, PROJECT NO. 2165

ORDER DISMISSING APPLICATION FOR REHEARING AND STAYING ORDER

(Issued November 26, 1965)

Alabama Power Company (Applicant) by application filed October 28, 1965 requests that the Commission grant a rehearing of its September 28, 1965 Order Fixing Annual Charges for the use of a Government Dam, 34 FPC 971. That order assessed against Alabama Power Company an annual charge of $92,000 for the Company's use for power purposes of the Government's John Hollis Bankhead Dam on the Black Warrior River, Alabama.

In support of its application for rehearing, Applicant states that:

> in its preliminary review of the determinations and computations of the Commission Staff, [Applicant] has tentatively concluded that there are several areas of concern involving the determination of the amounts of the costs to be allocated and the allocation of power benefits in the assignments of such costs between the several functions.

However, Applicant declares that due to the involvement of certain of its key officials in the hearing before this Commission on Docket No. E-7183 no complete review and analysis by the Company of the Commission's September 28th order has yet been possible. According to Applicant, such a complete review and analysis can be undertaken only after the hearing on Docket No. E-7183 is completed and its key officials are released therefrom for other duties.

However, since the Applicant does not allege in its application for rehearing any error in the above-mentioned order as is required by Section 1.34(b) of the Commission's Rules of Practice and Procedure, we are unable to give favorable consideration to this application. But in view of the representations made by the Applicant indicating a need for more time to determine whether it considers the order in error, we deem it appropriate to stay the order so as to permit the Applicant additional time in which to study that order and to file another application for rehearing if it deems such action necessary.

The Commission finds:

It is appropriate and in the public interest under the circumstances recited above to dismiss Applicant's application for rehearing of the Commission's order issued September 28, 1965 in Project No. 2165, and to stay the Commission's order of September 28, 1965 in Project No. 2165 until December 31, 1965.

The Commission orders:

(A) The Alabama Power Company's application for rehearing of the Commission order issued September 28, 1965 in Project No. 2165 is hereby dismissed.

(B) The Commission's order issued September 28, 1965 in Project No. 2165 is hereby stayed until December 31, 1965.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr. and Carl E. Bagge.

CITY OF HERMANN, MISSOURI AND PANHANDLE EASTERN PIPE LINE COMPANY, DOCKET NO. CP66-24

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued November 26, 1965)

On July 21, 1965, The City of Hermann, Missouri (Applicant), filed in Docket No. CP66-24 an application, as supplemented on September 17, 1965, and October 29, 1965, and amended October 15, 1965, pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Panhandle Eastern Pipe Line Company (Respondent) to establish physical connection of its transportation facilities with the facilities proposed to be constructed by Applicant and to sell and deliver to Applicant volumes of natural gas for resale and distribution in the City of Hermann, in the incorporated communities of Middletown, New Florence, New Haven and Berger, and in the unincorporated areas of Big Springs and McKittrick, all in the State of Missouri, as more fully set forth in the application.

Applicant proposes to construct and operate a municipal gas distribution system within its own borders and approximately 45 miles of 6.5-inch O.D. lateral transmission pipeline extending southward from a point of interconnection with Respondent's main line in Audrain County, Missouri, to the town border of Applicant on the south bank of the Missouri River in Montgomery County, Missouri. Middletown, New Florence, Berger and New Haven will each construct and operate municipal gas distribution systems. New Haven will construct and operate approximately 15 miles of 4.5-inch O.D. transmission line extending south and east from Applicant to New Haven.

Applicant proposes to purchase from Respondent the requirements of its own customers as well as the requirements of the other named communities and rural customers. The volumes of gas required by Middletown and New Florence will be sold and delivered to them by Applicant at interconnections on its proposed lateral. The volumes to be sold to Berger and New Haven will be delivered to New Haven by Applicant at a point on Applicant's town border. New Haven will then transport its own gas and sell and deliver gas to Berger at the Berger town border. Rural customers in the Big Springs and McKittrick areas will be served by Applicant by means of short line taps extending from Applicant's proposed lateral.

The estimated peak day and annual requirements of each community and the transportation charges to be incurred by Middletown, New Florence, New Haven and Berger, are as follows:

	Year of operation			Transportation charge (cents per Mcf)
	1st	2d	3d	
Peak day (Mcf at 14.73 psia):				
Hermann (Applicant)	1,110	1,473	1,737	
Middletown	77	92	108	
New Florence	217	265	308	
New Haven	487	572	647	
Berger	74	127	142	
Total	1,965	2,529	2,942	
Annual (Mcf at 14.73 psia):				
Hermann (Applicant)	121,236	163,908	191,883	
Middletown	7,251	8,680	10,262	[1] 5.5
New Florence	20,701	25,421	29,354	[1] 11.7
New Haven	67,268	118,998	153,236	[2] 12.5
Berger	7,037	12,297	13,726	[3] 17.7
Total	223,493	329,304	398,461	

[1] To be paid to applicant.
[2] To be paid to applicant and includes gas transported for Berger.
[3] To be paid to New Haven.

Applicant will purchase gas from Respondent under Respondent's G-2 Rate Schedule with a monthly Demand Charge of $1.99 per Mcf and a commodity charge of 22.1 cents per Mcf. Middletown, New Florence and New Haven will each pay Applicant an amount equal to Applicant's cost of purchased gas plus the transportation charge shown above. Berger will pay for gas purchased from New Haven the cost of gas delivered to New Haven by Applicant plus the transportation charge shown above. The total amount paid for gas and the transportation thereof shall not in any case exceed 50 cents per Mcf.

Applicant's estimated cost of construction of the 45 miles of transmission lateral and the distribution system within its borders is $1,016,000. The total estimated cost to New Haven for its 15 miles of transmission line and distribution system is $324,000, and the costs to Middletown, New Florence and Berger for their distribution systems are estimated to be $35,000, $60,000, and $46,000, respectively.

These amounts are to be financed by gas revenue bonds to be issued separately by each municipality. Each such proposed issue has been approved by municipal elections. The project appears to be economically feasible.

Respondent was notified of the filing of the application by letter dated July 23, 1965. No answer has been received from Respondent.

Due notice of the filing of the application was published in the Federal Register on August 7, 1965 (30 F.R. 9891). No protest, petition to intervene or notice of intervention has been filed in this proceeding.

The Commission finds:

(1) Respondent, Panhandle Eastern Pipe Line Company, a Delaware corporation with its principal place of business in Kansas City, Missouri, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of September 23, 1942, issued in Docket Nos. G-200 and G-207 (3 FPC 273).

(2) Applicant is a municipality in the State of Missouri and is authorized to construct and operate facilites to distribute and sell natural gas to inhabitants and to communities along its system.

(3) It is necessary and desirable in the public interest that Respondent be directed to establish a physical connection of its transportation facilities with the facilities proposed to be constructed by Applicant and to sell and deliver up to 2,942 Mcf of natural gas per day to Applicant, as hereinbefore described

and as more fully set forth in the application, as hereinafter ordered and conditioned.

(4) The requirement that Respondent serve Applicant, as requested, will not place an undue burden upon Respondent nor impair its ability to render adequate service to its existing customers.

The Commission orders:

(A) Respondent is directed to establish a physical connection of its natural gas transmission system with the facilities to be constructed by Applicant and to sell and deliver up to 2,942 Mcf of natural gas per day to Applicant, all as hereinbefore described and as more fully described in the application.

(B) Applicant shall be prepared to receive natural gas from Respondent at the proposed new connection within one year from the date of this order.

(C) Respondent shall notify the Commission of the commencement of service within 10 days thereof.

(D) Respondent shall execute and file with the Commission a service agreement with Applicant in accordance with the Commission's Regulations.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr. and Carl E. Bagge.

IDAHO POWER COMPANY, PROJECT NO. 1971

ORDER AMENDING LICENSE (MAJOR)

(Issued November 26, 1965)

Idaho Power Company (Applicant) filed an application on June 7, 1965, with the Federal Power Commission seeking an amendment to its license for Project No. 1971 which would include the proposed Boise-Bench—Midpoint 230 kv transmission line in the license for that project. On August 30, 1965, the Secretary of the Interior (Intervener) filed a petition to intervene in opposition to the proposed amendment.

The proposed transmission line would be constructed at an estimated cost of $3,933,000, on the right-of-way 150 feet wide connecting at one end with the Boise-Bench substation and at the other end with the Midpoint transmission switching station, a distance of approximately 106.3 miles. The line would cross 71.078 miles of United States' land. It will provide additional capacity and will act as a back-up line for the existing Boise-Brady No. 3 and No. 4, 230 kv transmission lines.

Project No. 1971 consists of three developments on the Snake River in Idaho, the existing Brownlee and Oxbow developments and the Hells Canyon development which is now under construction. Presently, there are four authorized 230 kv transmission lines extended from the Brownlee switchyard to the Boise-Bench substation. From Boise-Bench there are presently two 230 kv lines which extend through the Midpoint switching station to a substation at Brady. All of these lines have been found to be primary transmission lines and all except one of the Boise-Bench-Midpoint-Brady segments have been included in the license for Project No. 1971. The afore-mentioned Boise Bench-Midpoint-Brady segment is included in the license for Project No. 1975.

The proposed 230 kv line would in general serve the same function as the two segments of the existing licensed transmission lines from Boise-Bench to Midpoint. It would become a new segment in a primary transmission line network which extends from the Brownlee switchyard through the Boise-Bench and Midpoint stations to Brady. The line will serve principally as a primary line transmitting energy from the three developments licensed as Project No. 1971 to its point of connection with other primary transmission lines at the Midpoint station. When some or all of the three developments of Project No. 1971 are generating power, this line will not carry any substantial amount of power from any other source.

The intervener alleges that the proposed transmission line is not a part of Project No. 1971 as "project" is defined in Section 3(11) of the Federal Power Act. Intervener's position as stated in its petition to intervene is that:

> For a transmission line to come within that definition, it must be a primary line * * * transmitting power therefrom [from the generating source] to the point of junction with the distribution system or with the interconnected primary transmission system.
>
> The generating source in this case is Brownlee-Oxbow-Hells Canyon. Unlike the transmission lines from Brownlee to Boise Bench (which were properly licensed as primary lines since they transmit power from the generating source to another point on the Company's transmission system), the Boise Bench-Midpoint line transmits power only from one intermediate point to another on the Company's transmission system.

The proposed line would serve as an additional connecting link between existing licensed primary transmission lines and will become part of the primary transmission system for Project No. 1971. The fact that the proposed line is only a segment in the primary transmission system of Project No. 1971 does not remove it from the Commission's licensing authority. Indeed, it would be anomalous to determine that the proposed segment of line, connecting at either end with other licensed primary lines, is not also subject to license.

The Intervener further requests in its petition that:

> In the event, however, that it should be decided that the proposed transmission line is a part of Project No. 1971 and subject to licensing by the Commission, the excess capacity provisions of Article 49 of the license, as provided in the Commission's Order of July 24, 1964, should also apply to this line.

Article 49[1] makes all lines which are licensed as part of Project No. 1971 subject to that Article. This includes future as well as presently licensed project lines.

In accordance with Section 11.21 of the Commission's Regulations under the Federal Power Act the proposed amendment of the license would increase the annual charges for occupancy of lands of the United States for transmission line purposes by: $852.94 or to a total $3,270.93, effective the first day of the month in which the order is issued.

The Commission finds:

The 230 kv transmission line which the Applicant proposes to construct from Boise-Bench to Midpoint will be a primary transmission line and part of Project No. 1971.

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[1] 32 FPC 342.

The Commission orders:

(A) Paragraph (5)(a) of the license is amended by adding thereto the following:

BOISE-BENCH-MIDPOINT TRANSMISSION LINE

Exhibit	FPC No.	Showing
J	1971-207	General map.
K	1971-208, 209, 210	Detail map.

(B) Paragraph (5)(b)(4) of the license is amended by adding thereto the following:

(g) Boise-Bench Midpoint

A 230 kv single-circuit transmission line extending from the Boise-Bench substation approximately 106.3 miles in a southeasterly direction to the Midpoint switching station.

Exhibit M (dated 6-1-65) General Description and Specifications of Equipment.

(C) Sub-paragraph (b) of Article 44 of the license is further amended to read as follows:

(b) For the purpose of recompensing the United States for the use, occupancy and enjoyment of its lands used for transmission line right-of way only $2,417.99 effective July 24, 1964, and $3,270.93 effective the first day of the month in which the order amending license is issued.

(D) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an aplication shall constitute acceptance of this license amendment. In acknowledgement of the acceptance of this license amendment, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr. and Carl E. Bagge.

NEKOOSA-EDWARDS PAPER COMPANY, PROJECT NO. 2498

ORDER ISSUING LICENSE (MINOR)

(Issued November 26, 1965)

Application was filed on December 9, 1964 by Nekoosa-Edwards Paper Company (Applicant) of Port Edwards, Wisconsin, for a minor license under Section 4(e) of the Federal Power Act (Act) for constructed Project No. 2498, known as the Hewittville Hydroelectric Project, located on the Raquette River, in the Town of Potsdam, in St. Lawrence County, New York. No lands of the United States are affected by the project.

The project was originally constructed in or about 1870, and extensively reconstructed in 1902. Portions of the powerhouse which were destroyed by a fire were rebuilt in 1934.

The Secretary of the Army and the Chief of Engineers have advised that the plans of the project structures affecting navigation are satisfactory, and recommended for inclusion in any license for the project the terms and conditions in the interest of navigation usually included in licenses for such

projects. Such terms and conditions are set forth in Article 6 of attached Form L-9.

The Department of the Interior, in reporting on the application, advised that no special conditions in the interests of fish and wildlife are considered necessary for inclusion in any license for the project.

The Department of Health, Education, and Welfare has reported that the project has no adverse effects on water supply, pollution or water control, and none is anticipated.

By Article 13 herein, we are requiring Applicant to cooperate with State and local agencies in the interest of recreation in connection with the use of project lands and waters by the public.

In Docket No. DI-179, In the Matter of *Central New York Power Corporation*, the Commission in its Opinion No. 185, issued November 22, 1949, found that the "Raquette River, from its confluence with the St. Lawrence River to at least Piercefield at about mile 91 is a navigable waterway of the United States" (8 FPC 390). The Hewittville Project is located within this stretch of the Raquette River.

In accordance with the criteria set forth in our April 25, 1962 Opinion No. 357 and order issuing a license to Public Service Company of New Hampshire for Project No. 2288 (27 FPC 830), the license herein granted shall have an effective date of November 1, 1949 and a termination date of December 31, 1993.

In our order on rehearing issued February 17, 1965, in *Wisconsin Power & Light Company, Project No. 2347, et al.*, 33 FPC 275, we stated that we would have no objection to the issuance of licenses for minor projects without waiving Sections 14 and 15 of the Federal Power Act and the other provisions of the Act necessary to the effectuation of those sections, provided the minor project applications are timely supplemented pursuant to Section 4.50 of our Regulations under the Act (18 CFR § 4.50), which relates to applications for major projects. In the event the Applicant herein wishes a license in which those provisions of the Act are not waived it should so advise us within 30 days from the date of issuance of this order and file its supplemental application within 30 additional days thereafter.

The Commission finds:

(1) The project is situated on navigable waters of the United States.

(2) Applicant is a corporation organized under the laws of the State of Wisconsin, is authorized to do business in the State of New York, and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effectuate the purposes of a license for the project.

(3) Public notice of the filing of the application has been given. No protests or petitions to intervene have been received. No conflicting application is before the Commission.

(4) The project does not affect a Government dam, nor will the issuance of a license therefor, as hereinafter provided, affect the development of any water resources for public purposes which should be undertaken by the United States.

(5) Subject to the terms and conditions hereinafter imposed, the project will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, and for other beneficial public uses, including recreational purposes.

(6) The installed horsepower capacity of the project hereinafter authorized for the purpose of computing the capacity component of the administra-

tive annual charge is 1,770 horsepower, and the amount of annual charges, based on such capacity, to be paid under the license for the project, for the costs of administration of Part I of the Act is reasonable as hereinafter fixed and specified.

(7) It will be in the public interest to waive pursuant to Section 10(i) of the Act the terms and conditions contained in the following sections of Part I of the Act:

Section 4(b), except the second sentence thereof; 4(e), insofar as it relates to approval of plans by the Chief of Engineers and the Secretary of the Army and to public notice; 6, insofar as it relates to public notice and to the acceptance and expression in the license of terms and conditions of the Act which are hereinafter waived; 10(c), insofar as it relates to depreciation reserves; 10(d); 10(f); 14, except insofar as the power of condemnation is reserved; 15; 19; 20; 22; and 23(a), insofar as it relates to the determination of fair value.

The Commission orders:

(A) This license is hereby issued to Nekoosa-Edwards Paper Company of Port Edwards, Wisconsin, under Sections 4(e) and 10(i) of the Act, for a period effective as of November 1, 1949, and terminating December 31, 1993, for the continued operation and maintenance of Project No. 2498, located on the Raquette River, a navigable water of the United States, subject to the terms and conditions of the Act insofar as not expressly waived herein, which Act is incorporated herein by reference as a part of this license, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) Project No. 2498 consists of:

(i) All lands constituting the project area and enclosed by the project boundary or the limits of which are otherwise defined; and

(ii) A 550 foot long combination gravity and buttress dam, 19 feet above bedrock, with flashboards adding 2 feet to the height when used; six masonry flumes, each 18 feet deep and 13 feet wide, conveying water to six waterwheels; and a reinforced steel and concrete powerhouse with total installed capacity of 1,770 horsepower.

(C) This license is also subject to the terms and conditions set forth in Form L-9 (July 1, 1964) entiled, "Terms and Conditions of License for Constructed Minor Project Affecting Navigable Waters of the United States" (32 FPC 577), which terms and conditions, designated as Articles 1 through 11, are attached hereto, and made a part hereof, and subject to the following special conditions set forth herein as additional articles:

Article 12. The Licensee shall pay to the United States the following annual charge:

For the purpose of reimbursing the United States for the costs of administration of Part I of the Act for the period November 1, 1949, through March 31, 1962, a charge of $5.00 per annum, and effective as of April 1, 1962, an annual charge of $88.50.

Article 13. Licensee shall cooperate with State and local agencies in the development, and maintenance of access roads, areas, and facilities needed for full public utilization of outdoor recreation opportunity at the project consistent with the terms of the license and the operation of the project.

(D) The terms and conditions of the Act, which it has been found above to be in the public interest to waive, are hereby excluded from this license.

(E) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance

of this license. In acknowledgement of the acceptance of this license, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr. and Carl E. Bagge.

EL PASO NATURAL GAS COMPANY, DOCKET NO. CP66-58

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued November 29, 1965)

On August 23, 1965, El Paso Natural Gas Company (Applicant) filed an application, as supplemented on September 13, 1965, in Docket No. CP66-58 pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities to be utilized for the sale and delivery of natural gas to Tucson Gas & Electric Company (Tucson Gas) and Southern Union Gas Company (Southern Union), both existing resale customers of Applicant, as more fully set forth in the application.

For service to Southern Union, Applicant proposes to construct and operate 24.9 miles of 8⅝-inch O.D. pipeline looping the initial portion of the presently existing 43.7 miles of its Clovis-Farwell lateral pipeline which is located in Lamb and Parmer Counties, Texas, to permit increased sales of natural gas to Southern Union and to modify its Clovis meter station to accommodate the increased sales. Applicant has agreed to increase the firm delivery obligation to Southern Union from 22,300 Mcf per day to 32,000 Mcf per day and to increase the delivery pressure from 200 psig to 250 psig. The facilities will also be utilized to maintain the continuity of exchange deliveries currently being made to Pioneer Natural Gas Company by use of the Clovis-Farwell lateral.

For service to Tucson Gas, Applicant proposes to convert the mainline tap serving Tucson Gas in Pima County, Arizona, to a 2-inch orifice type measuring and regulating station. Applicant estimates that requirements of Tucson Gas for resale in the Avra Valley area of Arizona will increase from a yearly volume of 101,383 Mcf in 1964 to 172,788 Mcf in 1968. Applicant states that the proposed measuring and regulating station will allow it more efficient control over the volumes of gas sold to Tucson Gas.

The estimated cost of the facilities to serve Southern Union is $487,000, and the cost of the facilities to serve Tucson Gas is $7,700. These costs will be financed by Applicant out of available working funds. The projects appear to be economically feasible.

Due notice of the filing of the application was published in the Federal Register on September 4, 1965 (30 F.R. 11356). No protest, petition to intervene, or notice of intervention has been filed in this proceeding.

At a hearing held on November 24, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, El Paso Natural Gas Company, a Delaware corporation having its principal place of business in El Paso, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order issued on October 29, 1942, in Docket Nos. G–242 and G–257 (3 FPC 851).

(2) The facilities hereinbefore described and as more fully described in the application in this proceeding are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of said Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Applicant, El Paso Natural Gas Company, authorizing the construction and operation of facilities as hereinbefore described and as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities authorized by this order shall be completed and placed in actual operation and the transportation of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within six months from the date of this order.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr. and Carl E. Bagge.

MIDWESTERN GAS TRANSMISSION COMPANY, DOCKET NO. CP66–15; TENNESSEE GAS TRANSMISSION COMPANY, DOCKET NO. CP66–25

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

(Issued November 29, 1965)

On July 22, 1965, Tennessee Gas Transmission Company (Tennessee) filed in Docket No. CP66–25 an application pursuant to Section 7(c) of the Natural

Gas Act for a certificate of public convenience and necessity authorizing the sale and delivery of an additional 1,000,000 Mcf (14.73 psia) of natural gas to Midwestern Gas Transmission Company (Midwestern) between November 1, 1965 and April 30, 1966, under Tennessee's existing FPC Temporary Winter Service (TWS) rate schedule, all as more fully set forth in the application.

Tennessee's proposed additional service is necessary to provide Midwestern with a gas supply for additional service which Midwestern proposes to render during the 1965–66 winter season to two of its southern system customers, Northern Illinois Gas Company (Northern) and Peoples Gas Light and Coke Company (Peoples).

Tennessee proposes to sell and deliver a temporary daily quantity of 20,000 Mcf to Midwestern at a rate of 58.37 cents per Mcf. The proposed service is firm, taking precedence after Tennessee's regular firm service and before service on an interruptible, temporary or emergency basis. Such service may be curtailed when it would impair Tennessee's ability to fulfill its obligations to render its regular firm service.

On July 16, 1965, Midwestern filed in Docket No. CP66–15 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale and delivery of an additional 500,000 Mcf (14.73 psia) of natural gas each to Northern and Peoples during the period between November 1, 1965, and April 30, 1966, all as more fully set forth in the application.

Specifically, Midwestern proposes to provide firm temporary winter service to Northern and Peoples under a proposed new FPC Rate Schedule to be designated as Rate Schedule TWS–1 Contract Demand Temporary Winter Service. The volume of gas to be delivered in any one day will be limited to a temporary daily quantity which, with certain exceptions, will not be in excess of two per cent of the temporary winter quantity. Midwestern proposes to deliver a temporary daily quantity of 10,000 Mcf of each to Northern and Peoples. The proposed service is firm, taking precedence after Midwestern's regular firm service and before service on an interruptible, temporary or emergency basis. Gas proposed to be sold to Northern and Peoples will be at a rate of 63.49 cents per Mcf.

Midwestern will receive the gas proposed to be sold by Tennessee in Docket No. CP66–25 at Portland, Tennessee. Midwestern will transport said gas for sale near Joliet, Illinois. No additional facilities will be required by either Tennessee or Midwestern for the proposed services.

On August 11, 1965, Northern filed a petition to intervene in support of the subject applications. Northern does not request formal hearing and does not object to the hearing and disposition of the subject applications under the shortened procedure provided for by the Commission's Rules. Inasmuch as the shortened procedure is being used herein, no further action on said petition appears necessary.

After due notice, no other petition to intervene, notice of intervention or protest to the granting of the applications has been filed.

At a hearing held on November 24, 1965, the Commission on its own motion received and made a part of the record in these proceedings all evidence, including the applications and exhibits submitted in support of the authorizations sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Tennessee Gas Transmission Company, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of July 12, 1947, in Docket No. G–910 (6 FPC 777).

(2) Applicant, Midwestern Gas Transmission Company, a Delaware corporation having its principal place of business in Chicago, Illinois, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order issued May 12, 1959, in Docket No. G–16841 (21 FPC 653).

(3) The proposed sales and delivery of natural gas by Tennessee and Midwestern hereinbefore described, as more fully described in the applications in these proceedings, are to be made in interstate commerce, subject to the jurisdiction of the Commission, and are, therefore, subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(4) Applicants are able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) The proposed sales and delivery of natural gas by Tennessee and Midwestern are required by the public convenience and necessity and certificates therefor should be issued as hereinafter ordered and conditioned.

(6) Public convenience and necessity require that the certificates issued hereinafter and the rights granted thereunder be conditioned upon Applicants' compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3) and (e) of Section 157.20 of such Regulations.

(7) Midwestern should tender for filing a proposed FPC Gas Rate Schedule TWS–1 and service agreements with Northern and Peoples all in conformance with the proposed rate schedule and service agreements submitted in its application in Docket No. CP66–15.

The Commission orders:

(A) Certificates of public convenience and necessity are issued authorizing Applicants, Midwestern Gas Transmission Company and Tennessee Gas Transmission Company, to sell and deliver natural gas as hereinbefore described, all as more fully described in the applications in these proceedings, upon the terms and conditions of this order.

(B) The certificates issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicants' compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3) and (e) of Section 157.20 of such Regulations.

(C) The sales and delivery of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within 3 months from the date on which this order issues.

(D) Midwestern shall tender for filing a proposed FPC Gas Rate Schedule TWS–1 and service agreements with Northern and Peoples all in conformance with the proposed rate schedule and service agreements submitted in its application in Docket No. CP66–15.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr. and Carl E. Bagge.

NATURAL GAS PIPELINE COMPANY OF AMERICA, DOCKET NO. CP66-85

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued November 29, 1965)

On September 28, 1965, Natural Gas Pipeline Company of America (Applicant), filed in Docket No. CP66-85 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale and delivery of an additional Daily Contract Quanity of 300 Mcf of gas to The City of Nebraska City, Nebraska (Nebraska City), an existing customer of Applicant, all as more fully set forth in the application.

Nebraska City's presently effective Daily Contract Quantity is 4,506 Mcf under Applicant's Rate Schedule CD-2, and 3,455 Mcf of maximum day storage withdrawal service under Applicant's Rate Schedule S-1.

Nebraska City has advised Applicant by letter dated September 8, 1965, it desires and will contract for an additional Daily Contract Quantity of 300 Mcf of natural gas and its latest estimate of 1965-66 peak day requirements exceeds by 300 Mcf its now available 1965-66 peak day supply. Applicant has agreed to supply Nebraska City with the additional quantity of gas requested with commencement of increased deliveries authorized in Docket Nos. CP65-169 and CP65-404, issued August 13, 1965, and August 24, 1965, 34 FPC 507, 568, respectively, which will be delivered from Applicant's unallocated capacity of 30,171. Mcf authorized in the aforementioned Docket No. CP65-404. No additional facilities will be required to make the proposed delivery.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on November 24, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorization, and upon consideration of the record.

The Commission finds:

(1) Applicant, Natural Gas Pipeline Company of America, a Delaware corporation having its principal place of business in Chicago, Illinois, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of November 7, 1958, in Docket No. G-9966 (20 FPC 694).

(2) The proposed sale and delivery of natural gas by Applicant to Nebraska City, as hereinbefore described, and as more fully described in the application and exhibits in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed sale and delivery of natural gas are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural

Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to the Applicant in this proceeding, authorizing the sale and delivery of natural gas to Nebraska City, as more fully described in the application and exhibits in this proceeding, subject to the jurisdiction of the Commission, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b) and (e) of Section 157.20 of such Regulations.

(C) The service authorized shall be commenced as provided in paragraph (b) of Section 157.20 of the aforesaid Regulations within sixty days of the date on which this order issues.

(D) Applicant shall file pursuant to Part 154 of the Commission's Regulations an acceptable service agreement reflecting the terms and conditions of the sale and the delivery of the additional Daily Contract Quantity to Nebraska City.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr. and Carl E. Bagge.

NORTHERN NATURAL GAS COMPANY, DOCKET NO. CP66-80

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued November 29, 1965)

On September 20, 1965, Northern Natural Gas Company (Applicant), filed in Docket No. CP66-80 an application, as supplemented on October 11, 1965, pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale and delivery of additional contract demand to an existing utility customer for the 1965-66 heating season, and, further, authorizing initial firm service to an industrial consumer and an increase of firm service to another industrial consumer, both of whom are served by two of Applicant's customer utility companies, all as more fully set forth in the application, as supplemented, in this proceeding.

Applicant seeks authorization to increase the contract demand of Elkhorn Valley Natural Gas Company from 1280 Mcf to 1380 Mcf per day in order that the latter may meet the growth requirements for the presently served communities of Hooper and Scribner, Nebraska. The request for additional contract demand is based on actual experience during the peak period of the 1964-65 heating season.

Under the provisions of Applicant's existing tariff, firm service to a large volume industrial consumer is subject to certificate authorization of this Commission. Therefore, Applicant proposes to (1) initiate firm service of 88 Mcf per day to Luverne Co-op Creamery (Creamery), Luverne, Minnesota, to be served by Central Natural Gas Company (Central), and (2) increase the firm service from 850 Mcf per day to 1030 Mcf per day to Wood Conversion Company (Wood Conversion) being served by Iron Ranges Natural Gas

Company (Iron Ranges). No additional contract demands are requested by the utilities since the proposed increased service to Creamery and Wood Conversion will be met under existing contract quantities.

Creamery will utilize natural gas in a drying chamber for the production of powdered milk. Wood Conversion will utilize the additional quantities of gas in a direct fired dryer for the production of acoustical and ceiling tile.

Applicant will require no additional facilities to render the proposed service.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on November 24, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, supplement and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Northern Natural Gas Company, a Delaware corporation having its principal place of business in Omaha, Nebraska, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of April 6, 1943, in Docket No. G-280 (3 FPC 967).

(2) The sales of natural gas by Applicant hereinbefore described, as more fully described in the application in this proceeding, are to be made in interstate commerce subject to the jurisdiction of the Commission and are, therefore, subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The sales of natural gas proposed by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Firm deliveries of natural gas by Applicant made through (a) Central to Creamery should be allowed in an amount up to 88 Mcf per day, and (b) Iron Ranges to Wood Conversion should be allowed in an amount up to 1030 Mcf per day.

(6) Public convenience and necessity require that the certificate issued thereunder hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is issued authorizing Applicant, Northern Natural Gas Company, to sell natural gas for resale as hereinbefore described, all as more fully described in the application, as supplemented, in this proceeding, upon the terms and conditions of this order.

(B) Firm deliveries of natural gas by Applicant made through (a) Central to Creamery shall be allowed in an amount up to 88 Mcf per day, and (b) Iron Ranges to Wood Conversion shall be allowed in an amount up to 1030 Mcf per day.

(C) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable

Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3) and (e) of Section 157.20 of such Regulations.

(D) The sales of natural gas authorized herein shall commence as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act within 6 months from the date on which this order issues.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr. and Carl E. Bagge.

PACIFIC NORTHWEST PIPELINE CORPORATION, G–13018; EL PASO NATURAL GAS COMPANY, G–13019; EL PASO NATURAL GAS COMPANY, CP66–27; NORTHWEST PIPELINE CORPORATION, CP66–28; NORTHWEST PIPELINE CORPORATION, CP66–29; NORTHWEST PIPELINE CORPORATION, CP66–30.

ORDER GRANTING MOTION AND SETTING DATE FOR PREHEARING CONFERENCE

(Issued November 29, 1965)

On October 11, 1965, the Commission staff (Staff) filed a motion for an order requiring the submittal of supplemental written testimony and presentation of independent witnesses in support of Northwest Pipeline Corporation's applications in this proceeding. The motion noted that the Commission had required Northwest Pipeline Corporation (Northwest) and El Paso Natural Gas Company (El Paso) to file written testimony and hearing exhibits in support of their applications on or before October 1, 1965, and that El Paso and Northwest had purported to comply with this requirement by the submission of the testimony of six witnesses, five of whom testified for El Paso and one for Northwest. By letter of its attorney, Northwest indicated the adoption of the testimony of the El Paso witnesses. Staff argued in its motion that the evidence submitted was not sufficient to adequately support the applications, that extensive cross-examination would be necessary to fully develop a record, and particularly that it was necessary that Northwest present witnesses "*who are independent from El Paso*" in support of its applications. The thrust of Staff's motion is that as a result of the decree of divestiture an independent company potentially capable of competing with El Paso must be created and that the evidence presented to the Commission is insufficient to allow the formation of a basis for the conclusion that the company which will acquire and operate the properties to serve the Pacific Northwest area will be financially and economically feasible in the future.

On November 5, 1965 El Paso and Northwest filed answers in opposition to Staff's motion; Cascade Natural Gas Corporation filed an answer in support of Staff's motion.

El Paso and Northwest argue primarily that compliance with Staff's motion would be time consuming and would not allow divestiture "without delay" as required by the mandate of the Supreme Court, that Staff's motion is not sufficiently specific as to the kind of evidence desired, that Staff's motion requires a procedure "contrary to the established course of procedure," and to suggest that expert witnesses who are employees of El Paso should be disqualified as witnesses in support of Northwest's applications, is without basis in fact, in law, or in practice.

The April 6, 1964, mandate of the Supreme Court was to require the divestiture by El Paso of the former Pacific Northwest Pipeline Corporation properties without delay. The Commission recognizes that the divestiture decree of the District Court was issued pursuant to that mandate and that it constitutes a determination of the anti-trust issues in the proceeding. However, as recognized in the divestiture decree, under the Natural Gas Act it is incumbent upon El Paso and Northwest to file and prosecute the applications for certificate authorization presented in this proceeding. This does not mean mere *pro forma* compliance with the requirements of the Act and the Commission's Regulations. The Commission prior to certificating any major new pipeline must be assured that there will be an existing corporation capable of rendering long-term service sufficient to meet the demands of the market area at a price which is reasonable. This, *Northwest* must demonstrate in this proceeding. The decisions of *its* officers and personnel are the decisions upon which the customers in its service areas will have to rely. It is obligatory that Northwest assume complete responsibility for any decisions or positions emanating from this proceeding. It is quite evident to this Commission that the independent judgment of the Northwest officials is absolutely necessary to a determination of the capabilities of the corporation to serve the new area. This judgment must be expresesd in this proceeding through evidence bearing upon the economic stability and future expectations of the company and upon the physical capacity of the company to meet its requirements. It is not the kind of evidence which should be drawn out on cross-examination by Staff or other parties. While it might be proper from a technical point of view for Northwest's officials to adopt the testimony of El Paso personnel in support of their case, it is also evident to this Commission that by so doing, the element of independent judgment so necessary to a sensible determination in this case will be missing. Staff's motion seeking to require the presentation of independent witnesses by Northwest is well taken and will be granted.

As to the requirement that evidence supplemental to that previously presented be served in order to more fully explain the companies' positions, we agree that only minimal evidence has been presented at this time. El Paso has pointed out that Staff did not particularize the evidence it felt was deficient. While this is true, we note that our regulations require the submittal of fully explained information. Regulations under the Natural Gas Act, Section 157.14(a). Evidence submitted in support of an application should *at least* comply with this requirement. A review of the evidence submitted herein does not show that this condition was met. For example, nowhere in the submitted evidence do El Paso witnesses testify as to the effect on *El Paso* of the proposed divestiture. Lacking information of this kind, as well as other detail, Staff was entirely correct in filing the motion.

We agree with the applicants, however, that further particularization of the nature of the additional evidence would be useful. For this purpose, El Paso's suggestion that a prehearing conference be held is proper. A prehearing conference would enable all parties to the proceeding to present a statement as to the issues involved and their views on those issues, and, insofar as there is misunderstanding or disagreement as to the precise nature or quantum of additional evidence which should be adduced a prehearing conference under the examiner who will eventually hear the case would be the appropriate place for clarification and determination. Accordingly, we here order that a prehearing conference be held on December 16, 1965, for consideration of matters which might expedite this proceeding and particularly to explore and determine any remaining questions as to the nature of the additional evidence the applicants will be required to adduce.

The Commission orders:

(A) The motion of the Commission staff filed on October 11, 1965, is granted.

(B) Northwest Pipeline Corporation shall file additional evidence fully supporting its applications in this proceeding.

(C) El Paso Natural Gas Company shall file additional evidence fully supporting its applications in this proceeding.

(D) A prehearing conference shall be held on December 16, 1965, at 10:00 a.m. (EST) in a hearing room of the Federal Power Commission, 441 G St., N.W., Washington, D.C., for the purpose of further determining methods to expedite the proceeding and for further clarification and determination of the manner in which Northwest and El Paso shall comply with Ordering Paragraphs B and C hereof.

(E) Presiding Examiner Harry Frazee or any other officer or officers of the Commission designated by the Chief Examiner shall preside at the above-ordered prehearing conference and shall take such action as may be appropriate to expedite the hearing.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr. and Carl E. Bagge.

PACIFIC POWER & LIGHT COMPANY, PROJECT NO. 2082

ORDER FURTHER AMENDING LICENSE (MAJOR)

(Issued November 29, 1965)

Application was filed on March 29, 1965 by Pacific Power & Light Company, licensee for major Project No. 2082, for further amendment of the license to include therein the proposed Keno Development in the stretch of the Klamath River downstream from the Bureau of Reclamation's Link River Dam located near the City of Klamath Falls, Oregon.

The application proposes that the Keno Development, which will affect public lands and utilize navigable waters of the United States, would be constructed in two stages: (1) immediate construction of Keno Dam to replace the damaged existing Keno Regulation dam (now part of the project) and improvement of the river channel upstream from the new dam; and (2) construction of power facilities downstream from the new dam beginning in about 1971 with completion in December 1973. The Keno Regulating dam has been operating by the licensee under an agreement with the Bureau of Reclamation to regulate the level of the Klamath River and of Lake Ewauna upstream from the dam. However, floods of December 1964 and January 1965 damaged the Keno Regulating dam and also caused serious flooding of land adjacent to the Klamath River and Lake Ewauna upstream from Keno Regulating dam. The subject application for amendment seeks Commission authorization to construct a new Keno Dam together with power facilities and to improve the channel of the Klamath and Link Rivers upstream of such dam. Commencement of the channel excavation was undertaken in February 1965 as an emergency measure with the prior approval of the Bureau of Reclamation and written notice to the Commission, and consisted of a 3,000 foot long channel, 100 feet wide at the bottom, along the left bank of the river and through the left dike at the Keno Regulating Dam, principally upon lands of the Bureau of Reclamation.

Specifically, Stage 1 would consist of: (1) a low gated concrete diversion dam on the Klamath River at about mile 235, with top pool elevation of

4086.5 feet msl; (2) channel improvement in the Klamath River from about mile 235 to mile 251, and removal of the existing Keno Regulating dam now part of the license; and (3) channel improvement in Link River; and Stage 2 would consist of: (1) an intake structure; (2) a power conduit about 22,500 feet long with capacity for 5,000 cfs; (3) a penstock; and (4) an outdoor powerhouse at about mile 229 with two units rated at 50,000 kw each, discharging into the pool of the John C. Boyle Development of Project No. 2082.

The Secretary of the Army and the Chief of Engineers have reported that the plans of the project structures affecting navigation are satisfactory insofar as the interests of navigation are concerned.

The Department of the Interior, in reporting on the application, has advised, among other things, that: (1) interests of the Buerau of Reclamation in the stretch of the Klamath River to be occupied by the proposed new Keno Dam require renegotiation of existing contracts between the licensee and the Bureau; and (2) conservation and development of fish and wildlife resources require special license conditions in the interests of fish and wildlife and recreational resources. Articles 55 through 62 herein substantially incorporate the Department's recommendations.

The Department of Agriculture, in reporting on the application, has advised that while the Keno Development would not occupy any National Forest lands, the development would affect lands of the United States within the Winema National Forest through possible variations in the level of Upper Klamath Lake. The Department concluded that the amended project would not interfere or be inconsistent with the purposes for which the Winema National Forest was created or acquired provided the amended license include conditions: (1) providing that the licensee maintain the level of Upper Klamath Lake between stated maximum and minimum levels; and (2) that in any negotiations for the changing of the existing lake levels or water agreements with the Bureau of Reclamation, the licensee shall consult with the Bureau of Sports Fisheries and Wildlife, the Oregon Game Commission and the Department. The Department's proposed-conditions insofar as they relate to regulation of the level of Upper Klamath Lake, are inappropriate here since no project works included or proposed to be included under the license for Project No. 2082 would control the level of Upper Klamath Lake. The level of that lake is controlled by the Link River Dam, owned by the Bureau of Reclamation and operated under agreement with the Bureau by the Pacific Power & Light Company. However, the objectives of the Department's second proposed condition, to the extent that it is applicable to Project No. 2082, will be adequately served by the general provisions of Article 58, *infra*.

The Department of Agriculture also requested a condition in the license which would "safeguard the rights" of small preference customers to obtain power from the subject project or from the Licensee's general system, without undue restriction. In commenting on the letter, the licensee advises that it provides service to REA financed cooperatives in its area by sale or by wheeling, and that while questions arise from time to time, they have been resolved on a mutually satisfactory basis, and it expects this will continue in the future. In our opinion, there is no need for the license condition suggested by the Secretary of Agriculture. The interests of REA-financed cooperatives, or of any other preference systems of the area, can be protected by other means. Section 202(b) of the Federal Power Act empowers this Commission, in appropriate circumstances, to direct a public utility to establish physical interconnection of its transmission facilities with the facilities of one or more other persons engaged in the transmission or sale of

electric energy, and to sell energy or to exchange energy with such persons on such terms and condition as the Commission might deem desirable. There appears to be no reason why an REA-financed cooperative or other preference system could not avail itself, if necessary, of the relief afforded by Section 202(b).

The Department of Health, Education, and Welfare has reported the proposed Keno Development would tend to reduce flooding of the sewage treatment plant of the City of Klamath Falls and would have no adverse effects on water supply, water pollution control, or mosquito control.

The State of Oregon, acting by and through its State Game Commission and its Fish Commission, filed a petition to intervene in this proceeding in the interests of fish and wildlife. By letter dated July 19, 1965, the Petitioners advised that they do not oppose, the proposed project but that the State of Oregon wishes to be a party to the proceeding to ensure that the resident species of game fish and animals and the possible later addition of anadromous food and game fish are protected from any adverse effects of the project. By order of this date, we are permitting the intervention sought.

As stated above, the application seeks to include in the license, as the second stage of construction, of the new Keno Dam, the installation of power facilities to be constructed in about 1971. However, since it appears that power from the new Keno Development will not be required in the area involved until 1974–75, we are under the general provisions of Article 65 herein, reserving the right to direct at a later date the construction of power facilities to develop the head between Keno Dam and the Boyle Reservoir of Project No. 2082.

The inclusion in the license of the proposed new Keno Dam will increase the area of Government lands occupied by the project, exclusive of transmission line right-of-way, by 84.30 acres, with a resultant increase in the amount of annual charges for such occupancy.

The Commission finds:

(1) Public notice of the application has been given. Excepting for the afore-mentioned petition and in an informal protest by Lyle Kellstrom, of Klamath Falls, Oregon, on his own behalf and 17 other individuals, which protest was subsequently withdrawn, no other petitions or protests have been received.

(2) There are no conflicting applications before the Commission. The issuance of a license amendment as hereinafter provided, will not affect the development of any water resources for public purposes which should be undertaken by the United States.

(3) The increased amount of annual charges to be paid under the license as herein amended for the purpose of recompensing the United States for the occupancy of its lands, exclusive of transmission line right-of-way, is reasonable as hereinafter fixed and specified.

(4) The exhibits designated and described in paragraph (C) below conform to the Commission's Rules and Regulations and should be approved as part of the license for the project as amended by this order to the extent indicated.

The Commission orders:

(A) The exhibits designated and described in paragraph (C) below are hereby approved as part of the license for Project No. 2082 to the extent indicated.

(B) The license for Project No. 2082 is hereby further amended, effective as of November 1, 1965, to include therein the new Keno Dam and the improvement of the river channel upstream from the dam.

(C) Subparagraph (a) of finding (3) of the license is hereby amended to include the following exhibits:

KENO DEVELOPMENT

Exhibit	Sheet	FPC No. 2082	Titled
J		-163	General Map.
K-8	1 (Rev. 8-24-65)	-176	Keno Development, except insofar as it shows tunnel, canal, flume, penstock, and powerhouse.
L-22	2	-165	Keno Development.
	1	-167	Keno Development Dam and Spillway.
	4	-170	Channel improvement—river mile 234.6-235.2.
	5	-171	Channel improvement—river mile 235.2-236.
	6	-172	Channel improvement—river mile 236-247.
	7	-173	Channel improvement—river mile 246-254.

(D) Subparagraph (b) of finding (3) of the license is hereby amended to include the following description of the new Keno Development:

Keno Development

A low, gated concrete diversion dam about 25 feet high and located on the Klamath River at approximately mile 235, with top pool elevation of 4086.5 feet msl; channel improvement in Klamath River from approximately mile 235 to mile 254; and channel improvement in Link River.

(E) Subparagraph (b) of Article 35 of the license is hereby amended, effective as of November 1, 1965, to read as follows:

(b) For the purpose of recompensing the United States for the use, occupancy, and enjoyment of its lands, exclusive of those used for transmission line right-of-way, $1,043.62.

(F) Articles 4, 7, and 25 of the license are hereby eliminated from the license.

(G) The following articles, some of which are in lieu of the articles designated in paragraph (F) above and some of which are additional articles, are hereby included in the license for the project:

Article 54. The construction, operation, and maintenance of the project and any work incident to additions or alterations shall be subject to the inspection and supervision of the Regional Engineer, Federal Power Commission, San Francisco, California, or of such other officer or agent as the Commission may designate, who shall be the authorized representative of the Commission for such purposes. The Licensee shall cooperate fully with said representative and shall furnish him a detailed program of inspection by the Licensee that will provide for an adequate and qualified inspection force for construction of the project. Construction of the project works or any feature thereof shall not be initiated until the program of inspection for the project works or any such feature thereof has been approved by said representative. The Licensee shall also furnish to said representative such further information as he may require concerning the construction, operation, and maintenance of the project, and of any alteration thereof, and shall notify him of the date upon which work will begin, and as far in advance thereof as said representative may reasonably specify, and shall notify him promptly in writing of any suspension of work for a period of more than one week, and of its resumption and completion. The Licensee shall allow him and other officers or employees of the United States, showing proper credentials, free and unrestricted access to, through, and across the project lands and project works in the performance of their official duties.

Article 55. The Licensee shall enter into a formal agreement with the United States Bureau of Reclamation for the purpose of regulating the level of Lake Ewauna and the Klamath River between Keno Dam and Lake Ewauna, and in the event that the Licensee and the Bureau fail to reach agreement, the Commission will prescribe the terms of such regulation after notice and opportunity for hearing.

Article 56. In order to prevent, or to minimize to the extent reasonably possible, deleterious effects to fish and wildlife caused by construction activities during the construction of the first stage of the Keno development, the Licensee shall, in consultation with the Oregon State Game Commission and the Bureau of Sport Fisheries and Wildlife, schedule and supervise the construction activities so as to: (a) minimize turbidity, siltation or other water pollution, (b) prevent the destruction of waterfowl nesting areas from deposition of spoil from channel improvement activities, and (c) avoid disturbing waterfowl nesting areas during the nesting season: *Provided*, That the Commission, on its own motion or upon motion of the Oregon State Game Commission or the Bureau of Sport Fisheries and Wildlife, may prescribe measures reasonably necessary to accomplish these objectives.

Article 57. The Licensee shall, prior to construction of Stage 2 of the Keno development, cooperate with the Oregon State Game Commission, U.S. Forest Service, and Bureau of Sport Fisheries and Wildlife in conducting additional studies to determine effects construction of the second stage of the Keno development would have on fish and wildlife resources. The Licensee shall incorporate into project plans measures found necessary to mitigate and compensate for the loss and damage to existing fish and wildlife resources. Cost of such measures shall be borne by the Licensee.

Article 58. The Licensee shall, for the conservation and development of fish and wildlife resources, construct, maintain, and operate, or arrange for the construction, maintenance, and operation of such facilities and comply with such reasonable modifications of the project structures and operation as may be ordered by the Commission upon its own motion or upon the recommendation of the Secretary of the Interior, Oregon State Game Commission, or California Department of Fish and Game, after notice and opportunity for hearing and upon findings based on substantial evidence that such facilities and modifications are necessary and desirable, reasonably consistent with the primary purpose of the project, and consistent with the provisions of the Act.

Article 59. Whenever the United States shall desire, in connection with the project, to construct fish and wildlife facilities or to improve the existing fish and wildlife facilities at its own expense, the Licensee shall permit the United States or its designated agency to use, free of cost, such of Licensee's lands and interest in lands, reservoirs, waterways and project works as may be reasonably required to complete such facilities or such improvements thereof. In addition, after notice and opportunity for hearing, the Licensee shall modify the project operation as may be prescribed by the Commission, reasonably consistent with the primary purpose of the project, in order to permit the maintenance and operation of the fish and wildlife facilities constructed or improved by the United States under the provisions of this article. This article shall not be interpreted to place any obligation on the United States to construct or improve fish and wildlife facilities or to relieve the Licensee of any obligation under this license.

Article 60. The Licensee shall, within one year from the date of the Commission order authorizing the construction of the Keno development, file with the Commission for approval an Exhibit R conforming to Section 4.41 of Commission Regulations under the Federal Power Act. The plan shall be prepared

after consultation with appropriate Federal, State, and local agencies, and shall include recreational improvements which may be provided by others in addition to the improvements the Licensee plans to provide.

Article 61. The Licensee shall construct, maintain and operate or shall arrange for the construction, maintenance and operation of such recreational facilities including modifications thereto, such as access roads, wharves, launching ramps, beaches, picnic and camping areas, sanitary facilities and utilities, as may be prescribed hereafter by the Commission during the term of this license upon its own motion or upon the recommendation of the Secretary of the Interior or other interested Federal and State agencies, after notice and opportunity for hearing and upon findings based upon substantial evidence that such facilities are necessary and desirable, and reasonably consistent with the primary purpose of the project.

Article 62. So far as is consistent with proper operation of the project, the Licensee shall allow the public free access, to a reasonable extent, to project waters and adjacent project lands owned by the Licensee for the purpose of full public utilization of such lands and waters for navigation and recreational purposes, including fishing and hunting, and shall allow to a reasonable extent for such purposes the construction of access roads, wharves, landings, and other facilities on its lands the occupancy of which may in appropriate circumstances be subject to payment of rent to the Licensee in a reasonable amount: *Provided, that* the Licensee may reserve from public access, such portions of the project waters, adjacent lands, and project facilities as may be necessary for the protection of life, health, and property and *Provided further,* that the Licensee's consent to the construction of access roads, wharves, landings, and other facilities shall not, without its express agreement, place upon the Licensee any obligation to construct or maintain such facilities. These facilities are in addition to the facilities that the Licensee may construct and maintain as required by the license.

Article 63. No lease of the project or any part thereof whereby the lessee is granted the occupancy, possession, or use of the project, or any part thereof, shall be made without prior written approval of the Commission; and the Commission may, if in its judgment the situation warrants, require that all the conditions of license, of the Act, and of the rules and regulations of the Commission shall be applicable to such property so leased to the same extent as if the lessee were the Licensee: *Provided, that* the provisions of this article shall not apply to leases of land or buildings or other property while not required to achieve the purposes of the license.

Article 64. On the application of any person, association, corporation, Federal agency, State or municipality, the Licensee shall, after notice and opportunity for hearing, permit such reasonable use of its reservoirs or other project works or parts thereof as may be ordered by the Commission in the interest of comprehensive development of the waterway or waterways involved and the conservation and utilization of water resources of the region for water supply for steam-electric, irrigation, industrial, municipal or similar purposes, consistent with the primary objective of the project. The Licensee shall receive such reasonable compensation as may be appropriate for use of its reservoirs or other project works or parts thereof for such purposes, any such compensation to be fixed either by Commission approval of an agreement between the Licensee and the party or parties benefiting or by the Commission in the event the parties are unable to agree. Applications shall contain information in sufficient detail to afford a full understanding of the proposed use, including satisfactory evidence that the applicant possesses necessary water rights pursuant to applicable State law, or a showing of cause why

such evidence cannot be submitted, and a statement as to the relationship of the proposed use to any State or municipal plans or orders which may have been adopted with respect to the use of such waters.

Article 65. The Licensee shall install additional capacity or make other changes in the project as directed by the Commission, to the extent that it is economically sound and in the public interest to do so, after notice and opportunity for hearing.

Article 66. The Licensee shall submit in accordance with the Commission's rules and regulations, revised Exhibit L drawings showing final design for channel improvement in the Klamath River from river mile 236 to 254, inclusive, and shall not begin construction of such work until the Commission approves the exhibit.

Article 67. Licensee shall remove the existing Keno Regulating Dam as soon as the new Keno Dam to replace it is in service and Licensee shall request the exhibits which show the existing Keno Regulating Dam and the description of same to be eliminated from the license.

(H) This amendment in the manner set out above shall not operate to alter or amend the license in any other respect, and shall not in any way constitute a waiver of any other part, provision or condition of the license.

(I) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license amendment. In acknowledgment of the acceptance of this license amendment, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr. and Carl E. Bagge.

TEXAS GAS TRANSMISSION CORPORATION, DOCKET NO. CP66-41

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued November 29, 1965)

On August 4, 1965, Texas Gas Transmission Corporation (Applicant) filed in Docket No. CP66-41 an application, as supplemented on September 23, 1965, pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of facilities and the transportation of natural gas to enable Applicant to exchange natural gas with the Memphis Light, Gas & Water Division (Memphis) of the City of Memphis, Tennessee, an existing customer, in connection with the operation of liquefied natural gas storage facilities to be constructed by Memphis for peak-shaving operations, all as more fully described in the application.

Memphis plans to construct and operate a liquefied natural gas plant for peak-shaving operations at a site north of the City of Memphis, Tennessee, and downstream of existing points of delivery for gas purchased from Applicant. The facilities proposed to be constructed by Memphis will not be physically attached to Memphis' present distribution system. The storage tank will have a capacity of 1,000,000 Mcf and a liquefication and vaporization capability of 5,000 Mcf per day and 200,000 Mcf per day, respectively.

Applicant will deliver peak-shaving volumes of natural gas to Memphis at existing delivery points and Memphis will deliver simultaneously equal vol-

umes of gas from its storage facilities into Applicant's system through the facilities which Applicant herein proposes to construct and operate. Pursuant to an agreement between the parties, the maximum volumes exchanged during any hour are not to exceed fifty percent of the total sales volumes of gas delivered by Applicant to Memphis during such hour. The application states that Memphis anticipates exchange volumes increasing from 111,517 Mcf per day in 1966 and 162,105 Mcf per day in 1972 and that Memphis has no present plans to increase the liquefied natural gas plant capacity.

Specifically, Applicant proposes to replace a forty-foot segment in each of its two 26-inch main lines with heavier wall pipe, to install eighty feet of 16-inch heavy wall pipe to serve as a tie-over between the 26-inch lines, to install eighty feet of 20-inch heavy wall pipe between its meter station and Memphis' facilities and the 16-inch tie-over, and to install one meter station. Estimated cost of the proposed facilities is $40,500 which will be financed from funds on hand.

After due notice no petition to intervene, notice of intervention or protest to the granting of the application has been received.

At a hearing held on November 24, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, as supplemented, and exhibits thereto, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Texas Gas Transmission Corporation, a Delaware corporation having its principal place of business in Owensboro, Kentucky, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of March 30, 1948, in Docket No. G–855 (7 FPC 213).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, will be used for the transportation of natural gas interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof and the transportation of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The proposed construction and operation of facilities and transportation of natural gas by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is issued authorizing Applicant, Texas Gas Transmission Corporation, to construct and operate facilities and to transport natural gas as hereinbefore described, all as more

fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The construction authorized in paragraph (A) above shall be completed and the facilities placed in actual operation as provided by paragraph (b) of Section 157.20 of the Regulations under the Natural Gas Act within three months of the date on which this order issues.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr. and Carl E. Bagge.

CITY OF CLEWISTON, FLORIDA v. FLORIDA POWER & LIGHT COMPANY, DOCKET NO. E-7243

ORDER PROVIDING FOR INVESTIGATION AND HEARING, AND DENYING MOTION TO DISMISS

(Issued November 30, 1965)

By this order we initiate an investigation and provide for hearing to determine whether the Florida Power & Light Company (FPL) should be required to establish interconnection with and render wholesale electric service to the City of Clewiston, Florida (Clewiston) and the rate therefor.

On September 7, 1965, Clewiston filed an Application For Interconnection and Complaint Against Unlawful Actions, requesting that this Commission, pursuant to Sections 202, 205, 206, 207, 306, 307, 308, 309, 316 and 317 of the Federal Power Act, order a direct interconnection between FPL and Clewiston, and require the rendition of wholesale electric service by FPL to Clewiston. Clewiston's complaint alleges that FPL presently supplies wholesale electric service to Glades Electric Cooperative, Inc., Moore Haven, Florida (Glades) which in turn supplies electric power and energy to an industrial corporation, the United States Sugar Corporation (Sugar Corporation). Clewiston's electric facilities connect with electric facilities of Sugar Corporation. The latter corporation generates a portion of its electric requirements and, as indicated, purchases a portion from Glades. During the twelve months ended September 30, 1964, Clewiston paid an average charge of 1.7¢ per kwh based upon total receipts of 14,417,000 kwh. Clewiston alleges that FPL has refused to provide a direct connection and electric service to Clewiston.

On October 6, 1965, FPL filed an answer opposing Clewiston's application for interconnection and complaint and a motion to dismiss the complaint for lack of jurisdiction. The answer and motion argue principally that Clewiston's complaint is premature because FPL has not been determined to be a public utility within the meaning of the Federal Power Act subject to the regulatory jurisdiction of this Commission. In reply to the motion for dismissal, Clewiston notes the pendency of this Commission's jurisdictional proceeding directed to FPL, *Florida Power & Light Company* Order Initiating Investigation and Hearing, issued February 26, 1965, Docket No. E-7210, 33 FPC 328, but maintains that concurrent Commission action in that proceeding and upon the

City's application and complaint is warranted in the interests of the power supply needs of Clewiston.

Upon consideration of the contentions by Clewiston and FPL in the aforementioned pleadings, we conclude that the matters raised in Clewiston's application for interconnection and complaint should be investigated by our staff and set for public hearing. We do not agree with FPL that a prior determination that it is a public utility under the Act constitutes a prerequisite to a hearing on the merits of Clewiston's complaint. Clearly, such would place a considerable time burden upon parties filing complaints with the Commission. Therefore, the jurisdictional issue now before a Commission trial examiner in Docket No. E–7210 should be determined concurrently with the merits of Clewiston's complaint without further delay, and the motion to dismiss must be denied.

A copy of Clewiston's application for interconnection and complaint, together with a request for comments by November 9, 1965, was forwarded to Glades and Sugar Corporation. To date no reply has been received.

The Commission further finds:

In view of the foregoing, it is necessary and appropriate for the purposes of carrying out the provisions of the Federal Power Act, and particularly, but not in limitation of the foregoing, Sections 202, 205, 206, 207, 306, 307, 308 and 309, that (1) FPL's motion to dismiss the application and complaint be denied, and (2) an investigation and a public hearing be ordered respecting the issues presented in the Application for Interconnection and Complaint filed by Clewiston and FPL's Answer thereto.

The Commission orders:

(A) FPL's Motion to Dismiss for Lack of Jurisdiction the Application for Interconnection and Complaint filed by Clewiston is hereby denied.

(B) A public hearing shall be held concerning the issues presented in the Application for Interconnection and Complaint filed by Clewiston and FPL's Answer thereto at a time and place to be specified by the presiding examiner.

(C) A prehearing conference shall be held before the presiding examiner commencing at 10:00 a.m. (EST), January 18, 1966 in a hearing room of the Federal Power Commission, 441 G Street, N.W., Washington, D.C., for purposes as specified in the Commission's Rules of Practice and Procedure.

(D) In order that the issues involved herein may be properly determined, an investigation is hereby initiated and FPL is hereby directed pursuant to the provisions of Sections 307 and 309 of the Federal Power Act to grant to authorized members of the staff of the Federal Power Commission during regular business hours, free access to its property and access to and the right to inspect and examine all of its accounts, records and memoranda including, but not limited to, the following: books, papers, correspondence, contracts, agreements, maps, reports of engineers, meter readings, and log sheets upon their request; and shall either furnish copies of such material at the request of the staff, or make such material available for reproduction by the staff or shall produce such material for use by the staff prior to and during said hearing at the Offices of the Commission, 441 G Street, N.W., Washington, D.C. 20426.

(E) Notices of intervention or petitions to intervene in this proceeding may be filed with the Federal Power Commission, Washington, D.C. 20426, on or before December 31, 1965, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.37).

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr. and Carl E. Bagge.

THE MONTANA POWER COMPANY, PROJECT NO. 2188

ORDER APPROVING AMENDED PROJECT EXHIBIT L DRAWINGS

(Issued November 30, 1965)

On July 26, 1965, The Montana Power Company, licensee for Project No. 2188, filed for Commission approval amended Exhibit L drawings showing repairs and reconstruction to be made to the dam of the Madison development of the project. The project, known as the Missouri River Project, is located on the Missouri and Madison Rivers, Montana.

The work, which was necessary to reduce excessive leakage and to replace the deteriorated top timber crib section which holds the stanchions for the flashboards, consists principally of driving steel sheet piling against the upstream face of the dam, and replacing the top timber and rock crib section of the dam with concrete. The plans for the work were reviewed by our staff and found to be adequate.

Pursuant to its request, the licensee was advised by Commission letter dated August 12, 1965 to proceed with the work as an emergency measure under Article 3 of the license, pending Commission action on the amended Exhibit L drawings herein under consideration. The Commission stated in its letter-permission that the start of the work and the maintenance of flows were to be in accordance with the agreement between the licensee and the Montana Fish and Game Department with respect to the construction and maintenance of flows, under which commencement of the work was to be no earlier than August 23, 1965.

The U.S. Corps of Engineers has reported that the plans of the project structures shown on the amended Exhibit L drawings are satisfactory insofar as the interest of navigation are concerned.

The Commission finds:

The following described amended Exhibit L drawings which supplement the exhibits noted herein and which are part of the license for the project, conform to the Commission's rules and regulations and should be approved as part of the license for the project.

MADISON DEVELOPMENT

Exhibit L	FPC No.	Showing	Supplementing
Modified	2188-92	Plans and cross-section of modified dam	2188-75
Modified	2188-93	Details of modifications	2188-75

The Commission orders:

The amended Exhibit L drawings described in the above finding are hereby approved as part of the license for Project No. 2188.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr. and Carl E. Bagge.

NEVADA IRRIGATION DISTRICT, PROJECT NO. 2266

ORDER APPROVING REVISED PROJECT EXHIBITS AND ADJUSTING AUTHORIZED INSTALLED CAPACITY AND ANNUAL CHARGES

(Issued November 30, 1965)

On April 12, 1965, Nevada Irrigation District, licensee for Project No. 2266, filed for Commission approval revised Exhibit L drawings L–41 and L–45, and amended Exhibit M showing the final details of the construction of the Dutch Flat No. 2 and Chicago Park Powerhouses of the project, and giving pertinent information regarding the equipment which will be installed therein.

The revised Exhibit L drawings have been corrected by our staff with the authorization of the licensee to show the equipment ratings shown on amended Exhibit M.

The proposed changes have been reviewed by our staff and found to be safe and adequate.

The effects of our approval of the revised exhibits will require the following revisions in the license for the project:

(1) revision of subparagraph (ii) of paragraph (B) of the license describing "Dutch Flat No. 2" and "Chicago Park";

(2) supersession of Exhibits L–41 (FPC No. 2266–81) and L–45 (FPC No. 2266–85) of the license by revised Exhibits L–41 (FPC No. 2266–111) and L–45 (FPC No. 2266–112);

(3) amendment of Exhibit M of the license, filed September 23, 1960, by the amended Exhibit M filed April 12, 1965, insofar as the description of powerhouse equipment for Dutch Flat No. 2 and Chicago Park are concerned; and

(4) revision of subparagraph (i) of Article 43 of the license to show an increase in the authorized installed capacity of the project from 78,800 horsepower to 81,000 horsepower.

The Commission finds:

(1) The following described revised exhibits conform to the Commission's rules and regulations and should be approved as part of the license for the project, and the exhibits referred to herein as being superseded should be eliminated from the license for the project to the extent herein indicated.

Exhibit L–41: (FPC No. 2266–111) "Dutch Flat No. 2 Powerhouse" superseding L–41 (FPC No. 2266–81).

Exhibit L–45: (FPC No. 2266–112) "Chicago Park Powerhouse" superseding L–45 (FPC No. 2266–85).

Exhibit M: filed April 12, 1965—Amended Exhibit M, in one sheet describing powerhouse equipment for Dutch Flat No. 2 and Chicago Park, superseding comparable description in Exhibit M filed September 23, 1960.

(2) The presently authorized installed capacity of the project for the purpose of computing the capacity component of the administrative annual charge is by this order increased from 78,800 horsepower to 81,000 horsepower, and the amount of annual charges, based upon such increased capacity, to be paid under the license for the project, for the costs of administration of Part I of the Act is reasonable.

The Commission orders:

(A) The revised exhibits described in finding (1) above are hereby approved as part of the license for Project No. 2266, and the exhibits described in the

same finding as being superseded are hereby eliminated from the license for the project to the extent therein indicated.

(B) Subparagraph (i) of paragraph (B) of the license is hereby revised to read as follows, insofar as the description of "Dutch Flat No. 2" and "Chicago Park" are concerned:

Dutch Flat No. 2 located on Bear River—comprised of an intake located above Drum Afterbay Dam (PG&E Co.), a conduit to a small forebay, a penstock, a powerhouse with a 31,000 horsepower turbine connected to a 23,400-KW generator installed therein, a step up transformer, a switching structure and an afterbay dam;

Chicago Park located on Bear River—comprised of an intake located above Dutch Flat No. 2 afterbay dam, a concrete flume to a small forebay, a penstock, a powerhouse with a 50,000 horsepower turbine connected to a 37,350-KW generator, a step up transformer and a switching structure;

(C) Subparagraph (i) of Article 43 of the license is hereby revised to read as follows:

(i) For the purpose of reimbursing the United States for the costs of administration of Part I of the Act, a reasonable annual charge in accordance with the provisions of Part 11 of the Commission's regulations as in effect from time to time. The authorized installed capacity for such purpose is 81,000 horsepower.

(D) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this order. In acknowledgment of the acceptance of this order, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr. and Carl E. Bagge.

ANNUAL CHARGES PRESCRIBED FOR LICENSED PROJECTS UNDER THE FEDERAL POWER ACT, DOCKET NO. R-272

ORDER NO. 309

AMENDING THE FORMULA FOR FIXING ANNUAL CHARGES TO LICENSEES UNDER § 11.20 OF THE REGULATIONS UNDER THE FEDERAL POWER ACT

(Issued November 30, 1965)*

On March 25, 1965, the Commission gave notice by publication in the Federal Register (30 F.R. 4259) that it proposed to amend § 11.20 of its Regulations under the Federal Power Act to modify the formula for fixing annual charges to non-public licensees (*i.e.*, licensees other than states or municipalities) for hydroelectric projects of more than 2,000 horsepower installed capacity to eliminate the inequities in the application of the existing formula to pumped storage projects. Comments were invited from interested persons to be submitted by April 27, 1965. In response to this notice and invitation, the Commission received comments from 3 licensees, each of whom expressed its approval of the proposed changes in the method of computing annual license charges.

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* Published in the Federal Register on December 7, 1965 (30 F.R. 15092).

Section 10(e) of the Federal Power Act (16 U.S.C. 803(e)) requires that the Commission fix annual charges to licensees to reimburse the United States for its costs of administering Part I of the Act (16 U.S.C. 791–823). Section 11.20 of the Regulations under the Federal Power Act now provides for fixing annual charges to non-public licensees by distributing the administrative costs attributable to this class of licensee in the proportion which the "annual charge factor" for each of the projects in the class bears to the total annual charge factors for all of the projects in the class. Paragraph (a)(3) of § 11.20 prescribes the formula by which the anual charge factor for each project is found. The components of that formula are the project's authorized installed capacity (measured in horsepower) and gross annual energy output (measured in kilowatt-hours), as follows:

$$\text{Annual Charge Factor} = \text{Authorized Installed Horsepower} + 150\,\frac{\text{Gross Annual Kwh Generation}}{1{,}000{,}000}$$

A pumped storage operation involves the generation of electric energy during peak load periods by using water electrically pumped into a storage reservoir during earlier off-peak periods. Although more electric energy is consumed in pumping than is realized from generation, the generated energy is more valuable to the electric system than the pumping energy expended because of its timely delivery. Thus, after credit is allowed for the energy used in pumping, the benefits to an electric system from pumped storage facilities are only capacity benefits. Consequently, the use of annual energy output as a factor in the formula now in use causes the annual charges for administrative costs for such facilities to be disproportionately high.

Under the regulation here being adopted, the annual charge factor will be differently determined for each of three types of projects: (1) for conventional projects, the factor will continue to be computed as it now is; (2) for pure pumped storage projects, the factor will be equal to the authorized installed horsepower; (3) for mixed conventional-pumped storage projects, the factor will be found by the following formula—

$$\text{Annual Charge Factor} = \text{Authorized Installed Horsepower} + 150\,(\text{Millions of Kwh Gross Generation}) - 100\,(\text{Millions of Kwh for Pumping})$$

This formula provides that the annual energy output from pumped storage facilities will not be used to increase the annual charge factor. Because annual energy output from pumped storage facilities may not be measured in all projects, the formula estimates this output as two-thirds of the energy consumed in pumping. This proportion, which is typical of pumped storage operations, is expressed in the formula by the figures 100, by which annual pumping energy is multiplied, and 150, by which gross annual generation is multiplied.

The Commission further finds:

In view of the foregoing, and upon consideration of all relevant matters presented, this amendment is necessary and appropriate for the purposes of the Federal Power Act.

The Commission, acting pursuant to the Federal Power Act, as amended, particularly sections 10(e), 304(a) and 309 thereof (49 Stat. 842, 855, 858; 16 U.S.C. 803(e), 825c(a), 825h), *orders:*

(A) Part 11, Annual Charges, Subchapter B, Regulations Under the Federal Power Act, Chapter I, Title 18, of the Code of Federal Regulations, is

amended by amending subparagraphs (3) and (4) of paragraph (a) of § 11.20 to read as follows:

§ 11.20 Costs of administration

(a) * * *

(3) The annual charge factor for each such project shall be found as follows:

(i) For a conventional project the factor is its authorized installed capacity (horsepower) plus 150 times its annual energy output in millions of kilowatt-hours.

(ii) For a pure pumped storage project the factor is the authorized horsepower.

(iii) For a mixed conventional-pumped storage project the factor is its authorized installed capacity (horsepower) plus 150 times its gross annual energy output in millions of kilowatt-hours less 100 times the annual energy used for pumped storage pumping in millions of kilowatt-hours.

(4) To enable the Commission to determine such charges annually, each such licensee shall file with the Commission, on or before February 1 of each year, a statement under oath showing the gross amount of power generated (or produced by non-electrical equipment) and the amount of power used for pumped storage pumping by the project during the preceding calendar year, expressed in kilowatt hours.

* * * * * * *

[Sections 10(e), 304(a), 309; 49 Stat. 842, 855, 858; 16 U.S.C. 803(e), 825c(a), 825h]

(B) This amendment herein adopted shall become effective December 30, 1965.

(C) The Secretary shall cause prompt publication of this order to be made in the Federal Register.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr. and Carl E. Bagge.

PAN AMERICAN PETROLEUM CORPORATION (OPERATOR), ET AL., DOCKET NO. RI66-61[1]

ORDER DENYING APPLICATIONS FOR RECONSIDERATION AND REHEARING

(Issued November 30, 1965)

Pan American Petroleum Corporation (Pan American) on October 8, 1965, filed an application for reconsideration and rehearing of the Commission's order issued September 8, 1965, in Docket No. RI66-61 suspending proposed revenue-sharing increases of 11.7526¢ and 11.5961¢ per Mcf tendered by Pan American; which were designated as Supplement No. 21 to its FPC Gas Rate Schedule No. 57, for sales of gas to Phillips Petroleum Company (Phillips) from Texas Railroad Commission District No. 10 and The Oklahoma Panhandle area, respectively. These increases were suspended for one day from the proposed effective date of September 13, 1965, or for one day from the date that Phillips makes effective its related increased rate of 15.22¢, plus applicable

[1] This proceeding has been consolidated for hearing with Docket No. RI66-61 for the purpose of deciding the contractual issues in dispute in these proceedings as set forth in our order issued November 2, 1965, *supra*, p. 1223.

tax reimbursement, under its Rate Schedule No. 4 which is suspended in Docket No. RI65–526,[2] whichever is later. Subsequent to the issuance of this suspension order, Phillips filed on September 10, 1965, a protest requesting that Pan American's proposed rates be rejected for lack of contractual support. Pan American filed an answer to Phillips' protest contending it was contractually entitled to the filed for rate. This contractual dispute was set for hearing by order issued November 2, 1965.

In support of its application, Pan American asserts that the Commission does not have the power to provide for an indefinite suspension period which may exceed five months. Pan American also claims that the Commission's action here is contrary to that taken in an order issued February 18, 1965, in *Tenneco Oil Company (Operator), et al.*, Docket No. RI65–464, *et al.* [unreported] where the producer was permitted to place its increased rate in effect subject to refund even though the gatherer had not filed for its contractually authorized rate increase. Pan American further contends that the Commission's indefinite suspension is inconsistent with the one day suspension provided in *Kerr-McGee Oil Industries, Inc.*, Docket No. RI66–81, with respect to the sale of gas under the same Pan American-Phillips contract involved here.[3]

The alternative suspension period was provided for in the September 8 order because it appeared at that time that Pan American was not entitled as a contractual matter to place its proposed revenue-sharing rates in effect until Phillips commenced collection of its suspended increased rate in Docket No. RI65–526.[4] While we could have rejected these increases without prejudice to their resubmittal when Phillips' began collecting its increased rate in Docket No. RI65–526, it has been our policy for some time in cases involving a revenue-sharing increase where it is not known when the purchaser will make its related rate effective to provide an alternative suspension period. Such an approach protects the producer from any unreasonable delay in placing its rate in effect subject to refund once it is contractually authorized, while at the same time protecting the purchaser by not permitting the producer to place its rate in effect until it is contractually authorized.

The *Tenneco* case cited by Pan American has no applicability to revenue-sharing increases such as are involved here where the contractual authorization for the increase depends on the purchaser also receiving an increase. The periodic increases in *Tenneco* bore no direct contractual relationship to the gatherer's resale rate. There was thus no contractual dispute in that case.

The Kerr-McGee and Pan American filings were treated differently because the contractual question presented in Kerr-McGee does not depend upon Phillips' placing into effect a higher rate than its presently effective rate either under Phillips' or Kerr-McGee's interpretation of the contract. Although Pan American has contended it has contractual authority at this time to make its filing, Phillips claims it has no contractual authorization to file the proposed rates suspended herein until Phillips begins collection of the 15.22¢ rate in Docket No. RI65–526.

As indicated in our November 2 order we are unwilling to accept Pan American's contractual position pending determination of this question because if we were to shorten the suspension period Phillips would be forced to place its increased rate of 15.22¢ per Mcf in effect subject to refund in Docket No.

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[2] Phillips could make its proposed increased rate in Docket No. RI65–526 effective but has not yet done so.

[3] Kerr-McGee's FPC Rate Schedule No. 12 covers acreage assigned by Pan American to Kerr-McGee subject to the Phillips-Pan American contract.

[4] In computing its rate Pan American utilized as part of the computation the 15.22¢ per Mcf Phillips' rate which is under suspension in Docket No. RI65–526.

RI65–526 or to absorb Pan American's rate increase.[5] The validity of the indefinite suspension period provided by us here is based on the assumption that there is no contractual basis for Pan American's filing at this time. If we conclude following the hearing on this contractual dispute that Pan American's interpretation of its contract is proper, we will then amend our suspension order to accord with that decision. We expect, of course, that the parties will cooperate, including consideration of agreeing to a stipulation of facts, to make possible a decision herein at the earliest possible date.

The Commission orders:

For the reasons set forth above, Pan American's application for reconsideration and rehearing is denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

TENNESSEE GAS TRANSMISSION COMPANY, DOCKET NO. CP66–55 AND TENNESSEE GAS TRANSMISSION COMPANY, DOCKET NO. RP66–18

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND PROVIDING FOR INTERVENTIONS AND FURTHER HEARING

(Issued November 30, 1965)

On August 19, 1965, Tennessee Gas Transmission Company (Tennessee), filed in Docket No. CP66–55 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale and delivery of natural gas to Pennsylvania Gas and Water Company (Penn Gas and Water) under a proposed initial Rate Schedule SS–E providing for a natural gas storage service, all as more fully set forth in the application.

Due notice of the application was published in the Federal Register on September 2, 1965 (30 F.R. 11294).

On September 23, 1965, a joint petition to intervene herein was filed by United Fuel Gas Company, The Manufacturers Light and Heat Company and The Ohio Fuel Gas Company (Petitioners). Petitioners state in the petition to intervene that a formal hearing is not requested and no objection is raised to the disposition of the proceeding under the Commission's shortened procedure method, provided the Commission incorporates conditions in the certificate order to provide that Tennessee shall not, in any rate proceeding, assess against any other class of service any deficiency in revenues under its Rate Schedule SS–E below the cost of service associated therewith and that appropriate costs of all facilities properly allocable to SS–E deliveries shall be subject to investigation and determination in a rate case or rate determination proceeding. Tennessee proposed an alternate condition, which is acceptable to Petitioners, providing (1) that the grant of the certificate requested shall not constitute a determination of the reasonableness or propriety of the rate or the form of the rate Tennessee will charge in connection with the proposed service and shall not be construed as a waiver of any of the requirements of

[5] Pan American's increase amounts to approximately $148,000 annually. It was erroneously in the September 8 and November 2 orders as amounting to $266,621. Phillips' proposed resale rate increased in Docket No. RI65–526 amounts to approximately $1,171,000 annually. Under its Rate Schedule No. 4 Phillips resells not only gas purchased from Pan American and other producers but also its own gas.

Section 4 of the Natural Gas Act, or of Section 154 of the Commission's Rules and Regulations, with respect to the service in question, and is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against Tennessee; and (2) that Commission action in this proceeding shall not foreclose nor prejudice any future proceeding or objection relating to the rate to be charged for the service herein authorized, or any position any customer of Tennessee may hereafter take with respect to the proper distribution or allocation of Tennessee's costs and expenses in a future proceeding.

On November 5, 1965, Tennessee filed a letter supplementing its application which stated that:

(1) The proposed SS–E storage service offered to Penn Gas and Water would be available to all of Tennessee's customers in Zones 4 and 5,

(2) The proposed SS–E rate was necessary in order to provide firm winter storage service to Penn Gas and Water because Penn Gas and Water could not qualify for the existing SS–5 service, and

(3) No other existing rate schedule providing winter storage service is available to adequately service Penn Gas and Water.

Tennessee seeks authorization to render a natural gas storage service to Penn Gas and Water for the delivery of a Daily Storage Quantity of 13,500 Mcf and a Winter Storage Quantity of 1,012,500 Mcf (at 15.025 psia). No additional facilities will be required because a portion of the unallocated maximum day capacity authorized at Docket No. CP65–120 will be utilized and deliveries will be made at the existing point of delivery to Penn Gas and Water.

The service will be rendered at a monthly charge composed of (a) Deliverability Charge of $1.85 times the Daily Storage Quantity, (b) Space Charge of 0.8¢ times the Winter Storage Quantity and (c) 0.5¢ per Mcf injected into or withdrawn from storage; plus a commodity charge of 27.34¢ in the Northern rate zone and 30.84¢ in the New York rate zone, per Mcf delivered.

Tennessee further proposes to reduce Penn Gas and Water's existing peak-day contract demand to 24,990 Mcf, a reduction of 4,192 Mcf from the existing contract demand.

Rate Schedule SS–5 makes available to existing contract demand customers in Tennessee's New York rate zone (Zone 5) firm deliveries, during each year's November 1–April 30 withdrawal period, of daily volumes of gas up to a specified Daily Storage Quantity, with total volumes to be delivered during the withdrawal period (Winter Storage Quantity) limited to 90 times the Daily Storage Quantity.

Tennessee proposes the new SS–E Schedule primarily to make available to Penn Gas and Water, an existing customer located in Tennessee's Northern Zone (Zone 4), a similar type of storage service now available only to Tennessee's Zone 5 customers under Rate Schedule SS–5. However, Tennessee offers to make the SS–E rate available in Zones 4 and 5, with increased commodity charges applicable in Zone 5. It appears that, if the proposed rate schedule were available only to a single customer, the rate schedule would be discriminatory and unduly preferential in violation of Section 4(b) of the Natural Gas Act. We will therefore condition the issuance of this certificate upon the requirement that the new SS–E Rate Schedule be made available in both Zones 4 and 5, with the difference in commodity charges between Zones 4 and 5, as indicated above.

It appears that the terms of Rate Schedule SS–E are more advantageous to Tennessee's customers than the terms of Tennessee's existing Rate Schedule SS–5 and, therefore, it can be presumed that Tennessee's customers currently

receiving service under Rate Schedule SS–5 will avail themselves of the new service. The dual rate structure will be allowed to continue for one year only in order to permit Penn Gas and Water to receive the service it urgently needs during the coming heating season. However, we are providing in this order for proceedings to be held in Docket No. RP66–18, being instituted herein, at which time Tennessee shall show that the proposed rate schedule is compensatory and that the rate schedule properly allocates to each zone its fair share of the cost of service.

After due notice, no petition to intervene, other than that of United Fuel Gas Company, *et al.*, notice of intervention, or protest to the granting of the application has been filed.

At a hearing held on November 26, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application submitted in support of the authorization, and upon consideration thereof the Commission, in the light of the previous discussion, finds that a certificate should be issued as hereinafter ordered and conditioned.

The Commission further finds:

(1) Tennessee Gas Transmission Company, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of July 15, 1947, in Docket No. G–910 (6 FPC 777).

(2) The proposed sale and delivery of natural gas, as hereinbefore described and as more fully described in the application in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed sale and delivery of natural gas are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued herein and the rights granted hereunder be conditioned upon Tennessee's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Tennessee Gas Transmission Company, authorizing the sale and delivery of natural gas as described above and as more fully described in the application and filings in this proceeding, subject to the jurisdiction of the Commission, upon the terms and conditions of this order. The certificate shall be effective for a period of one year from the date of issuance of this order.

(B) The grant of the certificate herein shall not constitute a determination of the reasonableness or propriety of the rate Applicant proposes to charge in connection with the service herein authorized, or of the form or forms thereof, and shall not be construed as a waiver of any of the requirements of Section 4 of the Natural Gas Act or of Section 154 of the Commission's Rules and Regulations with respect to the service herein authorized, and is without prejudice to any findings or orders which have been, or may hereafter be, made by the Commission in any proceeding now pending or hereafter instituted by or against the Applicant. Further, our action in this proceeding shall not foreclose nor prejudice any future proceeding or objection relating to the rate to

be charged for the service herein authorized, or any position any customer of Applicant may hereafter take with respect to the proper distribution or allocation of Applicant's cost and expenses in any proceeding where such distribution or allocation is in issue in determining the respective rates to be charged by Applicant for the various types and classifications of service rendered by it.

(C) Tennessee is hereby authorized to place into effect Rate Schedule SS–E for a period of one year or until otherwise authorized by the Commission in subsequent proceedings.

(D) Tennessee shall make its Rate Schedule SS–E available to all of its present customers in its Zones 4 and 5 who now purchase gas under Tennessee's SS–5 Rate Schedule.

(E) Tennessee's existing peak-day contract demand service to Pennsylvania is reduced to 24,990 Mcf.

(F) In the near future a hearing will be held in this docket at which time Tennessee shall be required to demonstrate that its SS–E Rate Schedule is compensatory and bears its fair share of Tennessee's cost of service.

(G) Tennessee shall make appropriate tariff filings for the service authorized herein in a form acceptable to the Commission.

(H) On or before February 7, 1966, Tennessee shall file its evidence in Docket No. RP66–18 to support the rates contained in Rate Schedule SS–E as being compensatory and as bearing their fair share of the cost of service for each zone.

(I) On March 7, 1966, a prehearing conference will be held at 10:00 a.m. (EST) in a hearing room of the Federal Power Commission, 441 G Street, N.W., Washington, D.C. 20426, for the purpose of delineating issues, stipulating facts, and, if necessary, of setting dates for the filing of evidence by other parties and rebuttal evidence by Tennessee.

(J) Interventions in Docket No. RP66–18 shall be filed on or before January 14, 1966.

(K) The certificate issued herein and the rights granted hereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr. and Carl E. Bagge.

CONSOLIDATED WATER POWER COMPANY, PROJECT NO. 2110

ORDER APPROVING REVISED PROJECT EXHIBIT K DRAWINGS

(Issued December 1, 1965)

On August 13, 1965, Consolidated Water Power Company, of Wisconsin Rapids, Wisconsin, filed for Commission approval revised Exhibit K drawings showing the boundary for the project, known as the Stevens Point Hydro Project No. 2110, located on the Wisconsin River, in Portage County, Wisconsin. Also filed was a revised Exhibit F showing the land rights for the project, but which does not require Commission approval.

No additional project occupancy of lands of the United States are shown on the revised drawings.

The Commission finds:

Revised Exhibit K drawings, Sheets 1 through 5 and 5A (FPC Nos. 2110–16 through –21) conform to the Commission's rules and regulations and should be approved as part of the license for the project, and the Exhibit K drawings (FPC No. 2110–3 through –8), now part of the license and which have been superseded, should be eliminated from the license for the project.

The Commission orders:

The revised Exhibit K drawings designated in the above finding are hereby approved as part of the license for Project No. 2110, and the Exhibit K drawings described in the same finding as being superseded are hereby eliminated from the license for the project.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr. and Carl E. Bagge.

PENNSYLVANIA ELECTRIC COMPANY AND THE CLEVELAND ELECTRIC ILLUMINATING COMPANY, PROJECT NO. 2280

ORDER DENYING MOTION FOR EXTENSION OF TIME IN WHICH TO FILE STATEMENT

(Issued December 1, 1965)

On September 17, 1965 this Commission issued an order granting Allegheny Electric Cooperative's petition to intervene in the proceeding on the joint application for license filed by Pennsylvania Electric Company and The Cleveland Electric Illuminating Company (Applicants) for the proposed Kinzua pumped storage plant, Project No. 2280 to be located at the Allegheny River Reservoir project, now under construction by the Corps of Engineers. By the same order, we also afforded the Cooperative an opportunity to file a statement of facts and law in support of its position on intervention. The Cooperative was given a period of thirty days from the date of the order in which to file such statement. The Applicants were afforded an opportunity to file a reply within 15 days of the filing of the Cooperative's statement.

On October 18, 1965, the last day of the thirty-day period, the Cooperative filed a "Motion for Extension of Time in Which to File Statement". In support

of its motion the Cooperative argued that it would not be in a position to file such a statement until after it has had an opportunity to study a report on the feasibility of including power generating facilities in the Allegheny River Reservoir Project, which it avers is now being prepared by the U.S. Corps of Engineers in response to a request made by the Committee on Public Works, U.S. Senate. For this reason, the Cooperative requests that its time for filing a statement be extended until sometime after the Corps of Engineers Report is made available.

The Applicants, by a filing made October 28, 1965, object to the Cooperative's motion for extension of time on the grounds that further delays would substantially increase construction costs for their proposed project and necessitate seeking alternative sources for interim power supply to serve their customer's needs. The Applicants further object that the Cooperative's motion for extension of time was not timely filed under the requirements of Section 1.13(d) of the Commission's Rules of Practice and Procedure.

Regardless of the question whether the Cooperative's motion was timely, it appears to the Commission that no useful purpose would be served by granting the proposed extension of time. On August 20, 1962 and April 13, 1965 the Director of Civil Works of the Corps of Engineers directed letters to the Commission commenting at length on the proposed project and suggesting certain license conditions and modifications. While the Commission would be disposed to study with interest any further Report from the Corps, such a Report is clearly not an essential pre-condition to Commission action on the pending application for license. There is no assurance that the awaited Corps Report would be completed at any time within the near future. We conclude therefore that the Cooperative's request for extension of time in which to file a statement of facts and law in support of its position should be denied.

In denying the Cooperative's motion for extension of time we are merely declining to hold this proceeding any longer in abeyance. We are not barring the Cooperative from filing hereafter any statement of fact and law that it may wish to present in support of its position provided such statement is filed prior to Commission action on the application for license. Such a statement by the Cooperative, will be welcomed by this Commission whether or not it incorporates an analysis of any further report which the Corps of Engineers may publish with regard to feasibility of construction by the Government of Kinzua power facilities.

The Commission finds:

Good cause has not been shown by Allegheny Electric Cooperative why its motion for extension of time should be granted.

The Commission orders:

The aforesaid motion is denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

TEXAS GAS TRANSMISSION CORPORATION, DOCKET NO. CP64-107

FINDINGS AND ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued December 1, 1965)

On August 30, 1965, Texas Gas Transmission Corporation (Applicant), filed in Docket No. CP64-107 an application to amend, as supplemented on Septem-

ber 2, 1965, the Commission's order issued May 26, 1964, 31 FPC 1292, in said docket, to authorize certain changes in the contract demands of twenty-four of its existing customers, to be effective November 1, 1965, all as more fully set forth in the application to amend in this proceeding.

The order of May 26, 1964, authorized Applicant, among other things, to increase contract demand service to existing customers in two stages, one commencing November 1, 1964, and the other commencing November 1, 1965. Applicant states herein that, as the result of recent market surveys, certain of its customers request modification of their authorized contract demands for the second stage commencing November 1, 1965.

The following eighteen customers request the increases in contract demands as set forth below:

Customer	Contract Demand Mcf at 15.025 psia		
	Authorized effective 11-1-65	Requested increase	Total requested effective 11-1-65
Jackson Utility Division, City of Jackson, Tennessee	21,811	971	22,782
Town of Covington, Tennessee	4,225	225	4,450
Town of Halls, Tennessee	1,270	150	1,420
Bells Public Utility District	800	175	975
Town of Olive Branch, Mississippi	800	85	885
Town of Henning, Tennessee	370	50	420
City of Martin, Tennessee	2,225	635	2,860
City of South Fulton, Tennessee	1,225	200	1,425
Southern Indiana Gas and Electric Company	60,000	2,000	62,000
Hoosier Gas Corporation	21,300	2,000	23,300
Boonville Natural Gas Corporation	3,455	220	3,675
City of Scottsville, Kentucky	2,500	150	2,650
City of Morganfield, Kentucky	1,760	750	2,510
City of Sturgis, Kentucky	1,020	45	1,065
Chandler Natural Gas Corporation	875	165	1,040
Western Kentucky Gas Company, (Zone 4)	7,700	190	7,890
City of Carrollton, Kentucky	3,075	225	3,300
The Cincinnati Gas & Electric Company	1,600	480	2,080
Total Increase		8,716	

The following six customers request the decreases in contract demands as set forth below:

Customer	Contract Demand Mcf at 15.025 psia	
	Authorized effective 11-1-65	Requested effective 11-1-65
Louisville Gas and Electric Company	160,000	155,000
Arkansas Louisiana Gas Company	38,590	37,692
Western Kentucky Gas Company (Zone 3)	63,000	59,215
Indiana Gas and Water Co., Inc.	83,055	80,000
City of Elizabethtown, Kentucky	6,270	5,925
Gibson County Utility District	8,250	7,900

The aggregate difference between the authorized contract demand and the requested decreases of the above six customers is 13,433 Mcf. These customers have advised Applicant that because of the installation of peak-shaving equipment, the improvement of underground storage facilities, and other changed circumstances, the contract demands as originally authorized to be effective November 1, 1965, will not be required.

312-270—69——92

No new facilities are involved for the proposed modification in contract demands.

Due notice of the filing of the application to amend and opportunity for hearing thereon has been given by publication in the Federal Register on September 16, 1965 (30 F.R. 11887). No protest or petition to intervene has been filed in this proceeding.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued May 26, 1964, in Docket No. CP64–107 be amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order issued May 26, 1964, in Docket No. CP64–107 is amended to authorize the proposed changes, as hereinabove set forth, in the contract demands of twenty-four of Applicant's existing customers, to be effective November 1, 1965, all as hereinbefore described and as set forth in the application to amend, as supplemented.

(B) In all other respects said order shall remain in full force and effect.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr. and Carl E. Bagge.

WISCONSIN MICHIGAN POWER COMPANY, PROJECT NO. 1759

ORDER APPROVING REVISED EXHIBIT L DRAWINGS

(Issued December 1, 1965)

On July 12, 1965, Wisconsin Michigan Power Company, licensee for Project No. 1759, filed for Commission approval revised Exhibit L drawings showing the "as completed" changes in the 69 kv electrical transmission facilities of the Twin Falls development of the project. The project is located on the Menominee River, Michigan, Wisconsin.

The changes referred to above which were necessary to improve system reliability and capacity, were authorized by Commission order issued July 8, 1964, 32 FPC 77. The licensee has advised that the changes were completed on April 30, 1965.

Exhibit L, Sheet No. 1, dated July 9, 1965 (FPC No. 1759–57) shows the electrical transmission equipment in the powerhouse with the elimination therefrom of the 69 kv transmission circuits and associated equipment. Exhibit L, Sheet 2 (FPC No. 1759–58) shows the transmission circuits and equipment connecting the power plant to the licensee's 69 kv transmission system.

The Secretary of the Army and the Chief of Engineers have approved the tracings of the project structures affecting navigation pursuant to Section 4(e) of the Federal Power Act.

The Commission finds:

(1) The following designated Exhibit L drawings conform to the Commission's rules and regulations and should be approved as part of the license for the project to the extent herein indicated:

Exhibit L, Sheet 1 (FPC No. 1759–57) entitled "Menominee River—Twin Falls Development—Power Structure". Approval only insofar as it as it shows the electrical transmission equipment in the powerhouse.

Exhibit L, Sheet 2 (FPC No. 1759–58) entitled "Menominee River—Twin Falls Development—Twin Falls Subsection".

(2) The following described Exhibit L drawing now part of the license should be eliminated from the license to the extent herein indicated:

Exhibit L, Sheet 1 (FPC No. 1759–53) entitled "Menominee River—Twin Falls Development—Power Structure". Superseded only insofar as it shows the electrical transmission equipment and circuits in and on the powerhouse.

(3) The following described exhibit now part of the license and which has been superseded should be eliminated from the license:

Exhibit L, Sheet 2 (FPC No. 1759–54) entitled "Menominee River—Twin Falls Development—Twin Falls Substation".

The Commission orders:

(A) The exhibits described in finding (1) above are hereby approved as part of the license for Project No. 1759 to the extent therein indicated.

(B) The exhibit described in finding (2) above is hereby eliminated from the license for Project No. 1759 to the extent therein indicated.

(C) The exhibit described in finding (3) above is hereby eliminated from the license for Project No. 1759.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

AREA RATE PROCEEDING (PERMIAN BASIN), DOCKET NO. AR61–1, ET AL.

ORDER DENYING MOTIONS TO STAY FILING REQUIREMENTS OF ORDERS TO SHOW CAUSE

(Issued December 3, 1965)

By order issued August 5, 1965, as modified and amended by orders issued October 12, 1965, and November 12, 1965, 34 FPC 424, 1135, 1287, the Commission ordered that certain respondents show cause why the rates prescribed in Opinion Nos. 468 and 468–A, 34 FPC 159, 1068, and the accompanying orders should not be applicable to certificate applications and rates for sales of gas made in the Permian Basin which were not consolidated in the Permian Basin case. On October 20, 1965, the Court of Appeals of the 10th Circuit stayed as to three parties the effectiveness of all of the provisions of Opinion Nos. 468 and 468–A to and including January 20, 1966. The Commission subsequently by order issued November 12, 1965, 34 FPC 1288, stayed the effectiveness of certain but not all of the provisions of Opinion Nos. 468 and 468–A as to all other respondents in the Permian Basin case. On November 17, 1965, and November 22, 1965, Gulf Oil Corporation, *et al.*, and Hunt Oil Company, *et al.*, respectively, filed motions requesting that the Commission stay the filing requirements of the show cause orders since it would be contrary to the public interest to require them to expend time, effort and money in a proceeding to show why certain orders, which have been stayed and may be reversed or modified, are not applicable to the respondents.

Good cause has not been shown for staying the filings required by the subject show cause orders. The fact that a court has granted temporary stay of the

ordering provisions of Opinion Nos. 468 and 468-A or the possibility that a stay may be granted until final court review of that opinion or that an opinion is subject to possible reversal and modification by a reviewing court is not justification for deferring further Commission action on related or similar matters. There always exists the possibility that a regulatory body may have its decisions stayed, reversed or modified, but this does not mean that the agency should defer acting on other matters pending review. Naturally, if after the conclusion of the subject show cause proceeding it should prove that stays of the resulting orders are necessary and proper they will be granted.

The Commission orders:

The motions filed in the above-designated proceeding by Gulf Oil Corporation, *et al.*, on November 17, 1965, and Hunt Oil Company, *et al.*, on November 22, 1965, are hereby denied.

Commissioner Bagge *not participating.*

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

CITY GAS COMPANY OF FLORIDA v. FLORIDA GAS TRANSMISSION COMPANY, DOCKET NO. RP65-48

ORDER DISMISSING COMPLAINT AND TERMINATING PROCEEDING

(Issued December 3, 1965)

City Gas Company of Florida (City Gas) on March 23, 1965, filed a complaint against its supplier, Florida Gas Transmission Company (Florida Gas), alleging that the latter had curtailed interruptible service to complainant on specified days while at the same time continuing interruptible service to other customers, and that such curtailment was unduly discriminatory and in contravention of the service agreement existing between buyer and seller.[1]

In an answer filed May 24, 1965, Florida Gas denied that it had subjected City Gas to unduly discriminatory treatment, admitted that it had made sales to certain interruptible customers north of Fort Pierce and upstream of the point of sale to City Gas during the period in question, but stated that physical considerations and the design of Florida Gas' system in the affected area are such that under the conditions existing at the time, the continuation of service to customers north of the area could not and did not adversely affect service therein. All customers within the area itself, with the exception of one,[2] were curtailed. Finally, the answer states that proposed changes in facilities, for which a certificate of public convenience and necessity has been applied in Docket No. CP65-165, will virtually eliminate need for similar curtailments.[3] In support of its argument Florida Gas appended detailed data and a description of its system operations.

Subsequently, City Gas filed a Notice of Withdrawal of its complaint stating that as a result of informal conferences, buyer and seller have been able to "resolve their differences."

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[1] City Gas claims a loss in revenues of $1848, which would represent a gross income loss of $323.

[2] Florida Gas states that Miller Gas Company was overlooked by administrative oversight.

[3] See order issued June 8, 1965, in Docket No. CP65-165, 33 FPC 1223, granting certificate for construction and operation of new facilities.

On the basis of Florida Gas' answer, and the withdrawal of City Gas' complaint, it appears that the necessity for future curtailment of gas supplies by seller and the likelihood of further discriminatory treatment alleged by complainant have been obviated and that good cause therefor exists for dismissing said complaint.

The Commission orders:

(A) The Complaint filed March 23, 1965, by City Gas Company of Florida against Florida Gas Transmission Company in Docket No. RP65–48 is hereby dismissed.

(B) The dismissal of such complaint is without prejudice and is not to be deemed determinative of the rights or obligations of Florida Gas or any of its purchasers.

(C) The proceeding in Docket No. RP65–48 is hereby terminated.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

EASTERN SHORE NATURAL GAS COMPANY, DOCKET NO. CP66–108

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued December 3, 1965)

On October 12, 1965, Eastern Shore Natural Gas Company (Applicant), filed in Docket No. CP66–108 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the increases in the contract demands of several of its firm customers purchasing gas for resale under its CD rate schedule, all as more fully set forth in the application.

Applicant requests authority to increase its Contract Demand volumes to four of its existing customers, namely, Elkton Gas Service, Division of Pennsylvania and Southern Gas Company, and the Dover Gas Light Division, the Sussex Gas Division, and the Citizens Gas Division of Chesapeake Utilities Corporation. Applicant requests the additional quantities to meet its customers' requirements for increased heating and base load sales. The Commission granted Applicant temporary authority on November 4, 1965, to commence the additional sales on November 1, 1965, the beginning of the 1965–66 heating season.

The present and proposed contract demands of each customer, and the increases requested, are as follows:

	Mcf (14.7 psia)		
	Present	Proposed	Increase
Pennsylvania and Southern Gas Company Elkton Gas Service Division	900	950	50
Chesapeake Utilities Corporation			
Dover Gas Light Division	2,330	2,830	500
Sussex Gas Division	660	680	20
Citizens Gas Division	1,300	1,450	150
Total	5,190	5,910	720

Transcontinental Gas Pipe Line Corporation has been authorized previously, by letter-order issued June 25, 1965, in Docket No. CP65–181, to deliver the requested increased volumes to Eastern Shore. Transcontinental Gas Pipe Line Corporation (Transco) is Applicant's sole supplier of natural gas.

No additional facilities are involved and the proposed service will not affect Eastern Shore's service to its other customers.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on December 1, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorization sought, and upon consideration of the record,

The Commission finds:

(1) Applicant, Eastern Shore Natural Gas Company, a Delaware corporation having its principal place of business in Salisbury, Maryland, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of November 29, 1957, in Docket No. G–12059, *et al.* (18 FPC 710).

(2) The proposed sale and delivery of natural gas by Applicant as hereinbefore described, and as more fully described in the application and exhibits in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid sale and delivery of natural gas is required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to the Applicant in this proceeding authorizing the sale and delivery of natural gas as hereinbefore described and as more fully described in the application and exhibits in this proceeding, subject to the jurisdiction of the Commission, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a), (b) and (e) of Section 157.20 of such Regulations.

(C) The service authorized shall commence as provided by paragraph (b) of Section 157.20 of the aforesaid Regulations within 30 days of the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

HUMBLE GAS TRANSMISSION COMPANY, DOCKET NO. CP65-395; MISSISSIPPI VALLEY GAS COMPANY, COMPLAINANT, v. HUMBLE GAS TRANSMISSION COMPANY, DEFENDANT, DOCKET NO. RP66-9

ORDER INSTITUTING PROCEEDING, GRANTING MOTION TO CONSOLIDATE PROCEEDINGS AND ESTABLISHING PROCEDURE

(Issued December 3, 1965)

Mississippi Valley Gas Company (MVG), on September 2, 1965, filed a formal complaint against Humble Gas Transmission Company (Humble), in Docket No. RP66-9, alleging that paragraph 10 of the General Terms and Conditions of Humble's FPC Gas Tariff[1] is unjust, unreasonable, unduly discriminatory or preferential within the meaning of Sections 4(b) and 5(a) of the Natural Gas Act. MVG requests the Commission to "set this matter down for hearing" and to consolidate its complaint proceeding with Humble's certificate application in Docket No. CP65-395.

In its complaint, MVG alleges that, under paragraph 10, Humble maintains "an absolute veto" over its industrial load growth that subjects MVG to an undue prejudice or disadvantage, which is illustrated by Humble's application, in Docket No. CP65-395, seeking Commission authorization to construct facilities to make a direct industrial sale to Diamond National Corporation (Diamond)—a company that has located a new plant in the area served by MVG. MVG states that it sought to obtain written consent from Humble under paragraph 10 to serve the natural gas requirements of this new plant, but was refused consent to make this sale.

Humble, on October 1, 1965, filed an answer to the complaint, in which it states that its service agreements with MVG and its other G-1 customers do not contain volumetric limitations, which are imperative for the protection of Humble against distributors' requirements that exceed the capability of Humble's facilities or would prove uneconomical. As to the proposed MVG sale to Diamond, Humble states that the needed additional volumes required to make that sale were available only at a rate in excess of its G-1 rate and that its contract with Diamond is in the public interest inasmuch as the increased incremental purchased gas costs are recovered exclusively from Diamond and are not borne by Humble's other customers. Humble also alleges that paragraph 10 is *per se* just, reasonable, and non-discriminatory.

The pleadings leave unresolved substantial questions of fact and law bearing upon issues evoked by conflicting contentions concerning paragraph 10, whether, among other things, paragraph 10 subjects MVG and Humble's other G-1 customers to any undue prejudice, disadvantage, or discrimination. Therefore, it appears that a public hearing should be held in order to afford all parties opportunity to present evidence concerning the issues raised by those pleadings.

Humble, on November 2, 1965, filed a motion in the above-entitled proceedings requesting the Commission to consolidate the complaint proceeding with the proceeding involved in Docket No. CP65-395. By order issued September

[1] Paragraph 10 of the General Terms and Conditions of Humble's tariff reads as follows:

> Buyer shall not sell gas purchased under Seller's Rate Schedule G-1 to any one industrial consumer in excess of 100,000 cubic feet per month except by written consent of Seller.

17, 1965, in Docket No. CP65–395, 34 FPC 873, Humble was ordered to show cause "why the Commission should not find and determine that [paragraph 10] in [its] filed tariff is unjust and unreasonable." In its motion, Humble states that MVG, in its formal complaint, requested consolidation of these proceedings and that these proceedings appear to raise a common question.

On November 12, 1965, MVG filed an answer to the motion for consolidation requesting the Commission to deny that motion. MVG there asserts that the order issued September 17, 1965, in Docket No. CP65–395 relates to the issue of the reasonableness of paragraph 10 as well as the issue of certificating the proposed sale to Diamond, and, therefore, a determination of the discrimination issue in Docket No. CP65–395 "will almost certainly make further proceedings unnecessary in" Docket No. RP66–9. However, MVG does not seek to withdraw its complaint nor does it suggest any other procedure for disposing of its complaint. Additionally, MVG, in its answer, alleges that no useful purpose will be served by consolidation inasmuch as consolidation will result in a delay of the proceedings and will result in considerable controversy as to which party has the burden of proving discrimination or the lack of it.

MVG's objections to consolidation are without merit. The issue involved, *i.e.*, the propriety of paragraph 10, is common in both proceedings, and therefore, should be tried in one proceeding. Any alleged conflict that may arise during the consolidated proceedings as to which party has the burden of proof or the burden of going forward with the evidence can be resolved by the Presiding Examiner. Furthermore, the possibility of such conflict does not warrant the trial of the same issue in two separate hearings.

The Commission finds:

It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the issues raised by the complaint filed by MVG be set for public hearing; that the complaint proceeding be consolidated with the proceeding involved in Docket No. CP65–395 for purposes of hearing and decision; and that the consolidated proceedings be tried in accordance with the procedures set out below.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly Sections 4, 5, 15, and 16 thereof, the Commission's Rules of Practice and Procedure, and the Regulations under the Natural Gas Act [18 CFR, Chapter I] a public hearing shall be held on a date to be fixed by notice from the Presiding Examiner concerning the issues raised in the formal complaint filed by MVG in Docket No. RP66–9.

(B) The motion to consolidate the proceedings involved in Docket No. RP66–9 with the proceeding in Docket No. CP65–395 filed by Humble on November 2, 1965, is granted and those proceedings are consolidated for the purposes of hearing and decision.

(C) The time for filing of evidence as prescribed by our order issued September 17, 1965, in Docket No. CP65–395, is modified as follows: Humble, in Docket No. CP65–395, and MVG, in Docket No. RP66–9, shall file their direct testimony and exhibits with the Presiding Examiner on or before January 10, 1966, and shall serve copies upon all other parties in the consolidated proceedings.

(D) Pursuant to Section 1.18 of the Commission's Rules of Practice and Procedure, a pre-hearing conference before the Presiding Examiner shall

commence at 10:00 a.m. (EST) on January 18, 1966, in a Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D.C. 20426, for the purpose of reaching such agreements as will expedite the determination to be made herein, including, but not limited to, stipulation of facts, narrowing and defining of issues, and establishment of dates for the service of answering and rebuttal testimony and for the cross-examination of all testimony.

(E) The cross-examination, when commenced, shall be continuous unless the Presiding Examiner finds that extraordinary circumstances preclude such procedure.

(F) Presiding Examiner Harry W. Frazee, or any other officer designated by the Chief Examiner for the purpose (see Delegation of Authority, 18 CFR 3.5(d)), shall prescribe other relevant procedural matters not herein provided, shall preside at the prehearing conferences and at the hearing in these matters, and shall control these proceedings until the completed record is certified to the Commission, pursuant to the Commission's Rules of Practice and Procedure.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

NORTHERN NATURAL GAS COMPANY, DOCKET NOS. G–17485, G–17486; TOWN OF MANILLA, IOWA, DOCKET NO. RP64–46

ORDER DENYING APPLICATION FOR REHEARING

(Issued December 3, 1965)

On November 12, 1965, Metropolitan Utilities District of Omaha and Minneapolis Gas Company (Interveners) filed a joint application for rehearing of the Commission's Opinion No. 479 and accompanying order issued in this proceeding on October 14, 1965, 34 FPC 1139, which, among other things, granted reductions in the third-year contract demands heretofore authorized for certain small customers of Northern Natural Gas Company. Interveners argue, *inter alia*, that granting such reductions unlawfully discriminates against them, burdens them with excessive and unjustified costs, and is otherwise unsupported by the facts and contrary to law.

Interveners' material arguments are sufficiently answered in Opinion No. 479, and in the Presiding Examiner's initial decision issued herein on July 1, 1965, and no useful purpose would be served by any further discussion of them.

The Commission finds:

The assignments of error and grounds for rehearing set forth in Interveners' application for rehearing present no facts or legal principles which would warrant any change or modification in the Commission's Opinion No. 479 and accompanying order.

The Commission orders:

The above-described application for rehearing of Opinion No. 479 and accompanying order issued in this proceeding on October 14, 1965, is denied.

Commissioner Ross *not participating.*

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

TEXAS EASTERN TRANSMISSION CORPORATION, DOCKET NO. CP66-90

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued December 3, 1965)

On October 4, 1965, Texas Eastern Transmission Corporation (Applicant), filed in Docket No. CP66-90 a "budget-type" application pursuant to Section 7(c) of the Natural Gas Act, as implemented by Section 157.7(b) of the Regulations under the Act, for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities, all as more fully set forth in the application.

Applicant seeks authorization to construct and operate facilities to enable Applicant to take into its pipeline system natural gas which it purchases in the general area of its system from time to time during the calendar year 1966, as the gas becomes available to it, in order to enable Applicant to maintain adequate gas reserves with which to meet the existing and future requirements of its customers.

Applicant states that it does not seek authorization by the instant application to make any new or additional sales of natural gas under the Natural Gas Act.

The total cost of Applicant's proposed construction under the application is not to exceed $5,000,000, with no single project to exceed $500,000, and will be financed from funds on hand.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on December 1, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Texas Eastern Transmission Corporation, a Delaware corporation having its principal place of business in Shreveport, Louisiana, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of March 30, 1949, in Docket No. G-1089 (8 FPC 228).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit within 60 days after the expiration of the authorization granted hereinafter, statements under oath in compliance with Section 2.58(c) of the Commission's Rules of Practice and Procedure under the Natural Gas Act.

(6) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(7) The authorization hereinafter granted should be limited to construction during the calendar year 1966 and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $5,000,000, with no single project to exceed a cost of $500,000.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity is issued authorizing Applicant Texas Eastern Transmission Corporation to construct during the calendar year 1966 the proposed facilities hereinbefore described, as more fully described in the application in this proceeding, and to operate such facilities only to take natural gas supplies from producers who have received authorization from the Commission to sell natural gas to said Applicant.

(B) Applicant shall submit within 60 days after the expiration of the authorization granted by paragraph (A) above statements under oath in compliance with Section 2.58(c) of the Commission's Rules of Practice and Procedure under the Natural Gas Act.

(C) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(D) The authorization granted in paragraph (A) above is limited to construction during the calendar year 1966, and the total expenditures for facilities to be constructed thereunder are limited to a maximum of $5,000,000, with no single project to exceed a cost of $500,000, and shall not be interpreted as authorization to attach new customers or to increase the volume of sales to existing customers.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

THE DETROIT EDISON COMPANY AND CONSUMERS POWER COMPANY, DOCKET NO. E-7234

ORDER PERMITTING APPEAL FROM RULING OF THE PRESIDING EXAMINER

(Issued December 6, 1965)

This order allows an appeal by Commission staff from a procedural ruling of the presiding examiner entered September 29, 1965, limiting the scope of staff's pre-trial examination of Mr. Walter H. Fuller, System Operator The

Detroit Edison Company. In doing so, we reverse the ruling of the examiner and refer the matter back for further proceedings by the examiner consistent with the views expressed herein.

Staff's Appeal was filed November 2, 1965. The Detroit Edison Company and Consumers Power Company support the examiner's action by their joint reply filed November 12, 1965.

In substance, the examiner concluded that in determining the ultimate issues herein, whether the two respondent companies are "public utilities" within the meaning of the Federal Power Act, he is obligated to limit this hearing and investigation adducing facts on unidirectional power transaction patterns allowing consideration of possible power flows from Atlantic seaboard states to the State of Michigan, but excluding consideration of possible reverse flows.

In our opinion, staff's Appeal meets the stringent requirements of Section 1.28 of the Rules of Practice and Procedure limiting interim appeals from rulings of the presiding examiner to those extraordinary circumstances where prompt decision by the Commission is necessary to prevent detriment to the public interest. As respondent companies' joint reply notes, this Commission does not favor such appeals.

Here we are persuaded that the examiner's erroneous construction of the Commission order directing this investigation and hearing issued July 20, 1965, 34 FPC 83, must be corrected at the earliest possible time. Detriment to the respondent companies, staff and Commission will ensue unless this investigation and hearing, now in the pre-trial stage, is untrammeled and free from any artificial restraint such as limiting the facts to be developed in the hearing to those narrative factual recitals set forth in the Commission's order of July 20, 1965. Presently, the schedule for service of testimony in this proceeding calls for service of staff's direct presentation on or before January 17, 1966, and service of respondent companies' direct cases on or before March 1, 1966. Resolution of the questions raised by the examiner's ruling at this time will permit all parties to properly address factual and legal questions raised by our order issued July 20, 1965.

We there directed: "* * * an investigation and hearing * * * to determine whether Detroit and Consumers are each a 'public utility' within the meaning of, and subject to the requirements of the Federal Power Act." Recitation of factual assertions contained in the recital portion of our order indicates nothing more than the reason for our concern and the need for the further hearing and investigation which we there directed.[1]

Particular facts which are to be developed in the record in this proceeding are those relevant and material to the issues of whether The Detroit Edison Company and Consumers Power Company are public utilities within the meaning of Section 201(e) of the Federal Power Act; *i.e.*, whether those companies each own or operate facilities for the transmission or sale at wholesale of

[1] Our order noted in part (p. 83):

* * * It further appears that each of the systems maintains a high voltage transmission network and these networks are interconnected at three points with each other and the resulting transmission network of the Michigan Pool is connected at two existing points with the transmission network of the Ontario Hydro System. * * * It also appears that through Ontario Hydro's high voltage transmission network the Michigan Pool is connected to the high voltage transmission networks of 140 major electric systems in the United States organized in three groups commonly known as CANUSE, PJM and the Interconnected System Group, all operating in synchronism and that as a result of the operation of these interconnections, Detroit and Consumers may own or operate facilities for the interstate transmission and sale for resale of electric energy transmitted from New York and consumed in Michigan. * * *

electric energy in interstate commerce.[2] Whether The Detroit Edison Company and Consumers Power Company own or operate such facilities may depend upon electric energy being transmitted from states along the Atlantic seaboard through interconnecting facilities of the Ontario Hydro Electric Commission to facilities of the two companies located within the State of Michigan or transfers in the opposite direction. Clearly a full development of all facts bearing on these questions is directed by our order issued July 20, 1965.

In reversing the ruling of the presiding examiner and referring this matter back for further consideration, we find it unnecessary to direct the examiner to instruct Mr. Walter H. Fuller to respond to staff counsel's proposed question.[3]

The Commission orders:

(A) Staff's Appeal from the September 29, 1965 ruling of the presiding examiner is allowed, that ruling is reversed and this matter is referred back to the examiner for further proceedings.

(B) As a part of the investigation and hearing provided by order of the Commission issued July 20, 1965, the presiding examiner shall afford staff counsel opportunity to resubmit the question as referred to above for further consideration of the examiner, and counsel for Mr. Walter H. Fuller, or The Detroit Edison Company, in the light of the views expressed herein.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

UNION PRODUCING COMPANY, DOCKET NOS. G–13811 AND G–18354, ET AL.

ORDER AMENDING ORDER APPROVING SETTLEMENT

(Issued December 6, 1965)

On November 16, 1965, Union Producing Company (Union) filed a motion in the above-docketed proceedings requesting amendment of the Commission's order of December 23, 1964, 32 FPC 1506, herein accepting an offer of settlement for certain of Union's currently effective FPC Gas Rate Schedules. In that order we directed Union to retain some of the monies required to be refunded and permitted it to commingle such funds with its general assets and use them for its corporate purposes at an interest rate of 6% per annum from February 5, 1965, to the date on which they are paid over to the person or persons ultimately determined to be entitled thereto in a final order of the Commission.

Union now requests that we amend the order of December 23, 1964, to conform with our determination in Opinion No. 468, *Area Rate Proceeding*, Docket No. AR61–1, *et al.*, 34 FPC 159 (issued August 5, 1965) that the proper

[2] Section 201(c) of the Federal Power Act provides that "* * * electric energy shall be held to be transmitted in interstate commerce if transmitted from a State and consumed at any point outside thereof; but only insofar as such transmission takes place within the United States."

[3] Staff's Appeal sets forth the following proposed question:

Q. Have you ever written an instruction to [the] dispatcher[s] which ask [them] to [in]quire at a time when you are trying to arrange an outward schedule to Ontario whether or not [the Ontario dispatcher] has an outward schedule to Niagara-Mohawk?

rate of interest for refund monies so retained and commingled with general corporate funds was 4.5% per annum, that being the prime rate of interest as fixed by the Federal Reserve Board. It is appropriate that we accordingly amend the order of December 23, 1964, to so provide.

The Commission orders:

(A) The Motion for Amendment of the order issued in these proceedings on December 23, 1964, filed by Union on November 16, 1965, is granted.

(B) Ordering Paragraph (F) of the order issued herein on December 23, 1964, is amended so as to provide for an interest rate of 4.5% per annum in lieu of 6% per annum from February 5, 1965, to the date on which the refund monies ordered to be retained are paid over to the person or persons ultimately determined to be entitled thereto in a final order of the Commission.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

CRISP COUNTY POWER COMMISSION, PROJECT NO. 659

ORDER APPROVING REVISED PROJECT M EXHIBIT AND MODIFYING LICENSE

(Issued December 7, 1965)

On September 18, 1965, Crisp County Power Commission, licensee for Project No. 659, filed for Commission approval a revised Exhibit M. The project is located on the Flint River in Crisp County, Georgia.

The revised exhibit shows the modifications proposed to be made by the licensee to transmission line "B". Approximately 10 miles of the line will be rebuilt on its present right-of-way with single-pole structures and its entire length will be reconductored.

In the interest of public safety we are by this order adding a new article to the license.

The Commission finds:

(1) The following described revised Exhibit M, which supplements the license Exhibit M, conforms to the Commission's rules and regulations and should be approved as part of the license for the project:

Exhibit M: entitled, "Revised Exhibit M", one typewritten page, dated September 17, 1965.

(2) Modification of the license for the project as herein ordered is in the public interest.

The Commission orders:

(A) The revised Exhibit M described in finding (1) above is hereby approved as part of the license for Project No. 659.

(B) The following article is hereby added to the license for the project:

Article 36. Licensee shall within six months from the effective date of this amendment:

(1) raise the transmission lines over the Flurnoy Branch arm of the reservoir or any other part of the reservoir to a minimum elevation of 576 feet (project data);

(2) take such other action as may be appropriate to avoid injury to persons using the reservoir for navigational and recreational purposes;

(3) submit for Commission approval revised Exhibits F, J, K, M, and L (reflecting the raised transmission lines), in conformance with the Commission's rules and regulations.

(C) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this order. In acknowledgment of the acceptance of this order, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

NIAGARA MOHAWK POWER CORPORATION, PROJECT NO. 2330

ORDER APPROVING PROJECT EXHIBIT M–1

(Issued December 7, 1965)

Pursuant to Article 32 of its license for Project No. 2330, Niagara Mohawk Power Corporation filed on June 30, 1965 for Commission approval Exhibit M–1 drawings showing five transmission facilities to be included in the license as parts of the constructed project works. The project is located on the Raquette River in St. Lawrence County, New York.

The five transmission facilities shown on the Exhibit M–1 drawings were found by the Commission in its license order issued July 15, 1964 to be parts of the project within the meaning of Section 3(11) of the Federal Power Act, and Article 32 of the license required the licensee to file for their inclusion in the license within one year from the date of issuance of the license.

The five transmission facilities are described in the license and are shown on Exhibit M–1 as being: (1) the 23 kv Norwood—Norfolk line; (2) the 23 kv East Norfolk—Norfolk line; (3) the short Norfolk 2.4 kv underground cable; (4) the Raymondville-Norfolk 115 kv line; and (5) the 23 kv substations at Norwood and East Norfolk and the 115 kv substation at Raymondville.

The Commission finds:

Exhibit M–1 dated June 9, 1965 in four drawings (Drawings Nos. 24192, 24191, 24187 and 24178, entitled "Operating Diagram"), conform to the Commission's rules and regulations and should be approved as part of the license for the project, and Exhibit M Drawing Nos. 24192, 24191, 24187 and 24178, entitled "Operating Diagram", now part of the license and which have been superseded, should be eliminated from the license for the project.

The Commission orders:

The Exhibit M–1 drawings described in the above findings are hereby approved as part of the license for Project No. 2330, and the Exhibit M drawings described in the same finding as being superseded are hereby eliminated from the license for the project.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

COLUMBIAN FUEL CORPORATION, DOCKET NO. G-14101, ET AL.;[1] CITIES SERVICE OIL COMPANY, DOCKET NO. G-20302, ET AL.[1]

ORDER APPROVING RATE SETTLEMENT PROPOSAL, SEVERING AND TERMINATING PROCEEDINGS AND PRESCRIBING REFUNDS

(Issued December 8, 1965)*

There is before us for consideration a Motion for Approval of Settlement Proposal, Termination of Rate Proceedings, and for Shortened Procedure Certification filed on October 4, 1965, as supplemented on November 2, 1965, by Columbian Fuel Corporation and Cities Service Oil Company (Respondents) in accordance with Section 1.18(e) of the Commission's Rules of Practice and Procedure. The joint proposal involves seventy currently effective rate schedules in eight of the areas set forth in the Commission's Statement of General Policy No. 61-1, as amended, 18 CFR 2.56, and the states of Kentucky, Maryland and Pennsylvania. There are thirty-one pending proposed rate increases relating to these rate schedules. In summary the settlement proposal filed by Respondents provides:

(1) Settlement rates, including tax reimbursement, to an affiliate, Cities Service Gas Company, based upon cost of service studies utilized by parties to these proceedings, and settlement rates, including tax reimbursement, equal to or less than the applicable increased or initial price ceilings to non-affiliated purchasers, except for two exceptions hereinafter discussed.

(2) Respondents waive the right to file for contractually authorized increased rates until April 1, 1968, for all of the rate schedules involved in the settlement. However, Respondents reserve the right to file for any contractually authorized increased rates at an earlier date if the period of suspension is legislatively extended beyond the present five month period.

(3) Respondents propose to refund all amounts, collected subject to refund, in excess of the proposed settlement rates, with applicable interest.

(4) Respondents reserve the right to file during the moratorium period any contractually authorized increased rate up to the applicable area ceiling, or to any revised ceiling, and to file for any contractually authorized tax reimbursement to which they may become entitled as a result of any change in applicable tax laws.

Settlement rates which are exceptions to the applicable area ceilings are proposed by Columbian Fuel Corporation (Columbian) for two sales of natural gas in the Kansas Hugoton Field. One is a sale to Panhandle Eastern Pipe Line Company (Panhandle) and the other is a sale to Colorado Interstate Gas Company (CIG). The sale to Panhandle is made under Columbian's FPC Gas Rate Schedule No. 33, at a presently effective rate of 12¢ per Mcf, being collected subject to refund, which was renegotiated by the parties in February, 1959, at which time Columbian dedicated approximately 44,000 acres of deeper reserves to the sale, to be developed and sold at a rate of 14¢ per Mcf for the intermediate horizons, and 16¢ per Mcf for the deepest productive horizons. Subsequently, Columbian developed the intermediate horizons, and

[1] The additional dockets involved herein are set forth in the appendices hereto.

*Rehearing and Reconsideration denied by order issued January 25, 1966, 35 FPC 149.

gas is presently being sold and delivered to Panhandle at the initial rate of 14¢ per Mcf under Columbian's FPC Gas Rate Schedule No. 36. The dedicated horizons underlying the intermediate horizons have not as yet been developed. As a part of its settlement proposal, Columbian proposes that the rate for all of the gas to be produced and sold from all dedicated horizons be 12¢ per Mcf. This is similar to circumstances which we considered in *Cities Service Production Company, et al.*, Docket No. G–9510, *et al.*, 28 FPC 1114, and *Socony Mobil Oil Company, Inc.*, Docket No. G–12193, *et al.*, 31 FPC 1101 where we granted exceptions to the applicable area ceiling, and we, therefore, approve the proposed settlement rate of 12¢ per Mcf of natural gas.

The sale to CIG in the Kansas Hugoton Field being made under Columbian's FPC Gas Rate Schedule No. 34 was renegotiated by the parties in November, 1959, at which time Columbian dedicated approximately 10,000 acres of deeper reserves to this sale at a rate which would be currently 16¢ per Mcf of natural gas. The presently effective rate for gas being produced from the now productive shallow horizons is 13.5¢ per Mcf being charged and collected subject to refund. The circumstances surrounding this sale are the same as those noted above regarding the sale to Panhandle, and, therefore, we approve the proposed settlement rate of 12¢ per Mcf of natural gas produced and sold from all dedicated horizons.

With respect to refunds, the parties to the settlement conferences utilized cost of service studies and revenues based on each of Respondents' revenue-cost relationship. These studies indicate that we should require, as Repondents propose, that all monies collected subject to refund above the settlement rates be refunded. However, for all of the reasons set forth in our order in *Humble Oil & Refining Company*, Docket No. G–9287, *et al.*, 32 FPC 49, we shall require each Respondent to retain certain monies due and owing its respective purchasers except such as are payable to Panhandle and Northern Natural Gas Company until further order of the Commission directing the nature of their disposition. The refunds will approximate $1,163,000 exclusive of applicable interest, and the estimated annual reduction of revenues to Respondents will be $295,000 under the settlement proposal.

The settlement proposal includes one sale for which issuance of a certificate of public convenience and necessity is pending in Docket No. CI65–820. This is a sale made by Columbian to United Fuel Gas Company under its FPC Gas Rate Schedule No. 79 in the Scott Smith "O" Field, Kentucky. We shall set the related application for abridged hearing in accordance with Section 7 of the Natural Gas Act, providing that the settlement rate shall be the initial rate.

We believe that the principles underlying the present settlement proposal are consistent with the public interest and the provisions of the Natural Gas Act, and consequently shall approve the same.

Our action herein should not be construed as constituting approval of any future rate increases, if any, that may be filed under the subject rate schedules, and is without prejudice to any findings or order of the Commission in future proceedings, including area rate or similar proceedings, involving Respondents' rates and rate schedules, their successors or assignees.

The Commission finds:

The proposed settlement of the subject proceedings on the basis described herein, as more fully set forth in the Settlement Proposal filed by Respondents on October 4, 1965, as supplemented on November 2, 1965, is in the public in-

terest and it is appropriate in carrying out the provisions of the Natural Gas Act that it be approved and made effective as hereinafter ordered, and good cause exists for approving the settlement rates, for severing and terminating certain proceedings and for providing for refunds.

The Commission orders:

(A) The joint offer of settlement filed with the Commission by Respondents on October 4, 1965, as supplemented on November 2, 1965, is approved in accordance with provisions of this order.

(B) Respondents shall file, within 90 days from the date of issuance of this order, notices of change in rates under their FPC Gas Rate Schedules to reflect the settlement rates and executed contract amendments in accordance with the terms of this settlement proposal as approved herein including amendments to those rate schedules for sales to CIG to provide for the measurement of the Btu content of the gas consistent with the standard required in Opinion No. 464, *Texaco Inc., et al.*, Docket No. G–8087, *et al.*, 33 FPC 1228. The notices of change and the contractual amendments shall be submitted in accordance with Part 154 of the Commission's Regulations under the Natural Gas Act.

(C) Respondents shall compute the difference between the rates collected subject to refund and the settlement rates for the sales for which it proposes to make refunds with applicable interest to the date of this order, and shall within 45 days from the date of issuance of this order submit a report to the Commission, with a copy to its jurisdictional pipe line purchasers, setting out the amount of refunds (showing separately the principal and applicable interest) the bases used for such determination, the period covered, and ten days thereafter shall submit to the Commission a copy of a letter from its jurisdictional pipeline purchasers agreeing to the correctness of such amounts.

(D) Respondents shall retain those amounts of monies shown in the report required under Ordering Paragraph (C) above, subject to further order of the Commission, except that the amounts due and owing, with applicable interest to the date of this order, for the periods set forth under the heading "Period of Refunds to be Released" on Appendix C, attached hereto, shall be refunded within ten days after receiving the letters from their jurisdictional pipeline customers required by Ordering Paragraph (C) above.

(E) Respondents may deposit the retained refunds in a special escrow account, and shall tender for filing within 60 days of the date of issuance of this order an executed Escrow Agreement, conditioned as set out below, accompanied by a certificate showing service of a copy thereof upon its jurisdictional pipeline customers. Unless notified to the contrary by the Secretary within 30 days from the date of filing thereof, the Escrow Agreement shall be deemed to be satisfactory and to have been accepted for filing. The Escrow Agreement shall be entered into between Respondents and any bank or trust company used as a depositor for funds of the United States Government and the agreement shall be conditioned as follows:

(1) Respondents, the bank or trust company, and the successors and assigns of each, shall be held and formally bound unto the Federal Power Commission for the use and benefit of those entitled thereto, with respect to all amounts and the interest thereon deposited in the special escrow account, subject to such agreement, and such bank or trust company shall be bound to pay over to such person or persons as may be identified and designated by final order

of the Commission and in such manner as may be therein specified, all or any portion of such deposits and the interest thereon.

(2) The bank or trust company may invest and reinvest such deposits in any short-term indebtedness of the United States or any agency thereof or in any form of obligation guaranteed by the United States which is, respectively, payable within 120 days as the said bank or trust company in the exercise of its sound discretion may select.

(3) Such bank or trust company shall be liable for such interest as the invested funds described in Paragraph (2) above will earn and no other interest may be collected from it.

(4) Such bank or trust company shall be entitled to such compensation as is fair, reasonable and customary for its services as such, which compensation shall be paid out of the escrow account to such bank or trust company. Said bank or trust company will likewise be entitled to reimbursement for its reasonable expenses necessarily incurred in the administration of this escrow account, which reimbursement shall be made out of the escrow account.

(5) Such bank or trust company shall report to the Secretary quarterly, certifying the amount deposited in the bank or trust company for the quarterly period.

(F) If either of Respondents elects to commingle the retained refunds with its general assets and use them for business purposes, it shall notify the Secretary of the Commission of its intention to do so within sixty days of the issuance of this order, and shall pay interest on such monies at the rate of 4.5% per annum from the date of issuance of this order to the date on which they are paid over to the person or persons ultimately determined to be entitled thereto by final order or orders of the Commission.

(G) Upon notification by the Secretary of the Commission that each of the Respondents has complied with the terms and conditions of this order, the Section 4(e) proceedings in Appendix A hereto shall terminate, and the proceedings in Appendix B hereto shall be severed from their respective consolidated proceedings.

(H) The acceptance by the Commission of Respondents offer of settlement is without prejudice to any findings or determinations that may be made in any proceeding now pending, or hereafter instituted by or against Respondents and is without prejudice to claims or contentions which may be made by Respondents, the Commission staff, or any affected party hereto, in any proceeding.

APPENDIX A PART I

COLUMBIAN FUEL CORPORATION

PERMANENTLY CERTIFIED SALES

Rate schedule No.	Field (area)	Purchaser	Docket number		Cents per Mcf at area pressure base (subject to Btu adjustment where applicable)		
			Certificate	Sec. 4(e) rate increase	Not subject to refund	Rate in effect 10/1/65	Settlement rate ***
	KANSAS, 14.65 PSIA						
2	Hugoton and others	Panhandle Eastern	G-4308	RI60-67 RI65-557	*15.0	[1] **15.0 [1] **16.0	**15.0
7	Hugoton	Cities Service Gas	G-7007	RI61-316 RI61-518	[2] 11.5	13.5	12.0
19	do	Northern Natural	G-7015		*11.0	11.0	11.0
20	do	do	G-7015		*11.0	11.0	11.0
21	do	Colorado Interstate	G-7016	RI64-512	*11.5	**13.5	**11.5
22	do	Northern Natural	G-7017		*11.0	11.0	11.0
26	do	do	G-9864	RI61-541	*12.0	17.0	12.0
27	Adams Ranch	Colorado Interstate	G-10802	RI62-429	*15.0	**17.0	**15.0
30	Belpre Pool	Northern Natural	G-12508	RI62-33	*13.5	14.5	13.5
31	Hugoton	Panhandle Eastern	G-14139		*12.0	12.0	12.0
32	Edstaff Pool	Northern Natural	G-14211	RI62-33	*13.5	14.5	13.5
33	Hugoton	Panhandle Eastern	G-7005	RI64-747	[3] 11.0	12.0	12.0
34	do	Colorado Interstate	G-7010	RI63-248 RI64-401	[4] 11.0	13.5	12.0
35	Greenwood	do	CI60-169	RI60-171 RI64-401	*15.0	**17.0	**15.0
36	Hugoton Deep	Panhandle Eastern	CI61-671		*14.0	14.0	12.0
37	Hugoton	Cities Service Gas	G-7013	RI62-49	11.0	12.0	12.0
40	do	Panhandle Eastern	G-7019		11.0	11.0	11.0
76	W. Liberal Block (Kansas deep)	Northern Natural	CI64-425		*16.0	16.0	16.0
	KENTUCKY, 15.325 PSIA						
8	Big Sandy	Kentucky-W. Va. Gas	G-7008		[5] *14.0 [6] *18.0	14.0 18.0	14.0 18.0
10	do	United Fuel Gas	G-7009		[7] 27.5	27.5	27.5
29	do	do	G-12487		[8] 27.5	27.5	27.5

	LOUISIANA, SOUTH, 15.025 PSIA						
63	West Gueydan	United Fuel Gas	G-12618	G-14101 G-17157 G-19942 RI61-238 RI62-79 RI63-188 RI64-268 RI65-161	*18.3	21.5	18.3
71	North Scott	Texas Gas Trans	CI62-1068		[10] *20.625	20.625	20.625
74	Midland	do	CI63-1317		*19.5	19.5	19.5
	MARYLAND, 15.325 PSIA						
55	Deer Park-Mt. Lake Park	Cumberland & Allegheny Gas Co	G-7085		*20.0	20.0	20.0
	OKLAHOMA, PANHANDLE, 14.65 PSIA						
1	Keyes	Panhandle Eastern	G-4310	RI60-67 RI65-557	*15.0	[24] **16.0	**15.0
15	Hugoton	MAPCO Production [11]	G-7011		[12] [13] 14.6334	14.6334	14.6334
16	do	Kansas-Nebraska	G-7012		11.0	11.0	11.0
18	do	Northern Natural	G-7014		*15.0	15.0	15.0
23	do	MAPCO Production [11]	G-7018		[12] [13] 14.6334	14.6334	14.6334
25	Keyes	Colorado Interstate	G-8994	G-17605 RI64-370	*15.0	**17.0	**15.0
38	Hugoton	Cities Service Gas	CI61-1074	RI66-106	*11.0	[14] 11.0	12.0
39	North Carthage	Panhandle Eastern	CI61-1489		*16.0	16.0	16.0
72	Texas County	do	CI63-1226		*16.0	16.0	16.0
75	Murdock	do	CI63-1454		*17.0	17.0	17.0
	PENNSYLVANIA, 15.325 PSIA						
60	Reed-Deemer	N.Y. State NGC	G-11120		*27.5	27.5	27.5
64	do	do	G-11121		*27.5	27.5	27.5
	TEXAS, RRC DIST. NO. 3, 14.65 PSIA						
28	Milton	Natural Gas P. L	G-11126	RI62-305	*15.0	16.5	15.0
	TEXAS, RRC DIST. NO. 6, 14.65 PSIA						
3	Carthage S. E	Texas Gas Trans	G-4560		11.6190	11.6190	11.6190

See footnote at end of table.

APPENDIX A PART I—continued

Rate schedule No.	Field (area)	Purchaser	Docket number		Cents per Mcf at area pressure bas (subject to Btu adjustment where applicable)		
			Certificate	Sec. 4(e) rate increase	Not subject to refund	Rate in effect 10/1/65	Settlement rate ***
	WEST VIRGINIA, 15.325 PSIA						
41	Sissonville	Consolidated Gas	G-7074		[15] *23.5	23.5	23.5
42	Peytona-Emmons	do	G-7075		[16] *23.01	23.01	23.01
43	Weston-Jane Lew	do	G-7076		*20.0	20.0	20.0
45	Smithton	do	G-7077		[17] *28.92	28.92	28.92
46	Chapmanville	United Fuel Gas	G-7078		[18] *28.0	28.0	28.0
47	Lorentz	Cumberland & Allegheny Gas Co	G-7079		21.0	21.0	21.0
49	Weston-Jane Lew	do	G-7079		*20.0	20.0	20.0
50	Cameron	Manufacturers Light & Heat Co	G-7080		*20.0	20.0	20.0
51	do	do	G-7080		*20.0	20.0	20.0
52	Mingo County	United Fuel Gas	G-7081		*22.5	22.5	22.5
53	Nicholas & Fayette Cos	Equitable Gas	G-7083		[15 19] 27.5	27.5	27.5
54	Raleigh County	United Fuel Gas	G-7084		[20] *24.0	24.0	24.0
					[21] *21.0	21.0	21.0
55	Deer Park-Mt. Lake Park	Cumberland & Allegheny Gas Co	G-7085		*20.0	20.0	20.0
	WEST VIRGINIA 15.325 PSIA						
57	Peytona-Emmons	Penzoil Co	G-7087		*14.0	14.0	14.0
62	Lewis	Consolidated Gas	G-11647		*20.0	20.0	20.0
65	Pifer Mountain	do	G-14386		*26.0	26.0	26.0
66	Mingo	United Fuel Gas	G-11648		23.0	23.0	23.0
67	N. Ext. Grady	Consolidated Gas	C160-97		[22] *26.91	26.91	26.91
68	Pifer Mountain	do	C160-139		*26.0	26.0	26.0
69	Wyoming & McDowell Cos	United Fuel Gas	C162-458		*28.0	28.0	28.0
70	McDowell Co	Consolidated Gas	C162-498		*25.0	25.0	25.0
73	Clay Co	Equitable Gas	C163-1312		*25.0	25.0	25.0
77	March Fork District	United Fuel Gas	C164-1492		*25.0	25.0	25.0
78	Union District	do	C164-1493				

APPENDIX A

PART II

COLUMBIAN FUEL CORPORATION

TEMPORARILY AUTHORIZED SALES

Rate schedule No.	Field (Area)	Purchaser	Docket number		Cents per Mcf at area pressure base (Subject to Btu adjustment where applicable)		
			Certificate	Sec. 4(e) rate increase	Not subject to refund	Rate in effect 10/1/65	Settlement rate ***
	KENTUCKY, 15.325 PSIA						
79	Scott Smith "O"	United Fuel Gas	[1] CI65-820		[1] **26.0	26.0	26.0

See footnotes at end of table.

APPENDIX A

PART III

CITIES SERVICE OIL COMPANY

PERMANENTLY CERTIFICATED SALES TO CITIES SERVICE GAS COMPANY

Rate schedule No.	Field (Area)	Purchaser	Docket number		Cents per Mcf at area pressure base (Subject to Btu adjustment where applicable)		
			Certificate	Sec. 4(e) rate increase	Not subject to refund	Rate in effect 10/1/65	Settlement rate ***
	KANSAS, 14.65 PSIA						
86	Hugoton	Cities Service Gas	G-4579		*11.0	11.0	11.0
149	do	do	CI61-1490		*12.0	12.0	12.0
120	S. W. Medicine Lodge	do	G-9792	G-20302 [25] R165-451	*12.0	[25] 13.0	12.0
	OKLAHOMA, OTHER, 14.65 PSIA						
67	W. Edmond Hunton Lime	do	G-4579		*6.7	6.7	6.7
93	Bodine Gasoline Plant	do	G-10193		11.0	11.0	11.0
102	S. E. Eureka	do	G-13304		*12.0	12.0	12.0
	TEXAS, RRC DIST. NO. 10, 14.65 PSIA						
161	W. Panhandle	do	CI63-365		*12.0	12.0	12.0

See footnotes at end of table.

APPENDIX B

SUSPENSIONS

Rate schedule number	Supplemental number	Docket number	Consolidated docket	Area
		COLUMBIAN FUEL CORPORATION		
1	6	RI60-67	AR64-1	Oklahoma Panhandle.
1	8	RI65-557		Do.
2	11	RI60-67	AR64-1	Kansas.
2	14	RI65-557		Do.
7	8, 9	RI61-316	G-2737	Do.
7	10	RI61-518	G-2737	Do.
21	3	RI64-512	AR64-1	Do.
25	2, 3, 4	G-17605	AR64-1	Oklahoma Panhandle.
25	5	RI64-370	AR64-1	Do.
26	4	RI61-541	AR64-1	Kansas.
27	4	RI62-429	AR64-1	Do.
28	1	RI62-305	AR64-2	Texas RRC Dist. No. 3.
30	4	RI62-33	AR64-1	Kansas.
32	2	RI62-33	AR64-1	Do.
33	3	RI64-747	AR64-1	Do.
34	2	RI63-248	AR64-1	Do.
34	3	RI64-401	AR64-1	Do.
35	2	RI60-171	AR64-1	Do.
35	3	RI64-401	AR64-1	Do.
37	2	RI62-49	G-2737	Do.
38	2	RI66-106		Oklahoma Panhandle.
63	1	G-14101	AR61-2	So. Louisiana.
63	3	G-17157	AR61-2	Do.
63	5	G-19942	AR61-2	Do.
63	6	RI61-238	AR61-2	Do.
63	7	RI62-79	AR61-2	Do.
63	8	RI63-188	AR61-2	Do.
63	9	RI64-268		Do.
63	10	RI65-161		Do.
		CITIES SERVICE OIL COMPANY		
200	1	G-20302	AR64-1	Kansas.
200	3	RI65-451		Do.

APPENDIX C

FLOW THROUGH OF REFUNDS

Purchaser	Docket number	Period of refunds to be retained		Period of refunds to be released	
		From	To and including	From	To and including
Cities Service Gas Company	G-20302			April 1, 1965	Date Settlement Rates Become Effective.
	RI61-316	March 3, 1961	July 22, 1961	July 23, 1961	Do.
	RI61-518			November 17, 1961	Do.
Colorado Interstate Gas Company.	G-17605	July 1, 1959	Date Settlement Rates Become Effective.		
	RI60-171	August 15, 1960	Do.		
	RI62-429	November 1, 1962	Do.		
	RI63-248	June 7, 1963	Do.		
	RI64-370	June 1, 1964	Do.		
	RI64-401	June 1, 1964	Do.		
	RI64-512	June 12, 1964	Do.		
Natural Gas Pipeline Co. of America.	RI62-305	July 5, 1962	Date Settlement Rates Become Effective.		
Northern Natural Gas Co	RI61-541			December 6, 1961	Date Settlement Rates Become Effective.
	RI62-33			April 6, 1962	Do.
Panhandle Eastern Pipe Line Co.	RI60-67			July 1, 1960	Date Settlement Rates Become Effective.
United Fuel Gas Co	G-14101			August 15, 1958	Date Settlement Rates Become Effective.
	G-17157			June 8, 1959	Do.
	G-19942			April 5, 1960	Do.
	RI61-238			April 20, 1961	Do.
	RI62-79	April 6, 1962	Date Settlement Rates Become Effective.		
	RI63-188	April 23, 1963	Do.		
	RI64-268	April 9, 1964	Do.		
	RI65-161	April 1, 1965	Do.		

*Initial rate.
**Rate subject to upward Btu adjustment.
***The settlement rates set out herein, unless otherwise noted, are total rates, subject to reductions in the manner and in the amounts set out in the respective rate schedules, where applicable under conditions of sale and/or delivery.
[1] Current effective rate is 15.0 cents per Mcf for that acreage acquired from William L. Graham Co. only. The 16.0 cents per Mcf rate, subject to refund under Docket No. RI60-67 applies to all other acreage under rate schedule No. 2. 17.0 cents per Mcf rate now suspended in Docket No. RI65-557.
[2] Supplemental agreement dated November 30, 1960 provided for a change in measurement pressure base from 16.4 psia to 14.65 psia and a change in rate from 11.5 cents per Mcf at 16.4 psia (10.27 cents per Mcf at 14.65 psia) to 12.5 cents per Mcf at 14.65 psia.
[3] Rate applicable to depths above the base of the Chase Group only. Contract further provides for a 14.0 cents per Mcf initial rate for gas produced from depths below the base of the Chase group down to the top of the Morrowan Series, and a 16.0 cents per Mcf initial rate for gas produced from depths below the top of the Morrowan Series.
[4] Rate applicable to depths above the base of the Morrow Group only. Contract further provides for a 15.0 cents per Mcf initial rate with a upward Btu provision for gas produced from depths below the base of the Chase Series. No filings have been made for gas produced from this deeper interval and price has escalated to 16.0 cents per Mcf.
[5] For gas from wells completed prior to 1-1-51.
[6] For gas from wells completed or deepened after 1-1-51.
[7] Increased rate allowed by Commission order dated 6-19-61.
[8] Increased rate allowed by Commission order dated 8-29-61.
[9] Initial rate as conditioned by temporary certificate issued 3-19-65.
[10] Rate established by order dated 12-23-63 issuing Permanent certificate.
[11] Successor to Hugoton Plains Natural Gas Company.
[12] There is a 1.0 cent per Mcf charge deducted from this rate for compression.
[13] Rate is 1.1166 cents per Mcf less than the buyers resale rate. The Commission approved predecessors offer of settlement at 15.75 cents per Mcf.
[14] Rate filing to 12.0 cents per Mcf filed 9-24-65 suspended in Docket No. RI66-106.
[15] Rate at contract pressure base of 15.025 psia.
[16] Rate at contract pressure base of 15.2 psia.
[17] Rate at contract pressure base of 14.9 psia for all gas under contract except gas purchased from Rudder Oil & Gas Company.
[18] Rate at pressure base of 15.325 psia for gas purchased from Rudder Oil & Gas Company.
[19] Rate increase allowed by Commission order dated 3-1-61.
[20] For gas purchased from November 1 through April 30.
[21] For gas purchased from May 1 through October 31.
[22] Rate at contract pressure base of 14.73 psia.
[23] 14.0 cents per Mcf rate suspended in Docket No. RI65-451.
[24] 17.0 cents per rate suspended in Docket No. RI65-557.
[25] Docket No. G-20302 is to be terminated only insofar as Cities Service's interest is concerned.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

ANNUAL REPORTS OF CLASSES A, B, C AND D NATURAL GAS COMPANIES SUBJECT TO THE NATURAL GAS ACT—MISCELLANEOUS AMENDMENTS TO F.P.C. FORMS NO. 2 AND NO. 2-A, DOCKET NO. R-283

ORDER NO. 310

AMENDING ANNUAL REPORT NO. 2 AND NO. 2-A

(Issued December 8, 1965)*

On September 20, 1965, the Commission issued a notice of proposed rulemaking in this proceeding (30 F.R. 12361, September 28, 1965), wherein it proposed to amend several of the schedules in FPC Form No. 2 and FPC Form No. 2-A, the annual reports required by §§ 260.1 and 260.2, respectively, of the Regulations under the Natural Gas Act to be made by natural gas pipeline companies subject to the Natural Gas Act.

The changes proposed in the notice were, for the most part, in response to suggestions made by representatives of the natural gas industry and were designed to minimize existing reporting requirements. Among the changes proposed, however, were others, more fully described in the notice, which were designed to supply additional information to assist the Commission in the proper performance of its responsibilities under the Act.

Many of the comments filed offer criticisms of the items in the latter class of proposals and we shall consider those in the future course of this proceeding.** In the meantime there is no reason to delay incorporation of the other changes in the form for the reporting year 1965.

The Commission finds:

The amendments to the annual report form here prescribed are necessary and appropriate for the administration of the Natural Gas Act.

The Commission, acting pursuant to the provisions of the Natural Gas Act, as amended, particularly sections 10 and 16 thereof (52 Stat. 826, 830; 15 U.S.C. 717i, 717o), *orders:*

(A) Annual Report FPC Form No. 2, prescribed by § 260.1(a), Subchapter G, Chapter I, Title 18 of the Code of Federal Regulations, is amended as follows:

1. In General Instruction 14, delete the sentence reading "If B.t.u. reported by respondent was determined on a different basis, explain such different basis.".

2. In schedule (page 201) entitled "Nonutility Property (Account 121)", instruction paragraph 4. is amended to read as follows:

> List separately any property previously devoted to public service having an original cost of $150,000 or more and give date of transfer to Account 121, Nonutility Property. Other items of property previously devoted to public service may be grouped provided that the number of properties so grouped is indicated.

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*Published in the Federal Register on December 16, 1965 (30 F.R. 15465).

**See: Order No. 327 in Docket Nos. 283 and 291, issued September 8, 1966, 36 FPC 591, 31 F.R. 12015, September 14, 1966; Order No. 310-B, herein, issued December 22, 1966, 36 FPC 1144, 31 F.R. 16562, December 28, 1966; and Footnote 1 of the Notice of Proposed Rulemaking issued November 29, 1966, in Docket Nos. R-311 and R-283, 31 F.R. 15325, December 7, 1966.

3. The two schedules (page 203) entitled, respectively, "Special Funds (Accounts 125, 126, 127, 128)" and "Special Deposits (Accounts 132, 133, 134)" are deleted.

4. The schedule (page 204) entitled "Notes and Accounts Receivable" is amended by deleting the parenthetical references "(see Sch. page 205)" and inserting in the heading thereof the following:

> Show separately by footnote the total amount of notes and accounts receivable from directors, officers, and employees included in Notes Receivable (Account 141) and Other Accounts Receivable (Account 143).

5. The two schedules (page 205) entitled, respectively, "Notes Receivable (Account 141)" and "Accounts Receivable (Accounts 142, 143)" are deleted.

6. In schedule (page 506) entitled "Gas Plant Held For Future Use (Account 105), instruction paragraphs 1. and 2. are amended to read as follows:

> 1. Report separately each property held for future use at end of the year having an original cost of $100,000 or more. Other items of property held for future use may be grouped provided that the number of properties so grouped is indicated.
>
> 2. For property having an original cost of $100,000 or more previously used in utility operations, now held for future use, give, in addition to other required information, the date that utility use of such property was discontinued, and the date the original cost was transferred to Account 105.

7. In schedule (page 542) entitled "Franchise Requirements (Account 927) (Gas)", delete the figure "$2500" wherever it appears in instruction paragraph 1. and insert in lieu thereof the figure "$10,000".

8. The last page entitled "Verification" is amended to read as set out in the attachment hereto.*

[Secs. 10, 16, 52 Stat. 826, 830; 15 U.S.C. 717i, 717o]

(B) Annual Report FPC Form No. 2–A, prescribed by § 260.2(a), Subchapter G, Chapter I, Title 18 of the Code of Federal Regulations, is amended by deleting the "Verification" on page 14 thereof and inserting in lieu thereof the "Attestation" set out in the attachment hereto.

(C) The amendments prescribed herein shall be effective for the reporting year 1965 and thereafter.

(D) The Secretary shall cause prompt publication of this order to be made in the Federal Register.

*Omitted in printing.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

MISCELLANEOUS AMENDMENT TO F.P.C. FORM NO. 1; REPORT FORM PRESCRIBED FOR CLASS A AND CLASS B ELECTRIC UTILITIES AND OTHERS SUBJECT TO THE FEDERAL POWER ACT, DOCKET NO. R–284

ORDER NO. 311

AMENDING ANNUAL REPORT FORM NO. 1

(Issued December 8, 1965)*

On September 21, 1965, the Commission issued a notice of proposed rulemaking in this proceeding (30 F.R. 12360, September 28, 1965), wherein it

*Published in the Federal Register on December 16, 1965 (30 F.R. 15465).

proposed to amend several of the schedules in FPC Form No. 1, the annual report required by § 141.1 of the Regulations under the Federal Power Act to be made by public utilities, licensees and others subject to the reporting requirements of the Federal Power Act.

The changes proposed in the notice were, for the most part, in response to suggestions made by representatives of the electric power industry and were designed to minimize existing reporting requirements. Among the changes proposed, however, were others, more fully described in the notice, which were designed to supply additional information to assist the Commission in the proper performance of its responsibilities under the Act.

Many of the comments filed offer criticisms of the items in the latter class of proposals and we shall consider those in the future course of this proceeding.** In the meantime there is no reason to delay incorporation of the other changes in the form for the reporting year 1965.

The amendments prescribed herein to the schedules on pages 432, 432b, 436–437 and 442 of Form No. 1 were not included in the notice of proposed rulemaking. However, they are of a clarifying nature and will not impose any substantial added burden to the reporting requirements.

The Commission finds:

(1) The amendments to the annual report form here prescribed are necessary and appropriate for the administration of the Federal Power Act.

(2) Since the amendments prescribed herein which were not included in the notice in this proceeding are of a clarifying nature further notice thereof is unnecessary.

The Commission, acting pursuant to the provisions of the Federal Power Act, as amended, particularly sections 4(a), (b), (c), 301(a), 302, 304, 309, and 311 thereof (49 Stat. 839, 854, 855, 858, 859; 16 U.S.C. 797(a), (b), (c), 825(a), 825a(a), 825c, 825h, 825j), *orders:*

(A) Annual Report FPC Form No. 1, prescribed by § 141.1(a), Subchapter D, Chapter I, Title 18 of the Code of Federal Regulations, is amended as follows:

1. In schedule (page 201) entitled "Nonutility Property (Account 121)", instruction paragraph 4. is amended to read as follows:

> List separately any property previously devoted to public service having an original cost of $150,000 or more and give date of transfer to Account 121, Nonutility Property. Other items of property previously devoted to public service may be grouped provided that the number of properties so grouped is indicated.

2. The two schedules (page 203) entitled, respectively, "Special Funds (Accounts 125, 126, 127, 128)" and "Special Deposits (Accounts 132, 133, 134)" are deleted.

3. The schedule (page 204) entitled "Notes and Accounts Receivable" is amended by deleting the parenthetical references "(see sch. page 205)" and inserting in the heading thereof the following:

> Show separately by footnote the total amount of notes and accounts receivable from directors, officers, and employees included in Notes Receivable (Account 141) and Other Accounts Receivable (Account 143).

**See: Order No. 311–B, herein, issued October 13, 1966, 36 FPC 749; 31 F.R. 13593, October 21, 1966.

4. The two schedules (page 205) entitled, respectively, "Notes Receivable (Account 141)" and "Accounts Receivable (Accounts 142, 143)" are deleted.

5. In schedule (page 405) entitled "Electric Plant Held For Future Use (Account 105), instruction paragraphs 1. and 2. are amended to read as follows:

1. Report separately each property held for future use at end of the year having an original cost of $100,000 or more. Other items of property held for future use may be grouped provided that the number of properties so grouped is indicated.

2. For property having an original cost of $100,000 or more previously used in utility operations, now held for future use, give, in addition to other required information, the date that utility use of such property was discontinued, and the date the original cost was transferred to Account 105.

6. In schedule (page 426) entitled "Franchise Requirements (Account 927) (Electric)", delete the figure "$2500" wherever it appears in instruction paragraph 1. and insert in lieu thereof the figure "$10,000".

7. In schedule (page 432) entitled "Steam-Electric Generating Plant Statistics (Large Plants)", change designation of instruction paragraph 7. to 8. and insert a new instruction as follows:

7. If more than one fuel is burned in a plant furnish only the composite heat rate for all fuels burned.

8. In the portion of the same schedule appearing on page 432b, insert a new instruction paragraph 3. as follows:

3. All heat rates on this page and also on pages 432 and 432a should be computed on the basis of total fuel burned including burner lighting and banking fuel.

9. In schedule (pages 436–437) entitled "Steam-Electric Generating Plants" insert the following footnote to columns (e), (f), (g), (i), (k) and (n):

* * * Include both ratings for the boiler and the turbine-generator of dual-rated installations.

10. In schedule (page 442) entitled "Transmission Line Statistics" insert the following footnote to the column heading above columns (f) and (g):

* * * In the case of underground lines, report circuit miles.

11. The last page entitled "Verification" is amended to read as set out in the attachment hereto.*

[Secs. 4(a), (b), (c), 301(a), 302, 304, 309, 311, 49 Stat. 839, 854, 855, 858, 859; 16 U.S.C. 797(a), (b), (c), 825(a), 825a(a), 825c, 825h, 825j]

(B) The amendments prescribed herein shall be effective for the reporting year 1965 and thereafter.

(C) The Secretary shall cause prompt publication of this order to be made in the Federal Register.

Before Commissioners: Joseph C. Swidler, Chairman; Charles R. Ross, David S. Black and Carl E. Bagge.

ATLANTIC SEABOARD CORPORATION, DOCKET NO. CP66-64

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued December 10, 1965)

On August 25, 1965, Atlantic Seaboard Corporation (Applicant), filed in Docket No. CP66-64 an application pursuant to Section 7(c) of the Natural

*Omitted in printing.

Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of a tap and sales metering station in order to provide an additional delivery point to Washington Gas Light Company (Washington), an existing resale customer, all as more fully set forth in the application.

The tap and metering station will be constructed on Applicant's 20-inch transmission pipeline near Chantilly, Fairfax County, Virginia. The proposed delivery point will be utilized by Washington to serve the following requirements of a new residential development now under construction:

	1966	1967	1968
Annual (Mcf)	24,000	48,000	73,200
Peak day (Mcf)	240	470	700

Applicant will sell this gas under the terms of its present agreement with Washington, and there will be no increase in the contract demand.

The estimated cost of construction of the proposed facilities is $5,750, which will be financed by Applicant from cash on hand.

Due notice of the filing of the application was published in the Federal Register on September 1, 1965 (30 F.R. 11654). No protest, petition to intervene, or notice of intervention has been filed in this proceeding.

At a hearing held on December 9, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Atlantic Seaboard Corporation, a Delaware corporation having its principal place of business in Charleston, West Virginia, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of March 16, 1943, in Docket No. G-284 (3 FPC 941).

(2) The facilities hereinbefore described and as more fully described in the application in this proceeding are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of said Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Applicant, Atlantic Seaboard Corporation, authorizing the construction and operation of the facilities as hereinbefore described and as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities authorized shall be completed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within six months from the date of this order.

Before Commissioners: Joseph C. Swidler, Chairman; Charles R. Ross, David S. Black and Carl E. Bagge.

CITIZENS UTILITIES COMPANY, DOCKET NO. E-7253

ORDER AUTHORIZING ISSUANCE OF PROMISSORY NOTES

(Issued December 10, 1965)

Citizens Utilities Company (Applicant), a Delaware corporation, qualified to transact business in the States of Arizona, Colorado, Connecticut, Idaho and Vermont with its principal business office at Stamford, Connecticut, filed an application with the Federal Power Commission, pursuant to Section 204 of the Federal Power Act to issue Promissory Notes up to but not exceeding at any one time, the aggregate amount of $9,500,000 and to issue shares of Common Stock in order to accomplish a 3-for-2 stock split. This order is confined to Applicant's request with respect to its Promissory Notes. Applicant's request for authority to issue additional shares of Common Stock will be the subject of a separate order.

Applicant proposes to issue Promissory Notes pursuant to an existing credit agreement which is to be renewed with the Chemical Bank New York Trust Company and with The Marine Midland Trust Company of New York under which these banks have made and will make loans to the Applicant from time to time on a revolving basis in an aggregate amount not exceeding $9,500,000 at any one time. According to the application, under the proposed credit agreement, the banks will agree to increase the amount of credit to $11,000,000 and will extend such credit until December 9, 1966. However, Applicant states that it will not issue Notes in excess of $9,500,000 without further application to the Commission. The borrowings are to be evidenced by unsecured Notes of the Applicant maturing not more than 90 days from the date of issuance and in any case, not later than December 9, 1966 with interest on each note at the New York prime interest rate for 90 day Notes as of the date of issuance of each Note.

According to the application, the Notes are to be issued to renew $5,400,000 in outstanding Notes due December 10, 1965 under the existing credit agreement referred to above and to furnish funds for the Applicant's 1966 construction program which has an estimated cost of $4,713,000. The major items in Applicant's 1966 construction program include $435,000 for a 25 mile 115 kv transmission line in Amada-Nogales, Arizona, $72,000 for an 8 mile 69 kv transmission line in Kingman, Arizona, $260,000 for substation improvements in Arizona, $490,000 for distribution facilities, $2.3 million for telephone service facilities and $843,000 for water supply facilities.

Written notice of the application has been given to the Arizona Corporation Commission, the Idaho Public Utilities Commission, the Public Service Board of the State of Vermont and to the Governor of each of those States. Notice was also published in the Federal Register on November 25, 1965 (30 F.R. 14694), stating that any person desiring to be heard or to make any protest with reference to said application should on or before December 9, 1965, file with the Federal Power Commission, Washington, D.C. 20426, petitions or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). On November 26, 1965, the Public Service Board of the State of Vermont filed a Notice of Intervention in this proceeding and supplemented this notice by a letter dated December 2, 1965. The Vermont Public Service Board states that it has no objection to that portion of the application which relates to the issuance of $9,500,000 worth of short-term Notes. However, regarding the issuance of Common Stock, the Public Service Board of Vermont states that it will be necessary under the Vermont statutes to hold a hearing before approving issuance of any stock by the Applicant.

The Commission finds:

(1) Applicant, a corporation, owns and operates facilities for the transmission and sale at wholesale of electric energy which is generated in the State of New York and consumed in the State of Vermont, all of which facilities are in addition to and do not include facilities used for the generation of electric energy used in local distribution or only for the transmission of electric energy in interstate commerce or facilities for the transmission of electric energy consumed wholly by the transmitter, and Applicant is, therefore, a public utility within the meaning of Section 203 of the Federal Power Act.

(2) The proposed issuance of Promissory Notes in the aggregate principal amount of $9,500,000, all as described above, will constitute an issuance of securities within the purview of Section 204 of the Act.

(3) The proposed issuance of Promissory Notes in the aggregate principal amount of $9,500,000, all as described above, will be in excess of 5% of the par value of the other securities of Applicant, and, therefore, will not be exempt by virtue of Section 204(e) from the requirements of Section 204(a) of the Act.

(4) Applicant is not organized and operating in a State, under the laws of which the issue here involved is regulated by a State Commission within the meaning of Section 204(f) of the Act, and the proposed issuance is, therefore, not exempt by virtue of that Section from the requirements of Section 204 of the Act.

(5) The proposed issuance of Promissory Notes will be exempt from the competitive bidding requirements of Section 34.1a of the Commission's Regulations under the Federal Power Act by reason of paragraph 34.1a(a)(2).

(6) The proposed issuance of securities, as hereinafter authorized, will be for a lawful object within the corporate purposes of Applicant and compatible with the public interest, which is appropriate for and consistent with the proper performance of service by Applicant as a public utility, and which will not impair its ability to perform that service, and is reasonably necessary and appropriate for such purposes.

The Commission orders:

(A) The proposed issuance of Promissory Notes in the aggregate principal amount of $9,500,000, outstanding at any one time, upon the terms and condi-

tions and confined to the purposes set forth in the application, all as described above, is hereby authorized, subject to the provisions of this order.

(B) This authorization is expressly conditioned upon the final maturity of said Notes being not later than December 9, 1966.

(C) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determination of cost or any other matters whatsoever now pending or which may come before this Commission.

(D) Nothing in this order shall be construed to imply any guarantee or obligation on the part of the United States in respect to any security to which this order relates.

Before Commissioners: Joseph C. Swidler, Chairman; Charles R. Ross, David S. Black and Carl E. Bagge.

EL PASO NATURAL GAS COMPANY, DOCKET NO. G–8932

ORDER AMENDING ORDER AUTHORIZING IMPORTATION OF NATURAL GAS

(Issued December 10, 1965)

On September 27, 1965, El Paso Natural Gas Company (Petitioner) filed in Docket No. G–8932 a petition, as supplemented on October 12, 1965, and November 12, 1965, pursuant to Section 3 of the Natural Gas Act to amend the order accompanying Opinion No. 289 (14 FPC 157) by authorizing the importation of additional quantities of natural gas for a limited period of time, all as more fully set forth in the petition as supplemented.

Petitioner seeks authorization to import at its existing Sumas, Washington, import point on the international boundary between the United States and Canada up to 50,000 Mcf at 14.9 psia of natural gas per day in addition to the presently authorized daily quantity of 300,000 Mcf. The additional quantity will be purchased from Westcoast Transmission Company and transported at the international boundary and in the United States through existing facilities. The additional quantity will be purchased on an interruptible basis through April 30, 1966, and will be used to alleviate curtailments during the 1965–66 heating season.

Inasmuch as Petitioner has experienced the necessity of curtailing interruptible sales during the past heating season and anticipates even greater curtailments during the 1965–66 heating season, it appears to be consistent with the public interest to permit the importation of the additional quantity of gas. Since the additional gas is for interruptible service, a situation could arise in which higher costs would be assigned to firm service due to the effect of the purchase of the additional quantity on purchased gas costs and peak day deliveries; and, therefore, the authorization hereinafter granted will be appropriately conditioned to require the adjustment of costs and sales used by Petitioner in any future rate proceeding.

After due notice no petition to intervene or protest to the granting of the petition has been received. A joint notice of intervention in support of the petition was filed on November 29, 1965, by the Idaho Public Utilities Commission, the Oregon Public Utilities Commissioner and the Washington Utilities and Transportation Commission. No other notices of intervention have been received.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and consistent with the public interest to authorize Petitioner to import an additional quantity of natural gas on a limited basis.

The Commission orders:

(A) The order accompanying Opinion No. 289 is amended by authorizing Petitioner to import an additional quantity of natural gas on a limited basis as hereinbefore described and as more fully described in the petition herein, and in all other respects said order shall remain in full force and effect.

(B) In any future rate proceeding Petitioner shall adjust the costs and sales offered in evidence in said proceeding by eliminating therefrom the purchased gas costs it may incur due to the additional purchases authorized herein and by eliminating therefrom the additional peak day and annual sales it may make as a result of the additional service it can render with the additional quantity of natural gas to be imported.

(C) The authorization issued herein is granted on the express condition that the interruptible service authorized herein shall be curtailed or interrupted to the extent required to meet existing or future contracted maximum delivery obligations of Applicant for firm service to its customers.

Before Commissioners: Joseph C. Swidler, Chairman; Charles R. Ross, David S. Black and Carl E. Bagge.

LONE STAR GAS COMPANY, DOCKET NO. CP66-124

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued December 10, 1965)

On October 22, 1965, Lone Star Gas Company (Applicant) filed in Docket No. CP66-124 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction during the calendar year 1966 and the operation of miscellaneous field facilities to enable Applicant to take into its certificated main pipeline system natural gas which will be purchased from producers thereof, all as more fully set forth in the application.

The purpose of this "budget-type" application is to enable Applicant to act with reasonable dispatch in contracting for and connecting to its pipeline system supplies of natural gas in various producing areas generally coextensive with said system.

The total aggregate cost of such construction, to be financed out of funds currently on hand, will not exceed $1,890,000 and the cost of any single project is to be limited to $472,500.

Due notice of the filing of the application was published in the Federal Register on November 9, 1965 (30 F.R. 14123). No petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on December 9, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Lone Star Gas Company, a Texas corporation having its principal place of business in Dallas, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order issued April 11, 1944, in Docket No. G–442 (4 FPC 565).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit within 60 days after the expiration of the authorization granted hereinafter a statement in compliance with Section 157.7(b) of the Commission's Regulations under the Natural Gas Act.

(6) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(7) The authorization hereinafter granted should be limited to construction during the calendar year 1966 and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $1,890,000, with no single project to exceed a cost of $472,500.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity is issued authorizing Applicant, Lone Star Gas Company, to construct during the calendar year 1966 and operate the proposed facilities hereinbefore described, as more fully described in the application in this proceeding, only to take natural gas supplies from producers who have received authorization from the Commission to sell natural gas to said Applicant.

(B) Applicant shall submit within 60 days after the expiration of the authorization granted by paragraph (A) above a statement in compliance with Section 157.7(b) of the Commission's Regulations under the Natural Gas Act.

(C) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(D) The authorization granted in paragraph (A) above is limited to construction during the calendar year 1966, and the total expenditures for facilities to be constructed thereunder are limited to a maximum of $1,890,000, with no single project to exceed a cost of $472,500.

Before Commissioners: Joseph C. Swidler, Chairman; Charles R. Ross, David S. Black and Carl E. Bagge.

TRANSCONTINENTAL GAS PIPE LINE CORPORATION, DOCKET NO. CP66-122

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

(Issued December 10, 1965)

On October 22, 1965, Transcontinental Gas Pipe Line Corporation (Applicant), filed in Docket No. CP66-122 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale and delivery of an additional 100 Mcf of natural gas per day to United Cities Gas Company, South Carolina Division (United Cities) at Gaffney, South Carolina, all as more fully set forth in the application.

This authorization will increase United Cities' entitlement under Applicant's Rate Schedule OG-2 to 4,000 Mcf per day from the 3,900 Mcf per day previously authorized by Commission letter dated June 25, 1965, in Docket No. CP65-181.

United Cities has requested the additional service from Applicant, stating that unexpected changes in its market requirements resulted in the need for the additional gas. Deliveries are to commence with the 1965-1966 winter heating season.

No new facilities will be required as a result of the proposed additional service.

Due notice of the filing of the application was published in the Federal Register on November 5, 1965 (30 F.R. 14023). No protest, petition to intervene or notice of intervention has been filed in this proceeding.

At a hearing held on December 9, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Transcontinental Gas Pipe Line Corporation, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of April 28, 1950, in Docket No. G-1277 (9 FPC 32).

(2) The proposed sale of increased volumes of natural gas hereinbefore described, as more fully described in the application in this proceeding, is to be a sale for resale in interstate commerce subject to the jurisdiction of the Commission and is subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The sale of increased volumes of natural gas, as proposed in the application, is required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's

compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3) and (e) of Section 157.20 of said Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Applicant, Transcontinental Gas Pipe Line Corporation, authorizing the sale of increased volumes of natural gas, as hereinbefore described and as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3) and (e)of Section 157.20 of such Regulations.

(C) The sale of increased volumes of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within six months from the date of this order.

Before Commissioners: Joseph C. Swidler, Chairman; Charles R. Ross, David S. Black and Carl E. Bagge.

CITIES SERVICE GAS COMPANY, DOCKET NO. CP66–115

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued December 13, 1965)

On October 20, 1965, Cities Service Gas Company (Applicant) filed in Docket No. CP66–115 an application pursuant to Section 7(c) of the Natural Gas Act, as implemented by Section 157.7(b) of the Commission's Regulations under the Act, for a certificate of public convenience and necessity authorizing the construction during the calendar year 1966 and the operation of routine natural gas facilities to enable Applicant to take into its certificated main pipeline system natural gas which will be purchased from producers thereof, all as more fully set forth in the application in this proceeding.

The purpose of this "budget-type" application is to augment Applicant's ability to act with reasonable dispatch in contracting for and connecting to its pipeline system new supplies of natural gas in various producing areas generally coextensive with said system.

The total cost of the facilities covered by this application will not exceed a maximum of $3,000,000, with no single project to exceed a cost of $500,000, which cost is proposed to be financed from treasury cash.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on December 9, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Cities Service Gas Company, a Delaware corporation having its principal place of business in Oklahoma City, Oklahoma, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of December 28, 1943, in Docket No. G–298 (4 FPC 471).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit within 60 days after the expiration of the authorization granted hereinafter, a statement in compliance with Section 157.7(b)(3) of the Commission's Regulations under the Natural Gas Act.

(6) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(7) The authorization hereinafter granted should be limited to construction during the calendar year 1966 and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $3,000,000, with no single project to exceed a cost of $500,000.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity is issued authorizing Applicant, Cities Service Gas Company, to construct during the calendar year 1966 the proposed facilities hereinbefore described, as more fully described in the application in this proceeding, and to operate such facilities only to take natural gas supplies from producers who have received authorization from the Commission to sell natural gas to said Applicant.

(B) Applicant shall submit within 60 days after the expiration of the authorization granted by paragraph (A) above a statement in compliance with Section 157.7(b)(3) of the Commission's Regulations under the Natural Gas Act.

(C) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraph (a) and (e) of Section 157.20 of said Regulations.

(D) The authorization granted in paragraph (A) above is limited to construction during the calendar year 1966, and the total expenditures for facilities to be constructed thereunder are limited to a maximum of $3,000,000, with no single project to exceed a cost of $500,000.

Before Commissioners: Joseph C. Swidler, Chairman; Charles R. Ross, David S. Black and Carl E. Bagge.

EL PASO NATURAL GAS COMPANY, DOCKET NOS. CP66-92 AND CP66-93

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

(Issued December 13, 1965)

On October 4, 1965, El Paso Natural Gas Company (Applicant) filed, with respect to its Southern Division, in Docket No. CP66-92 and, with respect to its Northwest Division, in Docket No. CP66-93 applications pursuant to Section 7(c) of the Natural Gas Act, as implemented by Section 157.7(c) of the Regulations under the Act, for certificates of public convenience and necessity authorizing the construction, during the calendar year 1966, and the operation of natural gas facilities for the sale and delivery of natural gas to existing authorized distributors for resale, and, also, in Docket No. CP66-93, the sale and delivery of natural gas to such distributors by means of facilities to be constructed, during the calendar year 1966, and operated by Pacific Gas Transmission Company (Pacific Gas) [1], all as more fully set forth in the applications in these proceedings.

Applicant states that it has filed the subject separate applications for its Northwest Division and its Southern Division in consideration of the forthcoming divestiture of Applicant's Northwest Division facilities to Northwest Pipeline Corporation, as ordered by the United States Supreme Court.[2]

In Docket No. CP66-92 for service to its Southern Division distributor customers, Applicant proposes to construct a maximum of thirty taps, twenty-five measuring and regulating stations, and three lateral or loop pipelines not to exceed a maximum diameter of 8⅝-inches and a maximum length of twelve miles, all together with standard appurtenances necessary for the respective operation of said facilities. The total estimated cost of the proposed maximum facilities in Docket No. CP66-92 is $300,000, which cost will be financed from current working funds.

In Docket No. CP66-93 for service to its Northwest Division distributor customers, Applicant proposes to construct a maximum of twenty taps, twenty measuring and regulating stations, and three lateral or loop pipelines not to exceed a maximum diameter of 8⅝-inches and a maximum length of twelve miles, all together with standard appurtenances necessary for the respective operation of said facilities. The total estimated cost of the proposed maximum facilities in Docket No. CP66-93 is $300,000, which cost will be financed from current working funds.

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[1] By order issued August 5, 1960, in Docket No. G-17350, *et al.* (24 FPC 134), Pacific Gas was authorized to transport for the account of Applicant natural gas purchased by the latter from Westcoast Transmission Company Limited at a point on the international boundary near Kingsgate, British Columbia. Deliveries of gas so transported are made by Pacific Gas at delivery points specified by Applicant along Pacific Gas' system in the States of Idaho, Washington and Oregon. By order issued April 6, 1962, as amended, in Docket No. CP62-59 (27 FPC 671), Pacific Gas was authorized to construct and operate taps and metering facilities at points of delivery specified by Applicant and where Applicant has been authorized to sell gas.

[2] See Notice of Applications, Consolidation of Proceedings and Requirement to File Testimony, issued August 18, 1965, regarding the application of Applicant in Docket No. CP66-27 and the applications of Northwest in Docket Nos. CP66-28, CP66-29 and CP66-30.

In each of the subject applications, Applicant states that natural gas deliveries to any one customer will not exceed 100,000 Mcf annually, and that such gas will not be sold or resold for boiler fuel purposes.

The total estimated cost of maximum facilities proposed in Docket Nos. CP66–92 and CP66–93 is $600,000 and, therefore, exceeds the cost limitation of $300,000 imposed by Section 157.7(c)(3) of the Commission's Regulations. Accordingly, Applicant requests that said cost limitation be waived.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the applications has been filed.

At a hearing held on December 9, 1965, the Commission on its own motion received and made a part of the record in these proceedings all evidence, including the applications and exhibits, submitted in support of the authorizations sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, El Paso Natural Gas Company, a Delaware corporation having its principal place of business in El Paso, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of January 11, 1944, in Docket No. G–288 (4 FPC 486).

(2) The facilities hereinbefore described, as more fully described in the applications in these proceedings, are proposed to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the proposed sales and transportation of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the proposed sales and transportation of natural gas by Applicant are required by the public convenience and necessity and certificates therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificates issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(6) The authorizations hereinafter granted should be limited to construction during the calendar year 1966 and the total expenditures for facilities thereunder should be limited to a maximum of $600,000 (a maximum of $300,000 each in Docket Nos. CP66–92 and CP66–93), with the total deliveries to any one customer in each docket not to exceed a maximum of 100,000 Mcf of natural gas per year.

(7) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit in each of the subject dockets within 60 days after the expiration of the authorizations granted hereinafter, a statement in compliance with Section 157.7(c)(8) of the Commission's Regulations under the Natural Gas Act.

(8) Good cause has been shown for waiver of the cost limitations set forth in Section 157.7(c)(3) of the Commission's Regulations under the Natural Gas Act.

The Commission orders:

(A) Upon the terms and conditions of this order, certificates of public convenience and necessity are issued authorizing Applicant, El Paso Natural Gas Company, in Docket Nos. CP66–92 and CP66–93 to construct, during the calendar year 1966, the proposed facilities hereinbefore described, as more fully described in the applications in these proceedings, and to operate such facilities and to sell natural gas by means thereof to distributors for resale and, in Docket No. CP66–93, to sell natural gas to distributors for resale by means of facilities to be constructed and operated by Pacific Gas, as hereinafter provided.

(B) The certificates issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(C) The authorizations granted in paragraph (A) above are limited to construction during the calendar year 1966 and the total expenditures for facilities to be constructed thereunder are limited to a maximum of $600,000 (a maximum of $300,000 each in Docket Nos. CP66–92 and CP66–93), with the total deliveries to any one customer in each docket not to exceed a maximum of 100,000 Mcf of natural gas per year.

(D) Applicant shall submit in each of the subject dockets within 60 days after the expiration of the authorizations granted by paragraph (A) above a statement in compliance with Section 157.7(c)(8) of the Commission's Regulations under the Natural Gas Act.

(E) The cost limitations set forth in Section 157.7(c)(3) of the Commission's Regulations under the Natural Gas Act are waived.

Before Commissioners: Joseph C. Swidler, Chairman; Charles R. Ross, David S. Black and Carl E. Bagge.

KANSAS-NEBRASKA NATURAL GAS COMPANY, INC., DOCKET NO. CP66–134

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued December 13, 1965)

On October 27, 1965, Kansas-Nebraska Natural Gas Company, Inc. (Applicant), filed in Docket No. CP66–134 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction during the calendar year 1966 and the operation of gas purchase facilities to enable Applicant to take into its certificated main pipeline system natural gas which will be purchased from producers thereof, all as more fully set forth in the application.

The purpose of this "budget-type" application is to augment Applicant's ability to act with reasonable dispatch in contracting for and connecting to its pipeline system new supplies of natural gas in various producing areas generally co-extensive with said system.

The total cost of the proposed facilities will not exceed a maximum of $1,600,000, and no single project will exceed a cost of $400,000, which costs will be paid for out of current working capital.

Due notice of the filing of the application was published in the Federal Register on November 17, 1965 (30 F.R. 14392). No protest, petition to intervene or notice of intervention has been filed in this proceeding.

At a hearing held on December 9, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Kansas-Nebraska Natural Gas Company, Inc., a Kansas corporation having its principal place of business in Hastings, Nebraska, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of April 6, 1943, in Docket No. G-259 (3 FPC 966).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit within 60 days after the expiration of the authorization granted hereinafter, a statement in compliance with Section 157.7(b)(3) of the Commission's Regulations under the Natural Gas Act.

(6) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(7) The authorization hereinafter granted should be limited to construction during the calendar year 1966, and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $1,600,000, with no single project to exceed a cost of $400,000.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity is issued authorizing Applicant, Kansas-Nebraska Natural Gas Company, Inc., to construct during the calendar year 1966 the proposed facilities hereinbefore described, as more fully described in the application in this proceeding, and to operate such facilities only to take natural gas supplies from producers who have received authorization from the Commission to sell natural gas to said Applicant.

(B) Applicant shall submit within 60 days after the expiration of the authorization granted by paragraph (A) above a statement in compliance with Section 157.7(b)(3) of the Commission's Regulations under the Natural Gas Act.

(C) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(D) The authorization granted in paragraph (A) above is limited to construction during the calendar year 1966, and the total expenditures for facilito be constructed thereunder should be limited to a maximum of $1,600,000, no single project to exceed a cost of $400,000.

Before Commissioners: Joseph C. Swidler, Chairman; Charles R. Ross, David S. Black and Carl E. Bagge.

NATURAL GAS PIPELINE COMPANY OF AMERICA, DOCKET NO. CP66–135

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued December 13, 1965)

On October 29, 1965, Natural Gas Pipeline Company of America (Applicant) filed in Docket No. CP66–135 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale and delivery of an additional Daily Contract Quantity of 200 Mcf of natural gas to United Cities Gas Company (United Cities), an existing customer of Applicant, all as more fully set forth in the application.

United Cities has requested Applicant to provide the additional gas commencing on or about December 15, 1965, to meet larger than anticipated increases in firm service demands for the 1965–66 winter season. United Cities' presently effective Daily Contract Quantity is 3,000 Mcf under Applicant's Rate Schedule G–1. Applicant's total authorized sales of United Cities will amount to 3,200 Mcf per day, after the issuance of this certificate.

No additional facilities will be required to provide the additional volumes. Deliveries will be made at an existing meter station serving Vandalia, Illinois.

The service will be rendered from Applicant's unallocated capacity.

Due notice of the filing of the application was published in the Federal Register on November 17, 1965 (30 F.R. 14393). No protest, petition to intervene, or notice of intervention has been filed in this proceeding.

At a hearing held on December 9, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Natural Gas Pipeline Company of America, a Delaware corporation having its principal place of business in Chicago, Illinois, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of October 13, 1942, in Docket No. G–235 (3 FPC 830).

(2) The proposed sale of increased volumes hereinbefore described, as more fully described in the application in this proceeding, is to be a sale for resale in interstate commerce subject to the jurisdiction of the Commission and

is subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The sale of increased volumes of natural gas, as proposed in the application, is required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3) and (e) of Section 157.20 of said Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Applicant, Natural Gas Pipeline Company of America, authorizing the sale of increased volumes of natural gas, as hereinbefore described and as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3) and (e) of Section 157.20 of such Regulations.

(C) The sale of increased volumes of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within six months from the date of this order.

Before Commissioners: Joseph C. Swidler, Chairman; Charles R. Ross, David S. Black and Carl E. Bagge.

NORTHERN NATURAL GAS COMPANY, DOCKET NO. CP66-98

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued December 13, 1965)

On October 11, 1965, Northern Natural Gas Company (Applicant) filed in Docket No. CP66-98 an application pursuant to Section 7(c) of the Natural Gas Act, as implemented by Section 157.7(c) of the Regulations under the Act, for a certificate of public convenience and necessity authorizing the construction during the calendar year 1966 and operation of natural gas facilities for the sale of natural gas to existing distributors for resale in existing market areas and for direct sales through Applicant's Peoples Division, all as more fully set forth in the application in this proceeding.

Applicant proposes to construct a maximum of 60 new delivery points for sales to existing distributing customers and a maximum of 40 new delivery points for direct sales customers. Firm volumes to be delivered will be provided from the existing contract demand of the distributor involved, or

from capacity of the existing pipeline facilities in areas where contract demand rate schedules are not applicable.

The total estimated cost of facilities proposed under this application will not exceed a maximum of $300,000 and the total deliveries to any one consumer will not exceed a maximum of 100,000 Mcf of natural gas per year.

Applicant requests a waiver of the provisions of Section 157.7(c)(1)(i) which prohibits the filing of an abbreviated application when a distributor is required to make a contribution to the Applicant for cost of construction of facilities. Applicant states that it is its policy to require distributors, including its Peoples Division, to make a contribution for the cost of constructing measuring and regulating facilities and appurtenances where no additional contract demand is being purchased by such distributors. Applicant's policy covering contributions is contained in its FPC Gas Tariff on file with the Commission.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on December 9, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Northern Natural Gas Company, a Delaware corporation having its principal place of business in Omaha, Nebraska, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of April 6, 1943, in Docket No. G-280 (3 FPC 967).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation and/or sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(6) The authorization hereinafter granted should be limited to construction during the calendar year 1966 and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $300,000, with the total deliveries to any one customer not to exceed a maximum of 100,000 Mcf of natural gas per year.

(7) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit within 60 days after the expiration of the authorization granted hereinafter, a statement in compliance

with Section 157.7(c)(8) of the Commission's Regulations under the Natural Gas Act.

(8) The certificate issued hereinafter should be conditioned upon Applicant's compliance with the provisions of Section 157.7(c)(7) of the aforesaid Regulations.

(9) Good cause has been shown for waiver of that portion of Section 157.7(c)(1)(i) of the Commission's Regulations under the Act which prohibits the filing of an abbreviated application where contribution toward the cost of the facilities is to be required of distributors.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity is issued authorizing Applicant, Northern Natural Gas Company, to construct during the calendar year 1966 the proposed facilities hereinbefore described, as more fully described in the application in this proceeding, and to operate such facilities to sell natural gas to distributors for resale and to direct customers as hereinafter provided.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(C) The authorization granted in paragraph (A) above is limited to construction during the calendar year 1966 and the total expenditures for facilities to be constructed thereunder are limited to a maximum of $300,000, with the total deliveries to any one customer limited to a maximum of 100,000 Mcf of natural gas per year.

(D) Applicant shall submit within 60 days after the expiration of the authorization granted by paragraph (A) above a statement in compliance with Section 157.7(c)(8) of the Commission's Regulations under the Natural Gas Act.

(E) The certificate issued by paragraph (A) above is expressely conditioned upon Applicant's compliance with the provisions of Section 157.7(c)(7) of the aforesaid Regulations and, further, the certificate is granted upon the express condition that any interruptible service resulting therefrom shall be curtailed or interrupted to the extent required to meet existing or future contracted maximum delivery obligations of Applicant for firm service to its customers.

(F) This certificate shall not entitle any industrial customers to whom firm deliveries are authorized herein to any priorities or rights to additional gas for metering any future increases in their requirements at the expense of resale customers desiring to acquire additional gas to meet any future increases in their requirements.

(G) Applicant's request for waiver of that portion of Section 157.7(c)(1)(i) of the aforesaid Regulations which prohibits the filing of an application where contribution to the cost of facilities is to be required from distributors is granted.

Before Commissioners: Joseph C. Swidler, Chairman; Charles R. Ross, David S. Black and Carl E. Bagge.

TEXAS GAS TRANSMISSION CORPORATION, DOCKET NO. CP65–423; UNION OIL COMPANY OF CALIFORNIA, DOCKET NO. CI65–1351

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

(Issued December 13, 1965)

On June 28, 1965, Texas Gas Transmission Corporation (Texas Gas) filed in Docket No. CP65–423 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of facilities and the transportation of natural gas to be purchased from Union Oil Company of California (Union Oil) in the North Fresh Water Bayou Field, Vermilion Parish, Louisiana, all as more fully set forth in the application.

Texas Gas proposes to construct and operate one meter station and approximately 36.3 miles of twenty-inch pipeline between a point on its Eunice-Thibodaux lines, eight miles north (downstream) of its Lafayette, Louisiana, compressor station, and Union Oil's delivery point in the North Fresh Water Bayou Field. Estimated cost of the proposed facilities is $3,538,000, which will be financed from funds on hand.

On June 21, 1965, Union Oil filed in Docket No. CI65–1351 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale for resale and the delivery of natural gas in interstate commerce to Texas Gas at an initial rate of 20.625 cents per Mcf at 15.025 psia, all as more fully set forth in the application. On July 19, 1965, the Public Service Commission of the State of New York filed a notice of intervention in Docket No. CI65–1351, and on September 15, 1965, Union Oil filed a settlement proposal in said docket. In its settlement proposal Union Oil has agreed to accept a certificate conditioned on the reduction of future tax reimbursement from seventy-five percent to fifty percent for the first five years commencing with the date of initial delivery with the proviso that after the end of the five-year period Union Oil will have the right to file prospectively for seventy-five percent tax reimbursement for any new taxes levied during the five-year period as well as for increased taxes levied after said period. On October 8, 1965, the Public Service Commission advised the Commission that it would not oppose the granting of a certificate to Union Oil which includes the terms of the settlement proposal.

The contract between Texas Gas and Union Oil provides for deliveries in excess of the maximum contract quantity if the deliverability is higher than that quantity, a provision that quantities taken in excess of the annual minimum takes will be deleted from subsequent minimum-take obligations, a five-year build-up in daily minimum contract quantities starting at a 1 to 12,500 reserve ratio and gradually building up to a 1 to 8,000 reserve ratio, a five-year make-up period for deficient takes, stringent deliverability requirements in that Union Oil must sustain a delivery of the contract quantity for fourteen consecutive days with failure to do so resulting in a reduction in contract quantity, a buyer's option to include any reserves developed in excess of 1¼ billion Mcf, a delivery pressure of 1,200 psig, and a firm rate of 20.625 cents

per Mcf for the first ten years. 8,907 acres are dedicated to the contract and reserves are estimated at 221 million Mcf. Texas Gas has filed a petition for leave to intervene in support of the application.

The application in Docket No. CI65–1351 is presented to the Commission in the nature of a settlement concurred in by the Applicant, the Commisssion staff and the interveners. While the initial price is in excess of the Commission's recent "in-line" determination, it is below the guideline price set forth in the Statement of General Policy No. 61–1 and combined with other contract provisions more favorable than those usually provided in this area. Therefore, the application will be granted.

After due notice no petitions to intervene, notices of intervention or protests to the granting of the applications have been filed other than those filed by the Public Service Commission of the State of New York and Texas Gas.

At a hearing held on December 9, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the applications and exhibits thereto, submitted in support of the authorizations sought, and upon consideration of the record,

The Commission finds:

(1) Applicant, Texas Gas Transmission Corporation, a Delaware corporation having its principal place of business in Owensboro, Kentucky, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of March 30, 1948, in Docket No. G–855 (7 FPC 213).

(2) Applicant, Union Oil Company of California, is engaged in the sale for resale of natural gas in interstate commerce for ultimate public consumption and is, therefore, a "natural-gas company" as heretofore found by the Commission.

(3) The facilities hereinbefore described, as more fully described in the application in Docket No. CP65–423, will be used for the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof and the transportation of natural gas by Texas Gas are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(4) The sale of natural gas hereinbefore described, as more fully described in the application in Docket No. CI65–1351, will be made in interstate commerce subject to the jurisdiction of the Commission, and such sale by Union Oil, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, is subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(5) Applicants are able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(6) The proposed construction and operation of facilities and the transportation and sale of natural gas by Applicants is required by the public convenience and necessity, and certificates therefor should be issued as hereinafter ordered and conditioned.

(7) Public convenience and necessity require that the certificate issued hereinafter in Docket No. CP65–423 and the rights granted thereunder should be conditioned upon Texas Gas' compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms

and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is issued authorizing Texas Gas Transmission Corporation to construct and operate facilities and to transport natural gas as hereinbefore described, all as more fully described in the application in Docket No. CP65–423, upon the terms and conditions of this order.

(B) A certificate of public convenience and necessity is issued upon the terms and conditions of this order authorizing the sale by Union Oil Company of California of natural gas in interstate commerce for resale, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, all as hereinbefore described and as more fully described in the application in Docket No. CI65–1351.

(C) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Texas Gas' compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(D) The construction authorized in paragraph (A) above shall be completed and the facilities placed in actual operation as provided by paragraph (b) of Section 157.20 of the Regulations under the Natural Gas Act within six months from the date on which this order issues.

(E) The certificate issued in paragraph (B) above is not transferable and shall be effective only so long as Union Oil continues the acts or operations hereby authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations and orders of the Commission.

(F) The grant of the certificate issued in paragraph (B) above shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act or of Part 154 or Part 157 of the Commission's Regulations thereunder and is without prejudice to any findings or orders which have been or which may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against Union Oil. Further, our action in this proceeding shall not foreclose nor prejudice any future proceedings or objections relating to the operation of any price or related provisions in the gas purchase contract herein involved. Nor shall the grant of the certificate aforesaid for service to the particular customer involved imply approval of all of the terms of the contract, particularly as to the cessation of service upon termination of said contract, as provided by Section 7(b) of the Natural Gas Act. Nor shall the grant of the certificate aforesaid be construed to preclude the imposition of any sanctions pursuant to the provisions of the Natural Gas Act for the unauthorized commencement of any sale of natural gas subject to said certificate.

(G) The certificate issued in Docket No. CI65–1351 is conditioned upon the submittal by Union Oil of a contract amendment as a supplement to its future rate schedule filing which amendment shall provide for a reduction in future tax reimbursement from seventy-five percent to fifty percent for the five-year period commencing with the date of initial delivery.

Before Commissioners: Joseph C. Swidler, Chairman; Charles R. Ross, David S. Black and Carl E. Bagge.

J. S. RUSHING, DOCKET NO. G-6085

ORDER AMENDING ORDER ISSUING CERTIFICATE AND ACCEPTING SUPPLEMENT TO FPC GAS RATE SCHEDULE FOR FILING

(Issued December 14, 1965)

On August 13, 1965, J. S. Rushing (Petitioner) filed in Docket No. G-6085 a petition to amend the order issuing a certificate of public convenience and necessity in said docket by deleting therefrom authorization to sell natural gas to Arkansas Louisiana Gas Company from all formations below 8,000 feet from the surface in the Ada Field, Webster and Bienville Parishes, Louisiana, all as more fully set forth in the petition.

Petitioner and the purchaser have amended their contract, J. S. Rushing FPC Rate Schedule No. 1, by extending the term thereof only with respect to sales from production from formations above 8,000 feet below the surface. The only gas presently being produced is from depths of less than 8,000 feet and Petitioner states that gas cannot be produced economically from deeper formations if the price received for such gas is limited to that in the present contract.

In view of the limited nature of Petitioner's existing operations and the fact that he cannot develop economically the acreage below a depth of 8,000 feet, the order issuing a certificate to Petitioner will be amended by deleting therefrom authorization to sell natural gas from such formations. However, the action taken in this case should not be construed as establishing a general Commission policy.

After due notice no petition to intervene, notice of intervention or protest to the granting of the petition has been received.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the order issuing a certificate of public convenience and necessity in Docket No. G-6085 should be amended as hereinafter ordered and that the related rate schedule supplement should be accepted for filing.

The Commission orders:

(A) The order issuing a certificate of public convenience and necessity in Docket No. G-6085 to J. S. Rushing is amended by deleting therefrom authorization to sell natural gas from formations below the depth of 8,000 feet from the surface, and in all other respects said order shall remain in full force and effect.

(B) The amendment dated February 16, 1965, insofar as it deletes production from formations below the depth of 8,000 feet, is accepted for filing,[1] effective on the date of this order and is designated as Supplement No. 6 to J. S. Rushing FPC Gas Rate Schedule No. 1.

[1] The amendment has heretofore been accepted for filing insofar as it provides for a rate increase and extends the term of the contract for production from formations above the depth of 8,000 feet.

Before Commissioners: Joseph C. Swidler, Chairman; Charles R. Ross, David S. Black and Carl E. Bagge.

TRANSWESTERN PIPELINE COMPANY, DOCKET NO. CP66-143

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued December 14, 1965)

On November 5, 1965, Transwestern Pipeline Company (Applicant) filed in Docket No. CP66-143 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of a 1,000 horsepower compressor unit and the sale and delivery of up to 37,500 Mcf of natural gas per day to Panhandle Eastern Pipe Line Company (Panhandle), as more fully set forth in the application.

The gas is to be delivered at an existing interconnection of Applicant's Cactus Lateral and Panhandle Sunray Pipeline in Sherman County, Texas, where Applicant is now delivering up to 25,000 Mcf per day to Panhandle, pursuant to the Commission's certificate order issued on June 29, 1965, in Docket Nos. CP65-362 (Applicant) and CP65-370 (Panhandle) 33 FPC 1304. The authorization issued in those dockets will expire on December 31, 1965, or when Applicant commences deliveries of exchange gas to Natural Gas Pipeline Company of America on the Cactus Lateral as authorized in Docket Nos. CP65-320 and CP65-325, whichever is earlier.

The sale of up to 37,500 Mcf per day, as proposed by the instant filing, will commence upon the termination of the present sale, and it will remain in effect until December 31, 1966, or until authorization is received in Docket No. CP65-236 or Docket No. CP65-237, which are competitive proposals for Permian Basin supply lines, or until authorization is obtained for the sale of gas to Pacific Lighting Gas Supply Company in Docket Nos. CP63-204 and CP64-91. Applicant is given the election, upon 90 days' notice to Panhandle, either to terminate the proposed sale or to reduce the volumes to be delivered under the proposed sale, if any of the said authorizations are granted prior to December 31, 1966, as provided in the Gas Sales Agreement dated October 25, 1965, executed by Applicant and Panhandle.

Applicant will construct the compressor unit and related facilities at its compressor station site P-3 near Pampa, Texas. The estimated cost of the facilities to be constructed is $223,000, which will be financed out of current working funds. The proposal is economically feasible.

Due notice of the filing of the application was published in the Federal Register on November 20, 1965 (30 F.R. 14538). No petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on December 9, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Transwestern Pipeline Company, a Delaware corporation with its principal place of business in Houston, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found

by the Commission in its order of August 10, 1959, issued in Docket No. G–14871, *et al.* (22 FPC 391).

(2) The facilities hereinbefore described and as more fully described in the application in this proceeding are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the transportation and sale of natural gas by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the transportation and sale of natural gas by Applicant are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of said Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Transwestern Pipeline Company authorizing the construction and operation of the facilities and the transportation and sale of natural gas as hereinbefore described and as more fully set forth in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities authorized shall be completed and placed in actual operation and the transportation and sale of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within one year from the date of this order.

OPINION NO. 482

UNITED STATES DEPARTMENT OF THE INTERIOR, BONNEVILLE POWER ADMINISTRATION, DOCKET NOS. E–6611, E–6905 AND E–7242

OPINION AND ORDER CONFIRMING AND APPROVING RATE SCHEDULES

(Issued December 14, 1965)*

Syllabus

1. Standards to be applied by Commission in passing on Bonneville's rate schedules are found in Bonneville Project Act and Flood Control Act of

*Reconsideration and Stay denied by order issued February 11, 1966, 35 FPC 227.

1944—these acts provide a dual standard of providing consumers with power benefits at lowest possible price consistent with good business practices as well as protecting interests of United States in amortizing its investment within reasonable period. P. 1465.

2. Commission jurisdiction can neither be analogized to an independent rate investigation nor to appellate function of United States Courts of Appeals over Commission decisions under Federal Power Act—it evolves from unique relationship between Department of the Interior and the Commission. P. 1465.
3. Commission's role is to review proposal of Secretary of Interior and confirm or approve, if on basis of independent judgment, it comports with dual statutory standard. P. 1465.
4. It has long been established that 50 years is a reasonable period within which to repay government's investment—there is no reason to depart from that period here. P. 1466.
5. It was entirely proper for Bonneville to use 40 years as representing the average service life of the transmission facilities. P. 1466.
6. In view of risks, Bonneville's management should be allowed reasonable margin of safety in meeting obligations; based on repayment study, risks that might add to obligations and possible increases in cost, relatively modest increase in rate level was not only reasonable but obligatory. P. 1468.
7. Commission concludes that rates presently established must under projected assumptions, be sufficient to insure that necessary contributions to amortization of Federal investment is made on schedule throughout the 50 years following date of investment in last project on system. P. 1468.
8. Secretary of the Interior exercised reasonable judgment in making provision for repaying replacement costs by adopting annuity method and amount established for such costs is reasonable. P. 1468.
9. Commission finds nothing militating against proposed increase with respect to impact of rate increase on the purchasers of power. P. 1469.
10. Bonneville, having consulted its customers at length, arrived at a reasonable rate structure to meet problems of itself and customers and designed to encourage widest possible use of electric power. P. 1470.
11. In a proceeding arising under Sections 5 and 6 of Bonneville Project Act and Section 5 of the Flood Control Act of 1944, Commission *confirms* and *approves* proposed rate schedules of Bonneville Power Administration.

Charles F. Luce, Administrator, for the Bonneville Power Administration.
Ralph H. Wickberg for the Idaho Public Utilities Commission.
Gus Norwood for Northwest Public Power Association.
Ken Billington for Washington Public Utility Districts Association.
James R. Cunningham for the Washington Utilities and Transportation Commission.
Dale T. Crabtree for the Oregon Public Utility Commissioner.
Robert Marritz for the National Rural Electric Cooperative Association.
Allan Hart and *William A. Dittmer* for Industrial Customers.
Leonard D. Eesley for the Staff of the Federal Power Commission.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

O'CONNOR, *Commissioner:*

This is a proceeding arising under Sections 5 and 6 of the Bonneville Project Act[1] and Section 5 of the Flood Control Act of 1944[2] with respect to rate schedules proposed by the Bonneville Power Administration to become effective December 20, 1965 and submitted for our confirmation and approval by the Secretary of the Interior on September 3, 1965. Bonneville acts as a marketing and transmission agency for a number of Federal electric generating projects in the Pacific Northwest. This particular proceeding pertains to rates for projects of the Corps of Engineers, and related transmission facilities, which are established under the Bonneville Act and the Flood Control Act. Additionally, while rates for power from projects of the Bureau of Reclamation are not subject to our approval, the proposed rates are also applicable to them, since the Reclamation projects are part of the same system as Bonneville, and financial data presented by Bonneville include them too.

A general review of Bonneville's rate schedules has been made by the Commission every five years. The Commission last approved Bonneville's wholesale rate schedules on December 16, 1959, for the five-year period commencing December 20, 1959 (22 FPC 1046); however, in 1964 with the concurrence of its customers the Secretary asked for a one-year extension of the approval of the existing rates. The request was based upon the statement of the Secretary that extensive studies envisaged a rate increase and further time was necessary to hold conferences with the customers of Bonneville that would be affected before the final rate proposals were submitted to the Commission. Accordingly we extended the approval of the existing schedules (with one amendment) until December 20, 1965 (32 FPC 1478).

The proposed new rate schedules, and the general rate schedule provisions applicable thereto, would increase Bonneville's revenues during the next nine years by about three percent, or an average annual amount of $4,000,000. The rates are included in six rate schedules, designated E–5, F–5, C–5, P–2, S–1, and H–4. The Secretary requests approval of the new rate schedules to supersede the existing rate schedules in their entirety. The proposed schedules would be applicable to Bonneville's sales of power and energy from projects of the Bureau of Reclamation and Corps of Engineers, either existing, under construction, or authorized, together with the currently unauthorized Grand Coulee Third Power Plant.[3]

A number of protests against the proposed increases were filed by electric cooperatives, cities, public utility districts, groups of industrial customers, individuals, associations, the Public Utility Commissioner of Oregon, the Oregon Department of Commerce, the Washington Utilities and Transportation Com-

[1] 50 Stat. 734, 16 U.S.C. 832d and 832e.

[2] 58 Stat. 890, 16 U.S.C. 825s.

[3] The study assumes that the first units of the unauthorized Grand Coulee Third Power Plant will commence operation in 1973. We agree that inclusion of this project, which will help the overall repayment situation, is justified here because of the likelihood of its authorization. In fact, this development is contemplated by the treaty signed January 17, 1961, between the United States and Canada relating to the Cooperative development of the Columbia River Basin.

Bonneville's completed projects include Bonneville, Grand Coulee, Hungry Horse, Detroit, McNary, Big Cliff, Lookout Point, Albeni Falls, Dexter, Chief Joseph, Chandler, The Dalles, Roza, Ice Harbor, Hills Creek, Cougar, Minidoka, Boise Diversion, Black Canyon, Anderson Ranch, and Palisades; projects under construction include Green Peter, Foster, John Day, Lower Monumental, Little Goose, and Dworshak; and projects now authorized include Libby, Lower Granite, Asotin, Lost Creek, Fremont, and Grand Coulee-Pump Turbines.

mission, and the Idaho Public Utilities Commission. In order to assist us in carrying out our statutory responsibilities we provided by order of October 29, 1965, [unreported] for an oral hearing before the whole Commission on the proposed rate schedules. At the hearing presentations were made by the Administrator of Bonneville, representatives of the Idaho Public Utilities Commission, the Northwest Public Power Association, the Washington Public Utility Districts Association, the Washington Utilities and Transportation Commission, the Oregon Public Utility Commissioner, the National Rural Electric Cooperative Association and a group of industrial customers.

The standards to be applied by us are found in the Bonneville Project Act and the Flood Control Act of 1944. These acts provide a dual standard as noted by several of the parties including the Secretary. Under the Bonneville Act (Section 6) it is provided that "such rate schedules * * * shall be fixed * * * with a view of encouraging the widest possible diversified use of electric energy"; whereas under Section 7 "Rate schedules shall be drawn having regard to the recovery * * * of the cost of producing and transmitting such electric energy, including the amortization of the capital investment over a reasonable period of years." Section 5 of the Flood Control Act directs that the Secretary of the Interior dispose of the energy "to encourage the most widespread use thereof at the lowest possible rates to consumers consistent with sound business principles, the rate schedules to become effective upon confirmation and approval by the Federal Power Commission." This section also has a provision similar to the Bonneville Act with respect to amortization.

In applying this dual standard a question arises as to the scope of the Commission's consideration of the proposed rates. The Secretary of the Interior argues that the Commission's jurisdiction is limited to ascertaining whether he has properly exercised his discretionary authority within the framework of the Bonneville Act and the Flood Control Act. On the other hand some of the protestants argue that we should proceed as though examining the rates proposed by a private utility under the Federal Power Act. Our jurisdiction, however, can neither be analogized to an independent rate investigation nor to the appellate function of United States Courts of Appeals over Commission decisions under the Federal Power Act. It evolves from a unique relationship between the Department of the Interior, a part of the Executive Branch, with managerial and ratemaking expertise over its projects, and, the Federal Power Commission, an independent agency of the Congress with special expertise in ratemaking. In establishing this relationship Congress did not limit us to the function of assuring that the Secretary had complied with the bare legal requirements of the statute. It expected us to apply our independent expertise in evaluating the rates set by the Secretary. On the other hand, investing the Commission with the responsibility of reviewing Bonneville's rates, Congress obviously did not mean that we were to supplant the Secretary's responsibility for initiating appropriate rates, nor were we to make a *de novo* determination. The statutory standard leaves to the Secretary a measure of discretion. It follows, therefore, that we need not necessarily reach the same conclusion as the Secretary. Our role is to review the Secretary's proposal and confirm and approve it if we conclude, on the basis of our independent judgment, that it comports with the dual statutory standard of providing consumers with the benefits of power at the lowest possible price consistent with good business practices as well as protecting the interests of the United States in amortizing its investment in the projects within a reasonable period.

The Secretary made an extensive presentation in support of the proposed rates with the filing and at the hearing. The heart of the presentation is what is known as the Columbia River Federal Power System-Repayment Study. Its purpose is to determine whether Bonneville's existing wholesale power rates will be sufficient to repay all obligations within a reasonable repayment period as provided by the statute. The Secretary showed that under the present rates, repayments would not be made in full within a reasonable period when certain future projects are taken into account, whereas the proposed rates would enable Bonneville to meet its obligations to Congress without a substantial adverse impact upon the economy of the region.

A basic element in Bonneville's Repayment Study is the "reasonable period of years" for the amortization of the Federal investment. It has long been established that 50 years is a reasonable period within which to repay the government's investment.[4] The 50-year repayment period has also been prescribed by the Bureau of the Budget as one of the criteria for its review of proposed Federal investment in hydro projects.[5] We see no reason to depart from the 50-year period here.

Bonneville uses a 40-year period in which to amortize the initial investment costs of its transmission facilities. Contemperaneous construction of the Bonneville Act by Bonneville has been that the transmission facilities should be amortized separately on the basis of their average service lives. Formerly Bonneville used a 35-year period, because it was thought that period represented the average service life of such facilities; it now believes that 40 years is the appropriate period. While some of the protestants contend that the 50-year period should be used for all facilities, we are of the opinion that it was entirely proper for Bonneville to use 40 years for the transmission facilities as representing the average service life of such facilities.

A question arises as to what constitutes the 50-year period. We agree with the Secretary that the system as a whole must be considered and that we should look at the period of repayment for the system. Bonneville sells power from a number of plants. These projects are integrated electrically and hydraulically. As other projects are built and commence operation, they will also be integrated into the system. Therefore, we think it entirely reasonable and proper to treat revenues and requirements as a whole in view of the contemplated developments extending into the later part of this century and to extend our consideration, as the Secretary does, to 50 years after the installations of all contemplated power generating and transmission facilities or approximately until the year 2046.[6] In following this method the Secretary applies estimated revenue from future projects to the amortization of existing projects, and likewise applies the revenue from existing projects, after they have been fully amortized, to the repayment of projects not as yet amortized.

Specifically the Secretary shows two repayment studies, one based on existing rates and one based on the proposed rates. He estimated annual revenues, until the year 2046, from which he subtracts the sum of estimates of annual operation and maintenance expenses, annual provision for replacements, and interest charges on the unamortized investment in power generating and

[4] See House Document No. 172, 79th Congress, p. 24; Senate Report No. 167, p. 28, on Supplemental Appropriation Bill 1965, H.R. 7091, 89th Congress. Compare Boulder Canyon Project Act (45 Stat. 1057, 1059) Federal Power Act, Section 6, 41 Stat. 1063, 1067; 16 U.S.C. 800.

[5] Bureau of the Budget Circular No. A–47, December 31, 1952, p. 13.

[6] This was the procedure followed in *United States Department of the Interior, Southeastern Power Administration*, 32 FPC 4, 7.

transmission facilities. The remainder each year is the amount available for amortization of the original investment. The studies show that under the existing rates there would be some amortization of the power investment in every year until the entire investment is amortized, except for the years 1975, 1976 and 1977. Under the proposed rates, 1975 would be the only year in which there would be no amortization of investment costs.

The Secretary also shows annually (for both the existing and proposed rates) the unamortized investment compared with what he calls the "allowable unamortized investment". This last is the total investment in service less the items that have been completely amortized. Where the allowable unamortized investment is greater than the unamortized investment the repayment period standards are being met, but where the unamortized investment is not reduced fast enough so that it is greater than the allowable figure this means that, under the assumptions of the study, the standards of the statute are not being met. Under the existing rates the study shows the repayment standards are met until the year 2019 but then there is a deficit in each of the following 12 years. Under the proposed rates, however, the allowable figures remain higher than the unamortized investment through the year 2028 when all of the original investment is amortized.

Although we have given considerable attention to this study, we are fully aware that it is based on estimates and assumptions with regard to the building of certain projects a considerable distance in the future. The situation might be changed by an increase in revenues as the protestants point out or by the incurrence of additional obligations as discussed below. We will, of course, have an opportunity to review the effect of such changes in 1969 and at five-year intervals thereafter. In this review we are considering the needs of the system as they presently appear to us. Our conclusion on the Bonneville Repayment studies is that the new rates meet the standards of the statute.

In appraising the results of the repayment study we bear in mind that Bonneville has made a determined effort to lower costs and increase revenues so as to minimize the necessity for a rate increase. The beneficial effects which will result from the Pacific Northwest-Pacific Southwest Intertie and the treaty with Canada for joint development of the Columbia River are reflected in the payout schedule. Adoption of the 50-year system-repayment plan reduced payout requirements about $9 million per year. The use of new cost allocations for The Dalles, Grand Coulee, and McNary projects lowered the investment costs allocated to power by about $89 million. Re-evaluation of the service lives of transmission facilities resulted in using an average service life of 40 years, instead of 35 years. Even with all of these changes the repayment schedule based on existing rates demonstrates that the costs of some projects in the system could not be repaid within 50 years of their in-service dates.

We also take into account the distinct possibility that certain obligations will be greater than predicted. For instance it was assumed that for the three billion dollars of investment to be made in the next ten years the interest rate will remain the same as it is now. A mere one-eighth of a percent increase in the average rate of interest on that investment would amount to $3.75 million a year, or nearly the entire proposed rate increase. It was also assumed that operation and maintenance costs would not escalate beyond 1975; that the Hanford plant would continue to be used for atomic materials as well as power until 1972; and that the non-federal High Mountain Sheep project would not be completed until 1975. If High Mountain Sheep should

be completed earlier, the federal system's sales and revenues will be substantially less than estimated in the repayment study.

Moreover, the proposed rate increase ignores any possibility of a rise in the cost of construction. The first two projects, Bonneville and Grand Coulee, were very low cost and Chief Joseph not much more, while later dams have been at higher cost. Transmission costs have also risen although this increase has been limited by the use of automation and higher voltage lines which carry proportionately much more power. While such cost increases have already been taken into account, further increases may not have been considered in the repayment study. In view of these risks the manager of Bonneville, like any prudent manager of a business, should be allowed a reasonable margin of safety in meeting his obligations. Therefore based on the repayment study, the risks that might add to Bonneville's obligations and the possible increases in cost, we think that the relatively modest increase in the rate level here proposed was not only reasonable but obligatory.

A further question arises as to what service period we should consider in evaluating the adequacy of the rates established by the Secretary. Protestants claim that the Secretary errs in seeking now to establish rates adequate to insure the sufficiency of the repayment contributions throughout the 50-year system period, extending approximately until 2046. Protestants generally accept the validity of the system repayment period but argue that, since we must re-examine these rates in 1969, our statutory obligation is fulfilled if the present rates are adequate to keep the amortization payments current for the 50-year period following that date, or until the year 2019.

Were we to assume the protestants' position, we could not presently confirm that the rates established by the Secretary would insure repayment of the Federal investment within the period contemplated by the statute. We conclude, that the rates presently established must, under the projected assumptions, be sufficient to insure that the necessary contributions to the amortization of the Federal investment is made on schedule throughout the 50 years following the date of the investment in the last project on the system. Thus if implementation of the new rates were postponed until 1969, as shown by the presentation of the industrial protestants, there would be an actual failure to meet the repayment requirement in the year 2024. The margin of safety, particularly important in view of unforeseen events such as those discussed above, would be even smaller. Therefore, in order to avoid greater rate increases later, we think the rates should be adjusted to the extent presently necessary.

The protestants also object to the Secretary's use of an annuity basis for showing estimated annual costs of replacements. The necessity for estimating costs of replacements arises because some items appurtenant to the dams and generating equipment have service lives of less than the 50-year amortization and have to be replaced before that time. Likewise there are items of transmission equipment that will have to be replaced before the end of the 40-year period. Some of the protestants, however, argue that the power users should not have to pay for the amortization of the initial facilities and at the same time pay for necessary replacements. They would treat each replacement as an additional capital investment to be amortized over its service life, or to be amortized over a 50-year period.

In our opinion the Secretary exercised reasonable judgment in making provision for repaying replacement costs by adopting the annuity method, and the amount estimated for such costs is reasonable. The statutes (Section 7 of the Bonneville Act and Section 5 of the Flood Control Act) relate

to the amortization of the capital investment "over a reasonable period of years", a provision clearly for the purpose of recouping the government's investment within the 50-year period. There is in the filing before us more than one method of providing for amortization of the replacements. For most of the Corps projects the annuity is based on paying within the project's 50-year payout period all of the replacements made during that period. For a few of the Corps projects the annuity replacement is based on paying for all replacements within a 100-year period. For Bonneville's transmission system the replacement annuity will be paid from the date of the original investment until the end of the service life of the replacement. Thus those replaced items having a life extending beyond the payout period will leave some unpaid amount at the end of the 40-year period. A sinking fund is utilized by the Bureau of Reclamation that will accumulate the amount of each replacement by the time the replacement is made. However, this replacement annuity is only five percent of the total replacement annuity and is not a significant factor in the repayment analysis.

While the present customers are required to pay in part for replacement items at the same time the cost of the original units is being amortized, this is because of the mechanics of the annuity method used. The cost to customers will not be greater, even initially, since the adequacy of revenues is not tested on an individual project basis or on a year-to-year basis but rather over the repayment period for the whole system. Whether the purchasers of the power pay for the replacements from the date of the initial investment at a lower annual rate or commence paying at the time of the replacement at a necessarily higher figure, the resulting payout will be approximately the same. And while present customers, in effect, will be paying something for replacements to be utilized by their successors they will at the same time be paying less per year for the original items and for replacements already made. In short the fallacy of protestants' argument is that the validity of the Secretary's program for paying for replacements of a major system with varying service lives cannot be fairly tested by focusing on individual replacement items to be made in the future.

Turning to the other standard of the statute, the impact of the rate increase on the purchasers of power, we find nothing militating against the proposed increase. The statutory criterion of "encouraging the widest possible diversified use of electric energy," obviously does not mean rates so low as to prevent the Columbia Basin projects from meeting the statutory repayment criteria. We are, in effect, directed by this language to prevent an unjustified increase.

We find that Bonneville's proposed increase is justified, when the facts are considered. Bonneville has shown that the proposed increase will have little impact on the economy of the area and will not discourage the use of electric energy. As Bonneville points out, since the middle of 1962 Bonneville has entered into new contracts for the sale of 468,000 kw of firm power and 110,000 kw of interruptible power to industry. It is now engaged in negotiations for the sale of additional power.

The design of the new rates proposed by Bonneville has caused few protests. The customers, in general, endorse the proposed changes in rate design. Bonneville points out that modifications of the rate design are needed to recognize the changing economies of supplying energy from the Federal hydro projects in that the major impact of additional costs falls on building the supply of firm energy.

Bonneville recognized that a change in the rate structure would not affect all customers with absolute equality because of their different load characteristics and operations. However, it took steps to ameliorate the effect of the changes and to provide more flexibility. Among other things it relaxed the ratchet provisions applicable to demand charges, adopted a 60-minute instead of a 30-minute demand interval, and provided a discount for purchasers serving sparsely settled areas. For the first four years of service under the new rates it also provided a 2 percent floor and a 6 percent ceiling in rate increases for customers purchasing all of their energy requirements from Bonneville. A new grade of power, called modified firm, and no increase in the rate for interruptible power, is expected to limit the increase in power billings to direct-service industries to about 2 percent. In our opinion Bonneville, which consulted its customers at length, has arrived at a reasonable rate structure to meet the problems of itself and its customers, and we find that the rate structure is designed within the meaning of the statute to encourage the widest possible use of electric energy.

In view of the foregoing considerations we shall confirm and approve Bonneville's proposed rate schedules and general rate schedule provisions.

The Attorney-General of the State of Oregon and the Northwest Public Power Association have requested opportunity to file additional briefs. The Secretary filed in opposition to Oregon's request. In view of the time that all parties had to acquaint themselves with the proposed rates, the filings of data and arguments made before the hearing, and the full arguments made at the hearing itself, we are of the opinion that no purpose would be served by the filing of such briefs.

The Commission further finds:

(1) It is appropriate for the purposes of the Bonneville Act and Section 5 of the Flood Control Act of 1944 that Bonneville's Rate Schedules E–5, F–5, C–5, R–2, S–1, H–4, and its General Rate Schedule Provisions effective December 20, 1965, be confirmed and approved for a period ending December 20, 1969.

(2) It is appropriate for the purposes of the Bonneville Act and Section 5 of the Flood Control Act of 1944 that the special applications of Bonneville's rates and charges embodied in Docket No. E–6611, and the rates and charges contained in contracts with the cities of Coulee Dam and Grand Coulee, Docket No. E–6905, be likewise confirmed and approved for a period ending December 20, 1969. With respect to Docket No. E–6611 any stipulations as to purchase of firm power will also extend to purchase of the new class of modified firm power made available under the new rate schedules.

The Commission orders:

(A) The wholesale rate schedules, general rate schedule provisions, and the special applications of rates and charges referred to in the finding clauses are confirmed and approved for a period beginning December 20, 1965 and ending December 20, 1969.

(B) The requests for permission to file briefs by the Attorney-General of the State of Oregon and the Northwest Public Power Association are denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

ALABAMA POWER COMPANY, PROJECT NO. 618

ORDER APPROVING REVISED PROJECT EXHIBITS

(Issued December 15, 1965)

Application was filed on February 10, 1965, by Alabama Power Company, licensee for Project No. 618, for Commission approval of Revised Exhibit L and an "Addendum to Revised Exhibit M" to show proposed changes and modifications to the ungated portion of the spillway for the constructed Jordan Dam No. 1 development of the project, located adjacent to the proposed Jordan Dam No. 2 development of the licensee's Project No. 2146 also situated on the Coosa River, Alabama.

The license for Project No. 618 now provides for the installation of spillway gates on the ungated section of the Jordan Dam No. 1 spillway for the purpose of increasing the maximum normal water surface elevation of the Jordan reservoir from 245 to 252 feet. As shown on the Revised Exhibit L drawing, the licensee proposes to change the spillway gates from 18–34 feet wide by 18 feet high to 18–34 feet wide by 8 feet high, with spillway sill increased in elevation from 234 to 245 feet. The proposed changes will provide a full gated spillway in lieu of the present partly gate-controlled and partly ungated spillway.

The changes proposed are a result of continuing studies by the licensee to obtain optimum over-all benefits. The project design flood, when routed through the proposed modified spillway, will surcharge the Jordan Dam No. 1 reservoir water surface level to about elevation 262 feet, will result in a peak discharge of about 480,000 cfs, and will have a remaining freeboard of about 5 feet. The proposed modified spillway is considered stable and adequate under both normal and flood water conditions of loading. The normal pool elevation of 252 feet and power installation, as now provided for in the license, remain unaffected by the proposed spillway changes. The proposed modifications to the spillway will effect an appreciable savings in capital costs amounting to $706,500.

The Office of the Chief of Engineers has advised that the plans of the project structures affecting navigation are satisfactory, and the tracing of the revised Exhibit L has been approved pursuant to Section 4(e) of the Federal Power Act insofar as the interests of navigation are concerned.

The Commission finds:

The following described revised exhibits conform to the Commission's rules and regulations and should be approved as part of the license for the project, and the license Exhibit–L, Sheet No. 30A (FPC No. 618–63), which has been superseded, should be eliminated from the license for the project:

(1) Exhibit–L Revised, Sheet No. 30A (FPC No. 618–64) entitled "Dam, Plan and Section", and (2) "Addendum to Revised Exhibit M".

The Commission orders:

The revised exhibits described in the above finding and hereby approved as part of the license for Project No. 618, and the license exhibit described in the same finding as being superseded is hereby eliminated from the license for the project.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

H. L. HAWKINS & H. L. HAWKINS, JR., OPERATOR, ET AL., DOCKET NO. G-18077, ET AL.

ORDER ON MOTION FOR CLARIFICATION AND MODIFICATION OF OPINION NO. 475

(Issued December 15, 1965)

The Superior Oil Company on November 5, 1965, filed a motion for clarification and modification of Opinion No. 475 and order issued September 22, 1965, 34 FPC 897.

Superior's motion relates principally to increased rates it has filed for gas sold as a result of acquiring Skelly Oil Company's undivided one-half interest in the Pheasant Field, Matagorda County, Texas. Superior already had an undivided one-half interest in the field and on November 22, 1961, commenced deliveries to Florida Gas Transmission Company under certificates issued in Docket No. G-20359 (Rate Schedule No. 99). On August 1, 1962, Skelly transferred its interest (Rate Schedule No. 158) to Superior but an acceptable filing recording this fact was not made until March 3, 1965. By Commission letter of April 2, 1965, the transfer agreement was designated Supplement No. 2 to Superior's Rate Schedule No. 99 and was made effective August 1, 1962.

Meanwhile, on August 3, 1962, after the actual date that Skelly transferred its interest, Superior had filed a rate increase from 17.5 to 18.5 cents. This was designated in the Commission's files as Supplement No. 1 to Rate Schedule No. 99, was suspended, and became effective subject to refund on February 3, 1963.[1] At the time this increase was not treated by us as applicable to the former Skelly gas, but on March 3, 1965, Superior, under protest, filed a Supplement No. 3 applying the 17.5 to 18.5 cent rate increase to such gas. This increase was also suspended[2] and was permitted to go into effect subject to refund on September 3, 1965.

Superior states that information as to the beginning and end of the refund period is critical with respect to the former Skelly gas and also requests clarification of the refund period involved in these proceedings. In accordance with our order denying rehearing, any possible refunds applicable to the 17.5 cent price charged would extend from the date service commenced until superseding rates became effective. Thus with respect to gas from Superior's original interest in the Pheasant Field, the refund period would extend from November 22, 1961 until February 3, 1963, when the superseding 18.5 cent rate became effective. Upon further consideration, we are of the opinion that Superior's rate filing on August 3, 1962 should be treated as applicable to the gas from the Skelly interest as well as Superior's original interest. In fact we made the transfer effective August 1, 1962 before the rate filing. As a result, Superior's refund period applicable to the 17.5 cent price for the Skelly gas would commence August 1, 1962, the date Superior acquired Skelly's interest (as the Commission's letter of April 2, 1965 specifically states). The period, as in the case of Superior's original gas, would terminate on February 3, 1963.

[1] Docket No. RI63-49.
[2] Docket No. RI65-572.

In view of our position taken here the proceedings in Docket No. RI65–572 will be terminated and Supplement No. 3 to Superior's Rate Schedule No. 99 will be cancelled. The 18.5 cent increased rate for both Superior's original interest and the former Skelly interest will be subject to the proceedings in Docket No. RI63–49, which is consolidated with the Texas Gulf Coast Area Proceeding, Docket No. AR64–2. Of course, in defining the refund periods involved in the present proceedings we are not in any way delimiting the period or amount of refunds that might be due in Docket No. RI63–49 or the Area Proceedings.

The Commission orders:

(A) Superior's motion for clarification and modification is granted as indicated above.

(B) The proceedings in Docket No. RI65–572 are terminated and Supplement No. 3 to Superior's Rate Schedule No. 99 is cancelled.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

FRANK E. PEACOCK, PROJECT NO. 2427

ORDER MODIFYING ORDER ISSUING LICENSE ON APPLICATION FOR REHEARING

(Issued December 15, 1965)

On November 26, 1965, Frank E. Peacock (Applicant), filed an application for reconsideration of the Commission's order dated November 19, 1965, 34 FPC 1344, issuing license to the Applicant for unconstructed Project No. 2427 located on the Black River in Jefferson County, New York. Applicant requests that the license order issued be altered in two respects. First, he requests that the license run for a period of 30 years, starting on the first day of the first month of full operation, but in any event starting no later than December 1, 1969. Secondly, he requests that the final date by which construction of the project shall commence be July 1, 1969 and that the final date for completion of the project be December 1, 1969.

The order issuing license provided that the license shall be for a period of 30 years, effective as of October 1, 1965 and the license order established June 1, 1966 and May 31, 1968, respectively, as the dates for the commencement and completion of the construction of the project works.

In support of his request, Applicant represents that his lease for the use of the project lands is for 30 years commencing with the first full month of operation and that at best the plant cannot be placed in operation until a year after the placement of orders for the necessary machinery. In addition, Applicant anticipates that the conditions in the river will preclude the start of construction until at least July 1, 1966.

Under the circumstances recited by the Applicant, it would be appropriate to amend the license order for Project No. 2427 to extend the license term from September 30, 1995 to December 1, 1999. Since Section 13 of the Federal Power Act requires construction to commence within two years of the date of issuance of a license, we are unable to grant Applicant's second request, even if we were so disposed. However, it would appear to be appropriate under the circumstances mentioned above to extend the date by which bona

fide construction is to start from June 1, 1966 to October 1, 1967 and to extend the date for completion of said construction from May 31, 1968 to December 31, 1969.

The Commission orders:

(A) The fifth paragraph of the Commission's order dated November 19, 1965 issuing license to Frank E. Peacock for Project No. 2427 is hereby amended to read as follows:

According to the application for license, Applicant has contracted a 30-year lease with Niagara Mohawk Power Corporation for necessary water rights, a lease of the lands for the proposed project, and the purchase of project power. In the circumstances, the license herein granted shall be for a period of approximately 34 years, effective as of October 1, 1965 and terminating December 1, 1999. It should be noted that Article 22 of Form L–4 (Revised June 1, 1964, 32 FPC 839) which is being included among the conditions upon which this license is being issued, requires that the licensee shall make good any defective title to project lands in the event that the project is recaptured by the United States at the end of the license term. Consequently, we are including a license condition (Article 33) requiring the licensee, to obtain an option from Niagara Mohawk permitting him, or his successors or assigns to acquire land within the project boundary in the event the United States should exercise its rights to recapture the project at the end of the license term.

(B) Paragraph (A) of that order is hereby amended to read as follows:

(A) This license is hereby issued to Frank E. Peacock (Licensee) of Wilmette, Illinois, under Section 4(e) of the Federal Power Act (Act) for a period effective as of October 1, 1965, and terminating December 1, 1999, for the construction, operation and maintenance of Project No. 2427, located on the Black River, navigable waters of the United States, subject to the terms and conditions of the Act which is incorporated herein by reference as a part of this license, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(C) Article 31 of that order is hereby amended to read as follows:

The Licensee shall commence construction of the project works not later than October 1, 1967, shall thereafter in good faith and with due diligence, prosecute such construction and shall complete construction of such works not later than December 31, 1969.

Before Commissioners: Joseph C. Swidler, Chairman; Charles R. Ross, David S. Black and Carl E. Bagge.

ARKANSAS LOUISIANA GAS COMPANY, DOCKET NOS. CP64–125, CP62–219; CITIES SERVICE GAS COMPANY, DOCKET NO. CP64–131

ORDER CLARIFYING OPINION AND DIRECTING COMPLIANCE WITH THE COMMISSION'S RULES AND REGULATIONS

(Issued December 16, 1965)

On November 19, 1965, the staff of the Commission filed a motion requesting clarification of Opinion No. 472, issued August 31, 1965, 34 FPC 659, in Trans-

western Pipeline Company, *et al.*, Docket No. G–20464, *et al.*, concerning the scope of the supplemental hearing established therein—specifically whether the supplemental hearing, as it relates to the remanded applications in Docket Nos. CP64–125 and CP62–219, is or is not to be limited to the issues of gas supply and markets. Arkansas Louisiana Gas Company (Arkla) on November 29, 1965, filed an answer in opposition to staff's motion. Arkla contends in essence that the examiner found that Arkla had satisfied all the requirements of public convenience and necessity except as to gas supply and markets and since the Commission adopted his decision with only one modification (the supplemental hearing should consider any other proposals to meet City Service Gas Company's (Cities) additional requirements) the only issues for the supplemental hearing related to Arkla's remanded applications are gas supply and markets.

Arkla overlooks the fact that the Commission specifically held that the Examiner's decision was ambiguous with respect to the scope of the supplemental hearing and expressly modified his decision *in two respects* to make clear that the purpose of the supplemental hearing was twofold—"to reconsider Arkla's application (or any amendment thereto)" and to consider any other proposals to meet Cities' needs. Gas supply and market data are so materially interrelated with the other aspects of any major project to make a substantial new sale that Arkla's failure to present such evidence made it impossible to give intelligent consideration to any of the major prerequisites of public convenience and necessity. Indeed for this very reason we also did not adopt the Examiner's decision with respect to the proper initial rate level. Arkla incorrectly maintains that this involved only the issue of whether the proposed rate should or should not be reduced by 1.0¢. Our language has a much broader meaning and makes it abundantly clear that, since we were not approving Arkla's application, it was unnecessary to even pass upon any aspect of the rate issue (which, as staff points out, involves the question of the proper allocation of costs and cost of service method).

In setting forth that market and supply evidence should be presented at the supplemental hearing it was not our intention to limit the issues which could be raised on remand solely to these matters. On the contrary, it was done so that we could realistically reconsider any issues which might be raised by the parties at the supplemental hearing. It would be unwise to prejudge what effect a full market and supply showing might have on the other aspects of Arkla's application, including the proper rate level. Arkla, of course, is not to be restricted solely to the presentation of gas supply and market evidence but may present whatever evidence it deems necessary to meet any issues raised by the parties.

Further, since Arkla failed to present, either in its application or as part of its evidence, all the information required by our Rules and Regulations, the Commission believes that the market, gas supply, or any other evidence Arkla desires to present in the supplemental hearing should include at least the information required by the appropriate subsection of Section 157.14 of the Commission's Rules and Regulations.

The Commission orders:

(A) The motion of the Commission staff filed on November 19, 1965, is hereby granted.

(B) For the reasons set out above the supplemental hearing established by Opinion No. 472 with respect to the remanded applications of Arkla is not to be limited solely to the issues of gas supply and markets—but was ordered

to reconsider the applications in their entirety in the light of the additional evidence to be presented by Arkla.

(C) The gas supply and market evidence and any other evidence Arkla desires to present in the supplemental hearing shall include at least the information required by the appropriate subsection of Section 157.14 of the Commission's Rules and Regulations.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

PANHANDLE EASTERN PIPE LINE COMPANY, DOCKET NO. CP66-21; UNION TEXAS PETROLEUM, A DIVISION OF ALLIED CHEMICAL CORPORATION (OPERATOR), DOCKET NO. CI66-27

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY, ACCEPTING RATE SCHEDULE FOR FILING AND PERMITTING RATE SCHEDULE TO BECOME EFFECTIVE

(Issued December 16, 1965)

On July 19, 1965, Panhandle Eastern Pipe Line Company (Panhandle) filed in Docket No. CP66-21 an application, as supplemented on August 13 and October 13, 1965, pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing (1) the construction and operation of 32.5 miles of 20-inch pipeline extending from a point in Woods County, Oklahoma, on Panhandle's existing Elk City Line, through Alfalfa County, to a point of connection with the Chaneydell processing plant to be constructed by Union Texas Petroleum (Union), a Division of Allied Chemical Corporation, in Major County, Oklahoma; (2) the acquisition of a one-third interest in the compressor facilities to be installed by Union in the Chaneydell Area to compress part of the gas from 17 psia to over 800 psia; and (3) the construction and operation of the Alva Compressor Station with 5,000 horsepower on the said Elk City Line on the downstream side of the junction with the proposed lateral, as more fully set forth in Panhandle's application.

On July 14, 1965, Union filed in Docket No. CI66-27 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale to Panhandle of approximately 75,000 Mcf of natural gas per day under a 20-year contract dated July 2, 1965, and amended July 6, 1965, as more fully set forth in Union's application.

The proposed sale is of residue gas which will be available after processing of casinghead and gas-well gas at Union's Chaneydell Plant. Pending completion of the plant, approximately 25,000 Mcf per day of unprocessed gas will be delivered.

Union may, upon proper notice to Panhandle, increase deliveries up to 125,000 Mcf per day after the plant is in operation. Panhandle's consent is not required for any such increase.

Union has simultaneously submitted the contract for filing as its FPC Gas Rate Schedule. The price charged by Union under the contract is 15.0 cents per Mcf, subject to an upward or downward Btu adjustment. The 15.0 cents base price equals the area ceiling for initial service, and the Btu adjustment

meets the criteria established in our Opinion No. 464 issued on June 10, 1965, 33 FPC 1228. Union proposes to meet Panhandle's fluctuating needs by adjusting the flow of gas-well gas, but the rate of delivery is not to vary more than 25 percent from the contract volume in effect at any time.

The purpose of the proposal is to augment Panhandle's system gas supply. No new sales are proposed.

The estimated cost attributable to Panhandle of the facilities to be constructed is $4,823,000, which will be financed out of general sources available to Panhandle. The proposal is economically feasible.

Notices of the filing of Panhandle's and Union's applications were published in the Federal Register on July 30, 1965 (30 F.R. 9560) and July 27, 1965 (30 F.R. 9333), respectively. No protest, petition to intervene, or notice of intervention has been filed in this proceeding.

At a hearing held on December 16, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the applications and exhibits submitted in support of the authorizations sought herein, and upon consideration of the record,

The Commission finds:

(1) Panhandle Eastern Pipe Line Company, a Delaware corporation having its principal place of business in Kansas City, Missouri, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of September 23, 1942, in Docket Nos. G–200 and G–207 (3 FPC 273).

(2) Union Texas Petroleum, a Division of Allied Chemical Corporation, will be engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption, subject to the jurisdiction of the Commission, and will, therefore, be a "natural-gas company" within the meaning of the Natural Gas Act upon the commencement of the service under the authorization granted hereinafter.

(3) The facilities hereinbefore described and as more fully described in the application filed by Panhandle in this proceeding are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Panhandle and the sale of natural gas by Union to Panhandle are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(4) Panhandle and Union are able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) The construction and operation of the proposed facilities by Panhandle and the sale of natural gas by Union to Panhandle, as proposed, are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(6) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Union's FPC Gas Rate Schedule be accepted for filing to become effective on the date of initial delivery.

(7) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Panhandle's compliance with all Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), (d)(2), (d)(3) and (e) of Section 157.20 of said Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Panhandle Eastern Pipe Line Company authorizing the construction, acquisition and operation of the facilities as hereinbefore described and as more fully described in Panhandle's application in this proceeding, upon the terms and conditions of this order.

(B) A certificate of public convenience and necessity is issued to Union Texas Petroleum, a Division of Allied Chemical Corporation, to sell natural gas to Panhandle, as hereinbefore described and as more fully described in Union's application in this proceeding.

(C) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Panhandle's compliance with all Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), (d)(2), (d)(3) and (e) of Section 157.20 of said Regulations.

(D) The facilities authorized by this order shall be completed and placed in actual operation and the transportation of natural gas thereby, as authorized in paragraph (A) above, shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within one year from the date of this order.

(E) Union's proposed related rate schedule is accepted for filing to become effective on the date of initial delivery of natural gas pursuant to this authorization, and is designated as follows:

Description and Date of Instrument	*Rate Schedule Designation*
Contract 7–2–65	Union Texas Petroleum, a Division of Allied Chemical Corporation (Operator), FPC Gas Rate schedule No. 83.
Ltr. Agreement 7–2–65	Supplement No. 1.
Ltr. Agreement 7–6–65	Supplement No. 2.

Before Commissioners: Joseph C. Swidler, Chairman; Charles R. Ross, David S. Black and Carl E. Bagge.

NATURAL GAS PIPELINE COMPANY OF AMERICA, DOCKET NO. CP66–96

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued December 17, 1965)

On October 7, 1965, Natural Gas Pipeline Company of America (Applicant), filed in Docket No. CP66–96 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction during the calendar year 1966 and the operation of miscellaneous field facilities to enable Applicant to take into its certificated main pipeline system natural gas which will be purchased from producers thereof, all as more fully set forth in the application.

The purpose of this "budget-type" application is to enable Applicant to act with reasonable dispatch in contracting for and connecting to its pipeline system supplies of natural gas in various producing areas generally co-extensive with said system.

The total aggregate cost of such construction, to be financed out of funds currently on hand, will not exceed $2,000,000, and the cost of any single project is to be limited to $500,000.

Due notice of the filing of the application was published in the Federal Register on October 22, 1965 (30 F.R. 13475). No petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on December 9, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Natural Gas Pipeline Company of America, a Delaware corporation having its principal place of business in Chicago, Illinois, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of November 7, 1958, in Docket No. G-9966 (20 FPC 694).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit within 60 days after the expiration of the authorization granted hereinafter a statement in compliance with Section 157.7(b) of the Commission's Regulations under the Natural Gas Act.

(6) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(7) The authorization hereinafter granted should be limited to construction during the calendar year 1966 and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $2,000,000, with no single project to exceed a cost of $500,000.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity is issued authorizing Applicant, Natural Gas Pipeline Company of America to construct during the calendar year 1966 the proposed facilities hereinbefore described, as more fully described in the application in this proceeding, and to operate such facilities only to take natural gas supplies from producers who have received authorization from the Commission to sell natural gas to said Applicant.

(B) Applicant shall submit within 60 days after the expiration of the authorization granted by paragraph (A) above a statement in compliance with Section 157.7(b) of the Commission's Regulations under the Natural Gas Act.

(C) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(D) The authorization granted in paragraph (A) above is limited to construction during the calendar year 1966 and the total expenditures for facilities to be constructed thereunder are limited to a maximum of $2,000,000, with no single project to exceed a cost of $500,000.

Before Commissioners: Joseph C. Swidler, Chairman; Charles R. Ross, David S. Black and Carl E. Bagge.

PACIFIC GAS TRANSMISSION COMPANY, DOCKET NOS. CP65-213, CP65-214, CP65-215

ORDER DENYING RECONSIDERATION, WAIVER OF THE COMMISSION'S RULES AND MAKING DETERMINATION OF THE QUESTION OF "EXTRAORDINARY CIRCUMSTANCES"

(Issued December 17, 1965)

On October 22, 1965, and October 26, 1965, the State of Texas (Texas) and the California Gas Producers Association, The Oil Producers Agency of California and the Jade Oil and Gas Company [California Gas Producers] requested that the Commission reconsider its rejection of the motion that they had previously directed to it requesting a reversal of rulings made by the Presiding Examiner denying the issuance of subpoenas duces tecum.[1]

The above-described Movants also requested that the Commission waive its rules, if necessary, and that the Commission determine the question of whether there exists, as they allege, extraordinary circumstances, that warrant the Commission's acting upon the appeal taken by them from the Presiding Examiner's rulings.

Section 1.28(a) of the Commission's Rules of Practice and Procedure provides that "Rulings of Presiding Officers may not be appealed from during the course of hearings except in extraordinary circumstances where prompt decision by the Commission is necessary to prevent detriment to the public interest * * *"

At a prehearing conference held on July 22, 1965, Texas advised that certain testimony and exhibits submitted by Barry Hunsaker, Chief Pipeline Engineer for El Paso Natural Gas Company (El Paso), in the Gulf Pacific hearings (Docket No. CP64-76) would be sought and that it would endeavor to have these made part of the record in these proceedings.

Texas alleged that it could show through the presentation of this Witness that there is an alternative method of supplying gas to California at a firm price and a cheaper price than the gas sought to be imported into California under the pending application.

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[1] The Independent Petroleum Association of America, The Texas Independent Producers and Royalty Owners Association, The West Central Texas Oil and Gas Association and The Permian Basin Petroleum Association joined in the motions for reconsideration filed by Texas and California Producers Association. For the purposes of this order all of the aforementioned parties either sponsoring or supporting the aforesaid applications for reconsideration will be referred to as Movants.

At the same prehearing conference the California Gas Producers also advised that they sought certain testimony proffered by the Witness McKinney in the Gulf Pacific hearings, *supra*. The Witness McKinney purportedly testified in the Gulf Pacific hearing that if the Gulf Pacific Project were approved by the Commission, The Pacific Lighting Companies would cut-back on their purchase of gas from El Paso and Transwestern Pipeline Company (Transwestern). California Gas Producers contend that the testimony of the Witness McKinney would show that this cut-back would be large enough to afford Pacific Gas & Electric Company (P.G. & E.) with an alternate supply of gas that could be readily substituted for the Canadian importation of natural gas proposed herein (pg. 2 of California Gas Producers motion filed September 21, 1965). They further allege in the latter motion that these additional supplies of natural gas would be available to P.G. & E. at a lower cost than the proposed Canadian supply of natural gas.[2]

On September 16, 1965, the Presiding Examiner, after hearing oral argument, denied the request of Texas and The California Gas Producers for the issuance of subpoenas duces tecum with respect to the aforementioned witnesses and certain material they presented in the Gulf Pacific hearings.

On September 21, 1965, the above-noted Movants requested that the Presiding Examiner certify his ruling denying their request for the issuance of subpoenas duces tecum for the Witnesses Hunsacker and McKinney to the Commission. This request was denied by the Presiding Examiner.

On the same date, the above Movants filed a motion with the Commission requesting it to reverse the ruling of the Presiding Examiner and to issue the subpoenas duces tecum as requested.

By letter dated October 15, 1965, the Secretary of the Commission rejected the motions to reverse the Ruling of the Presiding Examiner. The Secretary in his letters to these movants rejecting their motions stated:

> * * * The Presiding Examiner found "* * * no extraordinary circumstances here * * * where prompt decision on this question is required by the Commission or is necessary to prevent detriment to the public interest" (See Transcript Page 816), and thereby refused to certify to the Commission the ruling which is the subject of the tendered filing. Moreover, the motion does not recite pressing reasons for immediate review of the Examiner's ruling by the Commission.

Thereafter, Texas on October 22, 1965, and the California Gas Producers on October 26, 1965, filed applications for reconsideration of the rejection of its motion to reverse the Ruling of the Presiding Examiner and to issue subpoenas duces tecum as requested.

We have examined the pleadings relating to the motion and see nothing therein which would justify our intercession in the normal processes of the hearing. The determination of whether material sought to be secured by subpoena bears sufficient materiality and relevance is a matter on which the hearing examiner will normally be much better equipped to pass. Our intercession may occasionally be warranted where the examiner's ruling reflects a misunderstanding as to the scope of the proceeding or where there are extraordinary circumstances which require avoidance of any possibility of delay in

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[2] California Gas Producers point out in their motion that El Paso's Rate Schedule G–X (Excess Gas Service) would be available to P.G. & E., because of the cut-backs envisaged by McKinney's testimony. They claim that the rate chargeable under such excess gas service is 22.22 cents per Mcf (14.73 psia). They also point out that Transwestern's Rate Schedules, covering deliveries of gas to California make provision for a rate of 21 cents for deliveries that are cut-back by The Pacific Lighting Companies (Transwestern LX Gas).

the event the examiner's ruling were to be found to be erroneous. Nothing of the kind is involved here. We note that the movants, with the approval of the examiner, have made an offer of proof with respect to the testimony which is the subject of the motion. It will be available for our consideration when the case comes before us for decision. We are of the opinion that this is the proper way to handle the matter.

The Commission finds:

(1) Movants have not demonstrated the existence of any pressing reasons that require a waiver of the Commission's rules.

(2) Movants have failed to establish the existence of extraordinary circumstances contemplated by Section 1.28(a) of the Commission's Rules of Practice and Procedure that warrant an appeal by them to the Commission of the aforementioned rulings of the Presiding Examiner in the instant proceedings.

(3) The public convenience and necessity requires that the applications for reconsideration filed herein with the Commission by the Movants be denied in all respects.

The Commission orders:

(A) The request by Movants for a waiver of the Commission Rules is denied.

(B) The request for reconsideration of the rejections of motions filed by Movants with the Commission for a reversal of rulings made by the Presiding Examiner is denied.

Before Commissioners: Joseph C. Swidler, Chairman; Charles R. Ross, David S. Black and Carl E. Bagge.

ST. CROIX PAPER COMPANY, PROJECT NO. 2492

ORDER DENYING PETITION TO INTERVENE

(Issued December 17, 1965)*

On February 24, 1965 a petition to intervene in the above-entitled license proceeding was filed by Philip J. Hennessery, III (Petitioner) for himself and in behalf of others similarly situated.

Petitioner states that he is a joint owner of a plot of land, together with improvements thereon, situated on the shores of Spednic Lake in the town of Vanceboro, Washington County, Maine and that he represents 137 persons who live and own property in the vicinity of Vanceboro, Maine and St. Croix, New Brunswick, Canada, some of whom are owners of Spednic Lake shore properties and some of whom derive their income solely or in part from guiding, outfitting and providing accommodations and other services for fishermen and sportsmen visiting the area.

Petitioner alleges that he and those persons he represents may be aggrieved by the issuance of a license to the St. Croix Paper Company for the Vanceboro Dam, Project No. 2492. Petitioner asserts that the maximum and minimum water levels proposed by the Applicant are unjust and unreasonable and will adversely affect the properties of petitioner, and other owners of lake shore properties. An answer to the petition was filed by the St. Croix Paper Company.

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*See orders granting and denying rehearing issued February 8, 1966 and March 11, 1966, 35 FPC 207 and 372.

In its application for license filed on November 16, 1964, the Applicant proposes to replace an existing earth dam with a new concrete and earth dam to be located a few feet upstream from the present location on the St. Croix River. According to the application there will be no change in water levels which are currently operated at a maximum of 385.86 feet mean sea level datum. Therefore, the effect of the proposed construction upon petitioner's property should not be any different from that of the existing earthfill dam.

The International Boundary between the Province of New Brunswick, Canada and the State of Maine runs through Spednic Lake and follows the East Branch of the St. Croix River. Consequently, the operating levels of the Lake are subject to the jurisdiction of the International Joint Commission (IJC). The IJC held a hearing on this matter on September 17, 1964, at which time camp owners from both Canada and the United States participated. By an order issued on October 15, 1965, the IJC approved the proposed construction by the St. Croix Paper Company and provided, among other things, that the elevation of Spednic Lake near Vanceboro shall not exceed 385.86 feet mean sea level, the present elevation of the Lake.

The Commission finds:

Intervention by the Petitioner in this proceeding has not been shown to be necessary or appropriate in carrying out the provisions of the Federal Power Act.

The Commission orders:

The aforesaid petition to intervene in this proceeding, is hereby denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

SOHIO PETROLEUM COMPANY, DOCKET NO. CI66-193

ORDER DENYING APPLICATIONS FOR REHEARING OR RECONSIDERATION

(Issued December 17, 1965)

On November 18, 1965, The Philadelphia Gas Works Division of The United Gas Improvement Company (PGW) filed an application for rehearing or reconsideration of the Commission's letter-order issued on November 5, 1965, granting a temporary certificate to Sohio Petroleum Company (Sohio) authorizing the sale of natural gas to Transcontinental Gas Pipe Line Corporation (Transcontinental) from the Johnson Bayou Field, Cameron Parish, South Louisiana Area. On December 3, 1965, the Public Service Commission of the State of New York (New York) filed a similarly entitled application.

The temporary certificate was issued subject to several express conditions, among which is the condition allowing Sohio to collect 20.625¢ per Mcf at 15.025 psia subject to Sohio's refunding to Transcontinental from the date of initial delivery, with interest at 7% per annum, any amounts collected in excess of the amounts resulting from the rate finally determined to be required by the public convenience and necessity in this docket; it was also stated that refunds would not be required below a total rate of 20.0¢ per Mcf at 15.025 psia, inclusive of any tax reimbursement.

PGW asserts that the Commission erred in the following respects: (1) That the Commission made a major substantive decision in Docket No. CI66-193

prior to acting upon petitions to intervene therein; and, (2) That the Commission abused its discretion in granting a temporary certificate in Docket No. CI66–193 upon the conditions set forth. New York asserts that this Commission's determination of the proper refund floor is erroneous.[1]

The Commission has carefully considered applicants' specifications of error but finds nothing therein to justify granting a formal rehearing or reconsideration of the letter-order of November 5, 1965. As to PGW's first contention, the Commission points out that it made an express finding that an emergency existed, that prompt action was therefore necessary, and that the decision to make the temporary grant was well within the realm of the Commission's discretion. Moreover, the Commission's action was taken after full consideration of the arguments advanced by PGW.

PGW's chief objection, of course, is that the Commission did not accept its argument for an 18.25¢ per Mcf refund floor, which is apparently based on Staff's opinion that such rate is the just and reasonable price for such gas in the South Louisiana area. The Commission's consistent position in these certificate cases has been that the proper standard for any refunds resulting from a temporary price which is subsequently found to be too high is the "in-line" price at which it will certificate sales pending determination of the just and reasonable rate. The right of the Commission to permanently certificate sales at the "in-line" price has been recently sustained by the Supreme Court in the *Callery* case.[2] As Justice Douglas states (34 U.S.L. Week 4047, 4048):

> Consumer protection is afforded by keeping the "in-line" price at the level where substantial amounts of gas have been certificated to enter the market under other contemporaneous certificates, no longer subject to judicial review or in any way "suspect". We believe the Commission can properly conclude under § 7 that adequate protection to the public interest requires as an interim measure that gas not enter the interstate market at prices higher than existing levels. To consider in this § 7 proceeding the mass of evidence relevant to the fixing of just and reasonable rates under § 5 might in practical effect render nugatory any effort to fix initial prices.

The Supreme Court's *Callery* decision also makes clear that refunds based upon the difference between the price charged and the proper refund price also are appropriate (34 U.S.L. Week 4047, 4049):

> We think that the Commission could properly measure the refund by the difference between the rates charged and the "in-line" rates to which the original certificates should have been conditioned. The Court of Appeals would delay the payment of the refund until the "just and reasonable" rate could be determined. We have said elsewhere that it is the duty of the Commission, "where refunds are found due, to direct their payment at the earliest possible moment consistent with due process". *Federal Power Commission* v. *Tennessee Gas Transmission Co.*, 371 U.S 145, 155. These excessive rates have been collected since 1958; under the circumstances, the Commission was not required to delay this refund further.

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[1] New York points out that the Commission failed to serve a copy of the letter-order upon it. The Commission sincerely regrets this inadvertent omission but feels no substantial harm has resulted.

[2] *United Gas Improvement Co., et al.* v. *Callery Properties, Inc., et al.*, 382 U.S. 223 (1965).

It is suggested that whatever the merits of the position in *Callery*, the present case involves south Louisiana and a decision in Docket No. AR61–2 fixing the just and reasonable price for the sale can be expected soon. It is clear, however, that even if we are able to decide the case in 1966, as we hope, that in view of the certainty of court review no actual payments of refunds could be expected for a year or more afterwards. From the guidelines established by *Callery* we should be able to arrive at a final decision in the certificate proceeding long before this time. Under these circumstances we see no reason for departing from our previous course of action in this type of case.

The Commission finds:

The specifications of error advanced as grounds for rehearing or reconsideration in applicants' applications present no facts or legal principles which would warrant any change or modification in the Commission's letter-order of November 5, 1965, in Docket No. CI66–193.

The Commission orders:

The above-described applications for rehearing or reconsideration of the Commission's letter-order of November 5, 1965, Docket No. CI66–193 are denied

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Before Commissioners: Joseph C. Swidler, Chairman; Charles R. Ross, David S. Black and Carl E. Bagge.

TRANSWESTERN PIPELINE COMPANY, DOCKET NO. CP66–89

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued December 17, 1965)

On October 1, 1965, Transwestern Pipeline Company (Applicant) filed in Docket No. CP66–89 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction during the calendar year 1966 and the operation of miscellaneous field facilities to enable Applicant to take into its certificated main pipeline system natural gas which will be purchased from producers thereof, all as more fully set forth in the application.

The purpose of this "budget-type" application is to enable Applicant to act with reasonable dispatch in contracting for and connecting to its pipeline system supplies of natural gas in various producing areas generally co-extensive with said system.

The total aggregate cost of such construction, to be financed out of funds currently on hand, will not exceed $1,500,000, and the cost of any single project is to be limited to $375,000.

Due notice of the filing of the application was published in the Federal Register on October 19, 1965 (30 F.R. 13299). No petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on December 9, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Transwestern Pipeline Company, a Delaware corporation having its principal place of business in Houston, Texas, is a "natural-gas com-

pany" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of October 10, 1963, in Docket No. CP63-290 (30 FPC 997).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit within 60 days after the expiration of the authorization granted hereinafter, a statement in compliance with Section 157.7(b) of the Commission's Regulations under the Natural Gas Act.

(6) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(7) The authorization hereinafter granted should be limited to construction during the calendar year 1966 and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $1,500,000, with no single project to exceed a cost of $375,000.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity is issued authorizing Applicant, Transwestern Pipeline Company to construct during the calendar year 1966 the proposed facilities hereinbefore described, as more fully described in the application in this proceeding, and to operate such facilities only to take natural gas supplies from producers who have received authorization from the Commission to sell natural gas to said Applicant.

(B) Applicant shall submit within 60 days after the expiration of the authorization granted by paragraph (A) above statements under oath in compliance with Section 157.7(b) of the Commission's Regulations under the Natural Gas Act.

(C) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(D) The authorization granted in paragraph (A) above is limited to construction during the calendar year 1966, and the total expenditures for facilities to be constructed thereunder are limited to a maximum of $1,500,000, with no single project to exceed a cost of $375,000, and shall not be interpreted as authorization to attach new customers or to increase the volume of sales to existing customers.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

ALABAMA-TENNESSEE NATURAL GAS COMPANY, DOCKET NO. CP65–197

ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued December 20, 1965)

On October 12, 1965, Alabama-Tennessee Natural Gas Company (Petitioner) filed in Docket No. CP65–197 a petition to amend the order of the Commission issuing a certificate of public convenience and necessity, 33 FPC 905, in said docket by authorizing the delivery of an additional quantity of natural gas to Reynolds Metals Company (Reynolds) on a firm basis, all as more fully set forth in the petition.

Petitioner proposes to increase its firm deliveries of natural gas to Reynolds near Muscle Shoals, Alabama, from 12,000 Mcf per day to 13,000 Mcf per day. The contract for the additional quantity provides for deliveries beginning September 16 and continuing through April 15 during the 1965–66 and 1966–67 winter periods.

Petitioner has heretofore been authorized to sell and deliver an additional 3,180 Mcf of natural gas per day to the City of Huntsville, Alabama. The City of Huntsville has advised Petitioner that it will not need the additional gas during the 1965–66 winter heating season and that it has no objection to Petitioner's use of the gas to serve other customers providing that the volume can be made available to the City of Huntsville during the 1966–67 winter heating season. Petitioner proposes to serve Reynolds from the volume heretofore allocated to the City of Huntsville and states that it will request in a future application authorization to deliver to Reynolds the additional quantity during the 1966–67 winter period.

No additional facilities are required to deliver the additional quantity to Reynolds.

After due notice no petition to intervene, notice of intervention or protest to the granting of the petition has been received.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the order issuing a certificate of public convenience and necessity in Docket No. CP65–197 should be amended as hereinafter ordered.

The Commission orders:

(A) The order issuing a certificate of public convenience and necessity in Docket No. CP65–197 is amended by authorizing Petitioner to deliver an additional 1,000 Mcf of natural gas per day on a firm basis to Reynolds, and in all other respects said order shall remain in full force and effect.

(B) The certificate issued in Docket No. CP65–197 shall not entitle Reynolds to whom firm deliveries are authorized herein to any priorities or rights to additional gas for meeting any future increases in its requirements at the expense of firm resale customers desiring to acquire additional gas to meet any future increases in their requirements.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

ARKANSAS LOUISIANA GAS COMPANY, DOCKET NO. CP66-144

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued December 20, 1965)

On November 8, 1965, Arkansas Louisiana Gas Company (Applicant) filed in Docket No. CP66-144 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction during the calendar year 1966 and the operation of miscellaneous field facilities to enable Applicant to take into its certificated main pipeline system natural gas which will be purchased from producers thereof, as more fully set forth in the application.

The purpose of this "budget-type" application is to augment Applicant's ability to act with reasonable dispatch in contracting for and connecting to its pipeline system supplies of natural gas in various producing areas generally co-extensive with said system.

The expenditures under the entire authorization will not exceed $3,908,300, whereas no individual project will exceed the cost of $500,000. The financing of the proposed construction will be from Applicant's cash on hand and from its cash generated from operations.

Due notice of the filing of the application was published in the Federal Register on November 24, 1965 (30 F.R. 14617). No protest, petition to intervene or notice of intervention has been filed in this proceeding.

At a hearing held on December 16, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Arkansas Louisiana Gas Company, a Delaware corporation having its principal place of business in Shreveport, Louisiana, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of January 26, 1943, in Docket No. G-252 (3 FPC 910).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit within 60 days after the expiration of the authorization granted hereinafter, a statement in compliance with

subparagraph (3) of Section 157.7(b) of the Commission's Regulations under the Natural Gas Act.

(6) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(7) The authorization hereinafter granted should be limited to construction during the calendar year 1966 and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $3,908,300, with no single project to exceed a cost of $500,000.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity is issued authorizing Applicant, Arkansas Louisiana Gas Company, to construct during the calendar year 1966, the proposed facilities hereinbefore described, as more fully described in the application in this proceeding, and to operate such facilities only to take natural gas supplies from producers who have received authorization from the Commission to sell natural gas to Applicant.

(B) Applicant shall submit within 60 days after the expiration of the authorization granted by paragraph (A) above a statement in compliance with subparagraph (3) of Section 157.7(b) of the Commission's Regulations under the Natural Gas Act.

(C) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(D) The authorization granted in paragraph (A) above is limited to construction during the calendar year 1966, and the total expenditures for facilities to be constructed thereunder are limited to a maximum of $3,908,300, with no single project to exceed a cost of $500,000.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

CITIES SERVICE GAS COMPANY, DOCKET NO. CP66–113

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued December 20, 1965)

On October 18, 1965, Cities Service Gas Company (Applicant) filed in Docket No. CP66–113 an application pursuant to Section 7(c) of the Natural Gas Act, as implemented by Section 157.7(c) of the Commission's Regulations under the Act, for a certificate of public convenience and necessity authorizing the construction during the calendar year 1966 and the operation of certain natural gas facilities, all as more fully set forth in the application in this proceeding.

Specifically, Applicant proposes to construct facilities necessary for (a) the direct sales of natural gas to consumers located in areas outside the franchise area of any local distributor, and (b) miscellaneous rearrangements not re-

312–270—69——97

sulting in any change of service rendered by means of the facilities involved, including changes in existing field operations and relocation of existing sales and transportation facilities when required by highway construction, dam construction, development of private property, industrial plant expansion and other similar reasons.

Applicant proposes to construct for direct sales a maximum of sixty lateral and loop lines with maximum lengths of five miles each and maximum diameters of six inches, together with taps, metering and appurtenant facilities.

Applicant proposes to construct facilities for thirty miscellaneous rearrangements with maximum diameter pipe of thirty inches and the maximum length of pipe for each miscellaneous rearrangement project estimated at one mile.

The total cost of facilities proposed under this application will not exceed a maximum of $300,000 and the total deliveries to any one consumer will not exceed a maximum of 100,000 Mcf of natural gas per year. The cost of facilities will be financed out of treasury cash.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on December 16, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Cities Service Gas Company, a Delaware corporation having its principal place of business in Oklahoma City, Oklahoma, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of December 28, 1943, in Docket No. G–298 (4 FPC 471).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the proposed transportation of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(6) The authorization hereinafter granted should be limited to construction during the calendar year 1966 and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $300,000, with the total deliveries to any one customer not to exceed a maximum of 100,000 Mcf of natural gas per year.

(7) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit within 60 days after the expiration of the authorization granted hereinafter, a statement in compliance with

Section 157.7(c)(8) of the Commission's Regulations under the Natural Gas Act.

(8) The certificate issued hereinafter should be conditioned upon Applicant's compliance with the provisions of Section 157.7(c)(7) of the aforesaid Regulations.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity is issued authorizing Applicant, Cities Service Gas Company, to construct during the calendar year 1966 and operate the proposed facilities for the sale of natural gas to direct customers and for miscellaneous rearrangements as hereinbefore described, as more fully described in the application in this proceeding, and as hereinafter provided.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(C) The authorization granted in paragraph (A) above is limited to construction during the calendar year 1966 and the total expenditures for facilities to be constructed thereunder are limited to a maximum of $300,000, with the total deliveries to any one customer limited to a maximum of 100,000 Mcf of natural gas per year.

(D) Applicant shall submit within 60 days after the expiration of the authorization granted by paragraph (A) above a statement in compliance with Section 157.7(c)(8) of the Commission's Regulations under the Natural Gas Act.

(E) The certificate issued by paragraph (A) above is expressly conditioned upon Applicant's compliance with the provisions of Section 157.7(c)(7) of the aforesaid Regulations.

(F) This certificate shall not entitle any industrial customers to whom firm deliveries are authorized herein to any priorities or rights to additional gas for meeting any future increases in their requirements at the expense of resale customers desiring to acquire additional gas to meet any future increases in their requirements.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

KANSAS-NEBRASKA NATURAL GAS COMPANY, INC., DOCKET NO. CP66-133

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued December 20, 1965)

On October 27, 1965, Kansas-Nebraska Natural Gas Company, Inc. (Applicant) filed in Docket No. CP66-133 an application pursuant to Section 7(c) of the Natural Gas Act, as implemented by Section 157.7(c) of the Regulations under the Act, for a certificate of public convenience and necessity authorizing the construction during the calendar year 1966 and the operation of gas-sales

or transportation facilities, all as more fully set forth in the application in this proceeding.

Applicant proposes to construct a maximum of 12 lateral lines of up to 6⅝-inch diameter pipe with the maximum length being 10 miles and a maximum of 12 taps and meters in order to transport and sell natural gas previously authorized under certificates for transportation or sale to existing distributors at rates on file with the Commission, for resale in existing market areas, and in order to sell natural gas to direct consumers located in areas outside the franchise area of any local distributor. Applicant also proposes to construct facilities necessary for a maximum of 4 miscellaneous rearrangements not resulting in any change of service rendered by means of the facilities involved.

The total cost of facilities proposed under this application will not exceed a maximum of $300,000 and the total deliveries to any one consumer will not exceed a maximum of 100,000 Mcf of natural gas per year. Such cost of proposed facilities will be financed from current working capital.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on December 16, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Kansas-Nebraska Natural Gas Company, Inc., a Kansas corporation having its principal place of business in Phillipsburg, Phillips County, Kansas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of April 6, 1943, in Docket No. G–259 (3 FPC 966).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation and/or sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities and the proposed transportation and/or sales of natural gas by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(6) The authorization hereinafter granted should be limited to construction during the calendar year 1966 and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $300,000, with the total deliveries to any one customer not to exceed a maximum of 100,000 Mcf of natural gas per year.

(7) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit within 60 days after the ex-

piration of the authorization granted hereinafter, a statement in compliance with Section 157.7(c)(8) of the Commission's Regulations under the Natural Gas Act.

(8) The certificate issued hereinafter should be conditioned upon Applicant's compliance with the provisions of Section 157.7(c)(7) of the aforesaid Regulations.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity is issued authorizing Applicant, Kansas-Nebraska Natural Gas Company, Inc., to construct during the calendar year 1966 and operate the proposed facilities for the sale of natural gas to direct customers and to distributors for resale and for miscellaneous rearrangements as hereinbefore described, as more fully described in the application in this proceeding, and as hereinafter provided.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(C) The authorization granted in paragraph (A) above is limited to construction during the calendar year 1966 and the total expenditures for facilities to be constructed thereunder are limited to a maximum of $300,000, with the total deliveries to any one customer limited to a maximum of 100,000 Mcf of natural gas per year.

(D) Applicant shall submit within 60 days after the expiration of the authorization granted by paragraph (A) above a statement in compliance with Section 157.7(c)(8) of the Commission's Regulations under the Natural Gas Act.

(E) The certificate issued by paragraph (A) above is expressly conditioned upon Applicant's compliance with the provisions of Section 157.7(c)(7) of the aforesaid Regulations, and, further, the certificate is granted upon the express condition that any interruptible service resulting herefrom shall be curtailed or interrupted to the extent required to meet existing or future contracted maximum delivery obligations of Applicant for firm service to its customers.

(F) This certificate shall not entitle any industrial customers to whom firm deliveries are authorized herein to any priorities or rights to additional gas for meeting any future increases in their requirements at the expense of resale customers desiring to acquire additional gas to meet any future increases in their requirements.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

MISSOURI EDISON COMPANY AND PANHANDLE EASTERN PIPE LINE COMPANY, DOCKET NO. CP66-69

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued December 20, 1965)

On September 7, 1965, Missouri Edison Company (Applicant) filed an application, as amended on September 27, 1965, and supplemented on October 11,

1965, and November 17, 1965, pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Panhandle Eastern Pipe Line Company (Respondent) to make a physical connection of its facilities with the facilities to be constructed by Applicant and to sell and deliver to Applicant up to an additional 4,095 Mcf of natural gas per day, as more fully set forth in the application.

Applicant proposes to construct and operate approximately 133 miles of lateral transmission pipelines and distribution systems to render natural gas service to 16 communities and rural areas in northeast Missouri. Fifteen of these communities will be served from the proposed tap on Respondent's main line. The remaining community, Clarksville, will be served through an extension from Applicant's existing delivery point for Louisiana, Missouri. The distribution system for the town of Louisiana, Missouri, is owned and operated by Applicant and is adjacent to the proposed new service area.

The total estimated cost of the facilities to be constructed by Applicant is $3,098,570, which will be financed initially from treasury funds and the proceeds from unsecured short term bank loans. Applicant will then refund the bank loans by the sale of stock, mortgage bonds or other form of permanent financing, subject to the approval of the Public Service Commission of Missouri.

The communities which will be served by Applicant and the third year annual and peak day volumes of natural gas estimated to be required by each community are as follows:

Community	Third year (Mcf)	
	Annual	Peak day
Bellflower	10,124	94
Clarksville	21,137	204
Curryville	9,723	85
Elsberry	43,254	413
Foley	6,034	54
Hawk Point	8,270	75
High Hill	6,034	54
Jonesburg	12,140	116
Moscow Mills	10,940	103
Old Monroe	10,287	96
Troy	50,414	488
Truesdale	6,906	62
Warrenton	57,067	540
Wentzville	97,741	938
Winfield	17,047	164
Wright City	23,480	227
Rural	37,559	382
	428,157	4,095

The gas will be purchased by Applicant under Respondent's G-2 Rate Schedule.

Applicant was granted a certificate of public convenience and necessity effective on July 13, 1965, by the Public Service Commission of Missouri.

By letter of September 8, 1965, Respondent was notified of the filing of the application and furnished a copy thereof. No answer has been received from Respondent.

Due notice of the filing of the application was published in the Federal Register on September 21, 1965 (30 F.R. 12053). No protest, petition to intervene or notice of intervention has been filed.

The Commission finds:

(1) Panhandle Eastern Pipe Line Company, a Delaware corporation having its principal place of business in Kansas City, Missouri, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of September 23, 1942, in Docket Nos. G–200 and G–207 (3 FPC 273).

(2) Applicant is a public utility company in the State of Missouri and is authorized to construct and operate facilities to distribute and sell natural gas to inhabitants of the communities along its system.

(3) It is necessary and desirable in the public interest that Respondent be directed to establish a physical connection of its transportation facilities with the facilities proposed to be constructed by Applicant and to sell and deliver up to an additional 4,095 Mcf of natural gas per day to Applicant, as hereinbefore described and as more fully set forth in the application, as hereinafter ordered and conditioned.

(4) The requirement that Respondent serve Applicant, as requested, will not place an undue burden upon Respondent nor impair its ability to render adequate service to existing customers.

The Commission orders:

(A) Respondent is directed to establish a physical connection of its natural gas transmission system with the facilities to be constructed by Applicant and to sell and deliver up to an additional 4,095 Mcf of natural gas per day to Applicant, all as hereinbefore described and as more fully described in the application.

(B) Applicant shall be prepared to receive natural gas from Respondent at the proposed new connection within one year from the date of this order.

(C) Respondent shall notify the Commission of the commencement of service within 10 days thereof.

(D) Respondent shall execute and file with the Commission a superseding service agreement with Applicant in accordance with the Commission's Regulations under the Natural Gas Act.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

NATURAL GAS PIPELINE COMPANY OF AMERICA, DOCKET NO. RP65–50

ORDER APPROVING PROPOSAL FOR RATE REDUCTIONS AND REFUNDS

(Issued December 20, 1965)

Natural Gas Pipeline Company of America (Natural), filed with the Commission on September 29, 1965, a proposed agreement with regard to its rates for sales of natural gas for resale. Among other things, the agreement provides for a reduction in the company's revenues of approximately $3,500,000 annually,[1] effective January 1, 1965. Natural proposes to file tariff sheets reducing the demand component of its two-part rates by 13 cents and its straight-line rates by .85 cents, if the agreement is approved.[2]

[1] Based on estimated billing units for 1966.

[2] See Appendix A.

This agreement is the result of numerous conferences between Natural and the Commission staff. Informal review of Natural's earnings was initiated on December 15, 1964, by a letter to Natural from the Chief of the Commission's Bureau of Natural Gas. Conferences were held between Natural and the Commission staff, and on April 2, 1965, the Commission in the above-entitled docket instituted an investigation of Natural's rates under Section 5(a) of the Natural Gas Act. In addition, the order of April 2, 1965, 33 FPC 666, required Natural to submit certain cost and revenue data. Natural's appeal from this filing requirement of the Commission's order is currently pending before the United States Court of Appeals for the Seventh Circuit.

Natural's proposed agreement provides for the methods of computing the jurisdictional portion of gas purchases and supplier refunds, the allocation of refunds according to proportionate contract demands, the filing of reports, the necessity of the Commission's accepting without suspension the tariff sheets to be filed, waiver of notice, the privileged nature of the agreement if not accepted unconditionally, and the stipulation that the agreement is a dollar settlement only. In addition to the foregoing provisions, Natural's proposal contains the following terms:

(1) Natural will reduce its rates by $3,500,000 annually by filing tariff sheets containing the rates shown in Appendix A, to be effective January 1, 1965, and will make refunds reflecting the retroactive effectiveness of the rate reduction within 45 days after Commission approval of the statement becomes final.

(2) (a) Obligations relating to a "consolidated effective tax rate" will remain effective as provided in previous settlements, opinions and orders with respect to the period prior to January 1, 1965. The corporate system of which Natural is a member contained no loss companies as of January 1, 1965.

(2) (b) As a result of the proposed rate reduction, Natural's rates will cease to include any amounts with respect to the invalidated Texas Dedicated Reserve Gas Tax as of January 1, 1965. Natural will refund the additional amount of $527,018, which was collected to reflect this item prior to that date, when it makes the refund described in paragraph (1) above.

(3) Natural's obligations arising out of prior settlements and orders with respect to supplier refunds and rate reductions shall continue with respect to the period prior to January 1, 1965, only. Natural will flow-through to its customers all supplier refunds attributable to gas purchased during 1965. Natural will conduct a post-audit of its purchased gas costs for 1966, and will make refunds to its customers to the extent its actual purchased gas costs during 1966 are less than 15.82 cents per Mcf. Supplier refunds attributable to 1966 received after 1966 will be subject to flow-through to the extent Natural's purchased gas costs during 1966 are less than 15.82 cents per Mcf. Refunds attributable to 1965 and 1966 purchased gas will be made semi-annually, if a specified minimum has accumulated, but no less than annually.

(4) Natural agrees to continue the use of liberalized depreciation for tax purposes until it has obtained a determination by the Commission, by Declaratory Order or otherwise, that Natural will not have to reflect liberalized depreciation in its rates if it elects to use straight-line depreciation for tax purposes. If Opinion Nos. 456 and 456-A, 33 FPC 574, 1277, are finally affirmed, Natural's obligations regarding liberalized depreciation will be determined in accordance with the terms of those opinions for the period from February 3, 1964 to January 1, 1965, and in accordance with the procedure described below for the period from and after January 1, 1965. If Opinion Nos. 456 and 456-A are finally affirmed, Natural wants to return to the use of straight-

line depreciation for tax purposes, if the Commission decides that such an election will be effective for rate-making purposes; but as long as Natural continues to use liberalized depreciation for tax purposes, the benefits of liberalized depreciation will be flowed-through to its customers by refunds or rate reductions. If the Commission enters an order requiring Natural to reflect liberalized depreciation in its rates if it uses straight-line depreciation for tax purposes, and that order is finally affirmed, Natural will reduce its rates to reflect the tax effect of the excess of liberalized depreciation over straight-line depreciation for the year immediately preceding the year in which the Commission's order becomes final, unless Natural can demonstrate that such a reduction would produce a level of revenue conducive to a rate increase filing. Until that rate reduction is made, Natural is obligated to make refunds reflecting liberalized depreciation for each year in which it uses liberalized depreciation for tax purposes. If the Commission enters an order, which becomes final, allowing Natural to reflect straight-line depreciation in its rates if it elects to use straight-line depreciation for tax purposes, Natural will continue to be obligated to make refunds for all years in which it uses liberalized depreciation for tax purposes, even though the obligation to reduce its rates will be terminated. These refunds will be made when Opinion Nos. 456 and 456–A are finally affirmed, for the period prior to that time, and annually thereafter until Natural either reduces its rates or elects to use straight-line depreciation for tax purposes, depending on the outcome of the Declaratory Order proceeding described above. If that aspect of Opinion Nos. 456 and 456–A requiring the deduction of deferred tax balances from the rate base is finally affirmed on appeal, Natural will make refunds and rate reductions to reflect that principle. There are other provisions in Article V of the agreement specifying the periods for which Natural shall be obligated to make refunds and rate reductions if the policies of Opinion Nos. 456 and 456–A are affirmed but some date other than February 3, 1964, is determined to be the date when the Commission could apply those policies to Natural, or if those policies or a policy of requiring Natural to reflect liberalized depreciation in its rates if its uses straight-line depreciation for tax purposes are reversed by the Commission or Congress. All amounts refunded pursuant to the terms of Article V will bear interest at seven percent per annum from the 20th day of the month in which payment was due to Natural until the date of refund.

(5) The agreement is contingent on the Commission's terminating the proceeding in Docket No. RP65-50 and relieving Natural of all obligations therein; Natural agrees to dismiss its appeal from Commission orders in that proceeding which is now pending before the Court of Appeals for the Seventh Circuit. Additional contingencies are approval by the Commission of the agreement's terms without modification and acceptance of the proposed tariff sheets without suspension.

(6) Natural's obligation under the agreement will terminate when new rates, (other than those required to be filed pursuant to the agreement) become effective.

The Public Service Commission of Wisconsin and the City of Chicago have filed comments on Natural's statement, as provided for in the "Notice of Proposed Settlement", issued October 5, 1965. Neither of these parties makes objection to Natural's proposals, although they state that they are unable to evaluate the amount of the proposed rate reduction and the terms of the agreement.

The Commission finds:

(1) Good cause exists for waiving the requirements of Section 154 of the Commission's Regulations under the Natural Gas Act in order that the proposed rates shown in the attached Appendix A may become effective on January 1, 1965, as hereinafter ordered.

(2) The proposed reduced rates and Natural's agreement to make refunds and further reduce its rates as provided in the statement filed September 29, 1965, are proper and in the public interest in carrying out the provisions of the Natural Gas Act and should be accepted for filing and made effective as hereinafter provided and ordered.

The Commission orders:

(A) The provisions of Section 154 of the Commission's Regulations under the Natural Gas Act are waived to the extent necessary to make the tariff sheets to be filed effective as of the date hereinafter specified, subject to the terms of this order.

(B) Natural's proposal filed September 29, 1965, to file tariff sheets containing the proposed rates shown in the attached Appendix A; to make purchased gas refunds to its customers; and to make refunds and rate reductions pertaining to liberalized depreciation subject to specified contingencies, is approved and made effective as specified herein subject to the terms of this order.

(C) Natural shall file within 10 days following the date of issuance of this order, revised tariff sheets acceptable to the Commission, containing the proposed rates shown in Appendix A. Upon the filing by Natural of such sheets and acceptance thereof, evidenced by a letter addressed to Natural by the Secretary of the Commission, such tariff sheets shall be effective as of January 1, 1965.

(D) Natural shall comply fully with each of the obligations it has assumed in the proposal embodied in its statement filed September 29, 1965, and shall comply with each of the provisions of this order. Subject to Natural's compliance with the terms of its agreement and of this order, the informal review of Natural's earnings initiated by the letter of December 15, 1964, and the proceeding in this Docket No. RP65-50 are terminated and Natural is relieved of obligations therein.

(E) This order is without prejudice to any filings or orders which have been made or may hereafter be made by the Commission and is without prejudice to any claims or contentions which may be made by the Commission, Natural, the Commission staff, or any other party affected by this order, in any proceeding now pending or hereafter instituted by or against Natural or any other persons or parties affected by this order.

APPENDIX A

Rate Schedule	Present Rates		Proposed Rates	
	Demand	Commodity	Demand	Commodity
CD-1	2.28	20.60	2.15	20.60
CD-2	2.20	20.60	2.07	20.60
PL-1	2.28	20.60	2.15	20.60
G-1		35.59		34.74
G-2		35.07		34.21

Before Commissioners: Joseph C. Swidler, Chairman; Charles R. Ross, David S. Black and Carl E. Bagge.

POWER SYSTEM STATEMENTS—MISCELLANEOUS AMENDMENTS TO F.P.C. FORMS NOS. 12, 12-A, 12-D, DOCKET NO. R-289

ORDER NO. 312

AMENDING REPORT FORMS NOS. 12, 12-A AND 12-D

(Issued December 20, 1965)*

The Commission is here amending F.P.C. Forms Nos. 12, 12-A and 12-D, Power System Statements, prescribed in §§ 141.51, 141.52 and 141.55, respectively, of its regulations and required to be filed by electric utilities, licensees and others engaged in the generation, transmission or distribution of electric energy. On October 28, 1965, we issued a notice of proposed rulemaking (30 F.R. 10418, November 5, 1965) in which the amendments were described in detail. We also stated that the amendments, for the most part suggested by representatives of the companies and other entities which make the reports reduce the present reporting requirements but, in addition, provide new schedules for the reporting of information relating to the operation of pumped storage facilities by the few hydroelectric licensees which have such facilities. Only a minor editorial change, which we have adopted, was suggested by the single response submitted pursuant to the notice. Accordingly, the amendments here prescribed are the same as those proposed in the notice and the following table lists the schedules affected in the several forms:

Schedule Heading	Page Number	
	New	Old
F.P.C. FORM NO. 12		
General Information	3	3
Capacity and Output, etc.	4	4
Do.	5	5
System Hydroelectric Data	8	8
Plant Data—Small Plants	9	9
Do.	10	10
Hydroelectric Plant Data	11	11
Do.	12	12
Pumped Storage Plant Data	13	----
Do.	14	----
Steam Electric, etc., Plant Data	15	13
Internal Combustion, etc., Plant Data	17	15
F.P.C. FORM NO. 12-A		
General Information	2	2
General Instructions	5	5
F.P.C. FORM NO. 12-D		
General Information	1	1

The Commission finds:

The amendments to the several report forms here prescribed are necessary and appropriate for the administration of the Federal Power Act.

The Commission, acting pursuant to the provisions of the Federal Power Act, as amended, particularly sections 4(a), (b), (c), 301(a), 302, 304, 309, and

*Published in the Federal Register on December 28, 1965 (30 F.R. 16106).

311 thereof (49 Stat. 839, 854, 855, 858, 859; 16 U.S.C. 797(a), (b), (c), 825(a), 825a(a), 825c, 825h, 825j), *orders:*

(A) F.P.C. Form No. 12, Power System Statements, for Classes I and II systems, prescribed by § 141.51(a), Subchapter D, Chapter I, Title 18 of the Code of Federal Regulations, is amended by adding a new schedule (4–A Pumped Storage Plant Data) and amending the General Information page and schedules 1, 3, 4, 5 and 7 to read as set out in the several schedule pages of the form appended hereto in *Attachment A.**

(B) F.P.C. Form No. 12–A, Power System Statements, for Classes III, IV and V systems, prescribed by § 141.52 of the said regulations, is amended by amending the General Information and General Instructions pages to read as set out in the two pages of the form appended hereto in *Attachment B.**

(C) F.P.C. Form No. 12–D, Power System Statements for certain Class III systems, prescribed by § 141.55 of the said regulations, is amended by amending the General Information page to read as set out in *Attachment C,** appended hereto. [Secs. 4(a), (b), (c), 301(a), 302, 304, 309, 311, (49 Stat. 839, 854, 855, 858, 859; 16 U.S.C. 797(a), (b), (c), 825(a), 825a(a), 825c, 825h, 825j)]

(D) The amendments prescribed herein shall be effective for the reporting year 1965 and thereafter.

(E) The Secretary shall cause prompt publication of this order to be made in the Federal Register.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

SOUTH CAROLINA NATURAL GAS COMPANY, DOCKET NO. RP66–11

DECLARATORY ORDER DETERMINING CONTRACTUAL OBLIGATIONS WITH RESPECT TO DELIVERY PRESSURES

(Issued December 20, 1965)

South Carolina Natural Gas Company (South Carolina), on September 15, 1965, filed a petition pursuant to Section 1.7(c) of the Commission's Rules of Practice and Procedure, requesting a declaratory order determining the question of the proper pressure at which overrun gas must be made available to South Carolina by Southern Natural Gas Company at the latter's Aiken delivery point.

South Carolina contends that the terms of its service agreement with Southern Natural and the provisions of the latter's tariff clearly provide for delivery pressure of 400 psig at Aiken, without any specification of the type of gas delivered. Thus South Carolina claims that a delivery pressure of 400 psig must continuously be maintained at the Aiken delivery point regardless of the daily quantity of gas it purchases at that delivery point. It further argues that based on those contract and tariff provisions, there is no justification for Southern Natural's attempt to limit this pressure requirement only to contract demand gas. In addition to its contention regarding the proper interpretation of the contract and tariff provisions, South Carolina also states that unless the pressure question can be resolved satisfactorily, it will be forced to

*Omitted in printing.

install additional compressor facilities at great expense in order to receive its "historical share of overrun gas at Aiken."

Southern Natural filed its answer to the petition on September 30, 1965, urging the Commission to find that pursuant to the terms of its tariff and its service agreement with South Carolina, it does not have any obligation to maintain the 400 psig contract delivery pressure at Aiken on days when South Carolina purchases gas at that delivery point in excess of the contract demand for that delivery point.

On October 22, 1965, Carolina Pipeline Company, which also purchases gas from Southern Natural at Aiken, filed a petition to intervene coupled with a request that the proceeding be set down for formal hearing. Carolina alleges that if Southern is required to maintain a delivery pressure of 400 psig at Aiken, it would affect adversely Southern Natural's ability to deliver the full capacity of its pipeline and would have a substantial adverse affect upon Southern Natural's ability to make deliveries to Carolina.

The effective service agreement between South Carolina and Southern Natural provides in part as follows:

> Purchaser agrees to take and purchase from Company, and Company agrees to sell and deliver to Purchaser quantities of gas up to the contract demands at the delivery point and at the delivery pressure specified in Exhibit A hereto * * *.

Exhibit A to that service agreement specifically provides for a contract demand of 70,650 Mcf at the Aiken delivery point at a delivery pressure of 400 psig. Section 3 of the General Terms and Conditions of Southern Natural's tariff states in part:

> Gas will be delivered at each delivery point at such pressure as may be mutually agreed upon and specified in the contract. Each pressure to be so specified, shall be such pressure as purchaser may request up to the pressure which, in the opinion of the company, can be continuously maintained, without reducing the existing or future deliverability, or impairing the efficient operation, of its system or any part thereof.

The facts indicate that Southern Natural has executed service agreements with each of its customers, including South Carolina, to deliver volumes of gas up to the specified contract demands, but it does not have service agreements or contracts for overrun service with any of its customers. Clearly, Southern Natural is not obligated to deliver daily quantities in excess of specified contracts, although when such excess gas is available it is obligated to apportion it equitably among all its customers.

Southern Natural in its answer admits that the pressures at Aiken have dropped below 400 psig, but only on days when quantities of gas considerably in excess of contract demand were being delivered to South Carolina and Carolina Pipeline at that delivery point. Southern Natural further states that it would be impossible, within reasonable economic limitations, to design a pipeline system which could assure maintenance of specified delivery pressures at specified delivery points without regard to the daily quantities of gas to be delivered.

After analysis of the pleadings filed and the related documents and data on file with the Commission, it is our view that South Carolina's claim for delivery pressure to be maintained at Aiken is not supported by the provisions of Southern Natural's tariff or by the contractual provisions of the service agreement between South Carolina and Southern Natural. On the contrary, we find that Southern Natural is not contractually obligated to maintain a

400 psig delivery pressure at its Aiken delivery point for South Carolina on days when South Carolina is purchasing volumes of gas at Aiken in excess of its contract demand for that delivery point.[1]

The Commission determines:

Southern Natural is not obligated under its tariff or under its service agreement with South Carolina to maintain a 400 psig delivery pressure at Aiken delivery point to South Carolina on days when South Carolina is purchasing overrun gas (*i.e.*, gas in excess of its Contract Demand entitlement) at that delivery point.

[1] Southern Natural began operating its new Hall Gate Compressor Station (CP64–314) on November 4, 1965. It is anticipated that the operation of that station will improve deliveries and pressures at Aiken.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

SUN OIL COMPANY, DOCKET NO. RI66-198

ORDER GRANTING MOTION FOR RECONSIDERATION, ACCEPTING CONDITIONALLY NOTICE OF CHANGE FOR FILING AND PROVIDING FOR HEARING ON AND SUSPENSION OF PROPOSED CHANGE IN RATE

(Issued December 20, 1965)

Sun Oil Company (Sun) filed a motion for reconsideration on November 23, 1965, of the Commission's undocketed order issued August 25, 1965, rejecting a proposed rate increase from 16.0¢ to 20.5¢ per Mcf for sales of gas under its FPC Gas Rate Schedule No. 124 to Transwestern Pipeline Company from Kermit Field, Winkler County, Texas.[1] In its letter-order the Commission refused to waive the condition in Sun's temporary certificate issued November 3, 1960, in Docket No. CI61-372 which prohibits the filing of any rate increase above the authorized initial rate of 16¢ per Mcf for sales under Sun's FPC Gas Rate Schedule No. 124. Waiver was not granted because the rate proposed by Sun was in excess of the applicable just and reasonable rate ceiling determined in Opinion No. 468 for sales in the Permian Basin where Sun's sale is made. Sun's application for rehearing of the August 25 order was denied by order issued October 21, 1965, 34 FPC 1180.

On October 20, 1965, subsequent to the issuance of our rejection order, the Tenth Circuit in *Skelly Oil Co.* v. *F.P.C.* (CA–10 No. 8385, *et al.*) stayed through January 20, 1966, the effectiveness of Opinion Nos. 468 and 468–A, 34 FPC 159, 1068, as to Skelly, Phillips and Warren. The Court's order further provided that any member of the Court may grant a similar stay if other petitions for review are filed in or transferred to that Court. Argument was also set for January 7, 1966, on the question of further stay. Sun was granted a court stay by order issued November 9, 1965.

Under the circumstances, it is appropriate to grant Sun's motion for reconsideration, conditionally accept for filing, and simultaneously suspend the rate increase filed on July 30, 1965, for a period of five months from the date it otherwise would have become effective had it not been rejected. Our acceptance of the instant rate increase is expressly conditioned to provide that

[1] The proposed increased rate filed on July 30, 1965 is designated herein as Supplement No. 3 to Sun's FPC Gas Rate Schedule No. 124. Details of the proposed increase are set forth in Appendix "A" hereof.

the rate increase will be rejected, *ab initio*, in the event the court stay referred to above is dissolved or Opinion Nos. 468 and 468–A are upheld upon judicial review.

The proposed changed rate and charge may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds:

It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the proposed change, and that Supplement No. 3 to Sun's FPC Gas Rate Schedule No. 124 be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly Sections 4 and 15 thereof, the Commission's Rules of Practice and Procedure, and the Regulations under the Natural Gas Act [18 CFR, Chapter I], a public hearing shall be held upon a date to be fixed by notice from the Secretary concerning the lawfulness of the proposed increased rate and charge contained in Supplement No. 3 to Sun's FPC Gas Rate Schedule No. 124.

(B) Pending such hearing and decision thereon, Supplement No. 3 to Sun's FPC Gas Rate Schedule No. 124 is conditionally accepted for filing, as noted above, and is hereby suspended and the use thereof deferred until February 1, 1966, and thereafter until such further time as it is made effective in the manner prescribed by the Natural Gas Act.

(C) Neither the supplement hereby suspended, nor the rate schedule sought to be altered thereby, shall be changed until this proceeding has been disposed of or until the period of suspension has expired, unless otherwise ordered by the Commission.

(D) Notices of intervention or petitions to intervene may be filed with the Federal Power Commission, Washington, D. C., 20426, in accordance with the Rules of Practice and Procedure [18 CFR 1.8 and 1.37(f)] on or before February 2, 1966.

APPENDIX A

Docket No.	Respondent	Rate schedule No.	Supplement No.	Purchaser and producing area	Amount annual increase	Date filing tendered	Effective date unless suspended	Date suspended until	Cents per Mcf		Rate in effect subject to refund in docket Nos.
									Rate in effect	Proposed increased rate	
RI66-198	Sun Oil Company, 1608 Walnut Street, Philadelphia, Pennsylvania, 19103 Attn: Mr. C.F. Webber.	124	3	Transwestern Pipeline Company, (Kermit Field, Winkler County, Texas) (R.R. District No. 8), (Permian Basin Area).	$8,100	7-30-65	[1] 9-1-65	2-1-66	16.0	[2] [3] 20.5	

[1] Contractually provided effective date. [2] Periodic rate increase. [3] Pressure base is 14.65 psia.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

UNION OIL COMPANY OF CALIFORNIA, DOCKET NO. CI65-683

ORDER DENYING MOTION FOR RECONSIDERATION

(Issued December 20, 1965)

On November 22, 1965, Union Oil Company of California (Union) filed a motion for reconsideration of certain of the conditions attached to the temporary certificate issued to Union in the above-captioned proceeding by the Commission's letter, dated November 4, 1965, permitting Union to sell gas in interstate commerce as proposed in the application for certificate.

The conditions to which Union has referred are as follows:

(1) The initial rate shall be that provided in the rate schedule accompanying the certificate application or the applicable area rate determined pursuant to the Commission's Opinion No. 468, as modified by Opinion No. 468–A, 34 FPC 159, 1068, whichever is lower.

(2) No increase in rate may be filed prior to January 1, 1968, except in compliance with a specific order of the Commission, for a rate in excess of the applicable area rate as determined pursuant to the Commission's Opinion No. 468, as modified by Opinion No. 468–A, or pursuant to later order of the Commission.

(3) The filing, within 90 days from the date of initial delivery, of a Rate Schedule-Quality Statement as set forth in the Commission's Opinion No. 468, as modified by Opinion No. 468–A.

(4) If the quality of the gas delivered hereunder at any time deviates from the quality standards set forth in Ordering Paragraph (B) of Opinion No. 468–A so as to require a downward adjustment to the existing rate, a notice of change in rate must be filed pursuant to the provisions of Section 4 of the Natural Gas Act; *provided, however,* that adjustments reflecting changes in Btu content shall be computed by the applicable formula and charged without the filing of a notice of change in rate.

Union moves that, in view of the Order issued by the United States Court of Appeals for the Tenth Circuit on November 5, 1965, staying Opinion Nos. 468 and 468–A to and including January 20, 1966, and enjoining and restraining this Commission from enforcing, causing to be enforced, or attempting to enforce said Opinions against Union, the Commission modify the temporary certificate issued to Union in Docket No. CI65–683 by deleting therefrom the conditions referred to, *supra.*

Union's arguments are unconvincing. Of course, with respect to Union's existing sales in issue in the Permian proceeding, the Court's action in granting a temporary stay of Opinion Nos. 468 and 468–A is binding upon us. This, however, has nothing to do with the public interest question presented by a new application under Section 7 of the Act. The Court's temporary stay of our orders in the Permian proceeding provides no basis for changing our conclusion that the public interest requires that sales conform to the just and reasonable standards for the future in Opinion Nos. 468 and 468–A, nor has Union adduced any information which would lead us to shift our position. As we indicated in the Permian Opinion, Union will, of course, have an opportunity at the hearing of its application to show why some higher price is warranted. But in the meantime, if it wishes to operate on an emergency

temporary certificate prior to the time when all interested parties can have their opportunity to state their case, it must do so pursuant to the reasonable conditions we have imposed.

The Commission finds:

The reasons advanced as grounds for reconsideration in Union's motion present no facts or legal principles which would warrant any change or modification in the Commission's letter of November 4, 1965, in Docket No. CI65-683.

The Commission orders:

The above-described motion for reconsideration of the Commission's letter of November 4, 1965, is denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

UNITED GAS PIPE LINE COMPANY, DOCKET NO. CP63-62

ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued December 20, 1965)

On November 5, 1965, United Gas Pipe Line Company (Petitioner) filed in Docket No. CP63-62 a petition to amend the order dated June 21, 1963 (29 FPC 1252) issuing a certificate in said docket by authorizing an increased daily sale and delivery of natural gas to the Town of Beaumont, Perry County, Mississippi, for resale, all as more fully set forth in the petition.

Petitioner has heretofore been authorized to sell and deliver up to 344 Mcf of natural gas per day to the Town of Beaumont and now requests authorization to sell and deliver up to 1,900 Mcf of natural gas per day. The additional gas will be resold by the Town of Beaumont to a plywood mill being constructed there.

The estimated annual and peak day requirements for the Town of Beaumont in Mcf at 14.9 psia for the first three years of increased deliveries are as follows:

Year	Annual	Peak day
1	299,700	1,544
2	349,667	1,578
3	351,867	1,900

Petitioner proposes to replace the meter, regulator and appurtenant equipment used to serve the Town of Beaumont with equipment of greater capacity to accommodate the increased deliveries. The estimated net cost of said facilities is $1,592, to be financed with funds on hand.

After due notice no petition to intervene, notice of intervention or protest to the granting of the petition has been received.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the order issuing a certificate of public convenience and necessity in Docket No. CP63-62 should be amended as hereinafter ordered.

The Commission orders:

The order issuing a certificate of public convenience and necessity to Petitioner in Docket No. CP63–62 is amended by authorizing the sale and delivery of up to 1,900 Mcf of natural gas per day to the Town of Beaumont, Mississippi, and the construction and operation of facilities necessary therefor. In all other respects said order shall remain in full force and effect.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

BRAZOS RIVER AUTHORITY, PROJECT NOS. 1490 AND 2472

ORDER PERMITTING WITHDRAWAL OF APPLICATION FOR PROJECT NO. 2472 AND AMENDING LICENSE (MAJOR) FOR PROJECT NO. 1490

(Issued December 22, 1965)

On March 19, 1965, the Brazos River Authority, Licensee of Project No. 1490 and Applicant for Project No. 2472, filed a notice of withdrawal of license application for Project No. 2472 which had been filed on May 4, 1964. The Authority, on March 19, 1965, also filed an application for amendment of its license for Project No. 1490, (Morris Sheppard) located on the Brazos River in Palo Pinto, Young and Stephen Counties, Texas. On October 21, 1965 the Authority filed a revised Exhibit B to the application for amendment.

Public notice of the notice of withdrawal of application in Project No. 2472 and application for amendment of the license for Project No. 1490 was issued April 14, 1965. No protests or petitions to intervene were received.

Project No. 2472 for which the Authority now seeks to withdraw its application would have been comprised of the existing Project No. 1490 and a proposed DeCordova Bend development downstream on the Brazos River in Hood and Parker Counties, Texas. The Authority asserts that the withdrawal of its application is necessary because it has been unable to complete arrangements for the sale of power which would have made it possible to finance the construction of the DeCordova Bend hydroelectric development. Under the circumstances, the Commission will permit the withdrawal of the application for license for Project No. 2472.

Licensee in its application for amendment of license for Project No. 1490, in substance, seeks Commission authority to permit the use of the Morris Sheppard Reservoir as a source of cooling water for steam-electric generating plants which certain utility companies intend to construct and operate on lands adjacent to the Morris Sheppard Reservoir. Licensee states that in return for such use, and the use of the proposed DeCordova Bend Reservoir for similar purposes, the companies will finance the construction of the DeCordova Bend Dam and Reservoir which will not include hydroelectric facilities. In the event that hydroelectric facilities are installed at a later date, this installation would not require modification of the DeCordova Bend Dam.

Specifically, Licensee requests the following:

(1) Approval of an easement (Exhibit B, as revised October 18, 1965) to be granted by Licensee to the Texas Electric Service Company and its successors and assigns (Companies) for the use of certain lands within the project boundary of Project No. 1490 for the construction, operation, and maintenance

of steam-electric generating facilities, reserving the right to the Licensee, its successors and assigns to use such lands for project purposes of Project No. 1490;

(2) Approval of a revised Exhibit K (FPC No. 1490–69) designating certain areas within the project boundary of Project No. 1490 which are to be the subject of the aforesaid easement; and

(3) Approval of the use of Morris Sheppard Reservoir as a source of cooling water for steam-electric generating plants to be constructed and operated by companies.

The easement (Exhibit B) which Licensee proposes to grant to Companies would change its interest in certain lands within Project No. 1490, shown in revised Exhibit K (FPC No. 1490–69), while reserving the right to Licensee, its successors and assigns to use the lands for project purposes. Since it appears that the proposed change in Licensee's interest in these project lands will not affect adversely the operation of Project No. 1490, we shall grant Licensee's request for approval of the easement. We shall likewise approve the revised Exhibit K (FPC No. 1490–69) showing the location of project lands affected by the easement.

With respect to Licensee's request for approval of the Companies' proposed use of the Morris Sheppard Reservoir, it appears that such use would not be inconsistent with project purposes as provided in the license. We shall authorize Licensee to permit the proposed use of the Morris Sheppard Reservoir, with the proviso that such operation shall not affect injuriously the operation of Project No. 1490.

In addition, Licensee seeks an amendment of its license adding a condition which would authorize the use of the Morris Sheppard Reservoir as a source of cooling water for Companies' steam-electric generating plants for the duration of the easement. The terms of the easement provide that it shall remain in effect until the purposes for which it is granted "shall have been abandoned". Under those terms, the proposed use of the Morris Sheppard Reservoir might well extend beyond the term of the license for Project No. 1490 which expires in 1988. As we stated in an order amending license for Project No. 405[1] in which we refused to provide conditions which would have extended beyond the term of the license, "it is fundamental that the terms and conditions of a license may not extend for a period beyond the expiration of its term".

While some similarity may exist between the use of the Morris Sheppard Reservoir proposed herein and the use of the Conowingo Reservoir provided for in Project No. 2355 (Muddy Run),[2] the extent of the Commission's licensing authority in each case is not the same. In the case of Muddy Run the Commission was exercising its licensing authority, pursuant to Sections 4(e) and 10(a) of the Federal Power Act in the interest of comprehensive development of the Susquehanna River, when it authorized the Muddy Run Pumped Storage Development and the use of the Conowingo Reservoir for the period of the license for Project No. 2355 which extended beyond the term of the license for Project No. 405. However, this exercise of authority does not obtain with respect to the proposed steam-electric generating facilities.

Licensee has not expressly requested the Commission to authorize the con-

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[1] The Susquehanna Power Company and Philadelphia Electric Power Company, Project No. 405, order issued August 16, 1965, 34 FPC 517.

[2] See Commission Opinion No. 443, issued September 21, 1964, 32 FPC 826.

struction and operation of the Companies' steam-electric generating plants, but, lest our action herein be interpreted as authorizing such construction or operation, we wish to make clear, consistent with the decision of the Supreme Court in the *Taum Sauk case*[3], that the Commission is not empowered to license steam-electric generating facilities and that we have not undertaken to do so herein.

The Texas Park & Wildlife Department has made certain suggestions with respect to fish protective devices. We shall provide for appropriate fish protective devices for Project No. 1490 by the addition of a pertinent license article.

The Department of the Interior in its report upon the application for amendment recommends that the license for Project No. 1490, as amended, include appropriate Form–L standard articles relating to fish, wildlife and recreation resources. We believe that it is in the public interest to protect fish, wildlife and recreation resources from any detrimental effects which may result from the use of project waters as herein authorized. Accordingly, we shall order the addition of appropriate articles dealing with these matters.

The Commission finds:

(1) It is appropriate to permit the withdrawal of the application for license for Project No. 2472.

(2) It is consistent with the public interest that the license for Project No. 1490 be amended as herein provided.

(3) The revised Exhibit K (FPC No. 1490–69) conforms to the Commission's rules and regulations and should be approved as part of the license for Project No. 1490; Exhibit K (FPC No. 1490–60) now part of the license and which will be superseded, should be eliminated from the license.

The Commission orders:

(A) Permission for withdrawal of the application for license for Project No. 2472 is hereby granted.

(B) The aforesaid request by Brazos River Authority for an amendment of the license for Project No. 1490 for the duration of the easement, which may extend beyond the term of the license, is hereby denied.

(C) Exhibit K (FPC No. 1490–60) of the license for the Project No. 1490, to be superseded by a revised Exhibit K (FPC No. 1490–69) hereinafter ordered approved, is hereby eliminated from the license.

(D) The license for Project No. 1490 is hereby amended by adding thereto the following articles:

Article 26. The Licensee may convey an interest in lands within Project No. 1490, as described in revised Exhibit K (FPC No. 1490–69), to the Texas Electric Service Company, its successors and assigns (Companies), reserving the right for Licensee, its successors and assigns to use such lands for project purposes as authorized in the license for Project No. 1490. The revised Exhibit K (FPC No. 1490–69), showing the location of such lands and the proposed easement relating thereto, as revised October 18, 1965, are hereby approved. Nothing in this license shall be construed as an undertaking by the Commission to authorize or license the said Companies' steam-electric generating facilities.

Article 27. The Licensee may permit the use of its reservoir and other project works as a source of and return for cooling water for steam-electric generating facilities of said Companies; *Provided*, that the construction of

[3] *Federal Power Commission v. Union Electric Company*, 381 U.S. 90.

such facilities within the project boundary shall be limited to the areas designated on revised Exhibit K (FPC No. 1490-69); and *Provided further*, that the construction, operation and maintenance of such facilities does not affect injuriously the operations of Project No. 1490.

Article 28. The Licensee shall, for the conservation and development of fishery resources, consult and cooperate with the Texas Parks and Wildlife Department and the Bureau of Sport Fisheries and Wildlife in determining criteria for the design, construction, maintenance, and operation of appropriate fish protective screens or devices in relation to the water intake of the steam-electric generating facilities referred to in Article 27 and in developing criteria for project operation which would prevent an increase in the temperature of waters affected by the aforesaid facilities to or above a level which would be detrimental to the fishery and recreational resources; *Provided*, that in the event the Licensee and the fishery and wildlife agencies fail to agree on such criteria, the same may be determined by the Commission after notice and opportunity for hearing.

Article 29. The Licensee, within one year of the date of issuance of this order, shall submit for Commission approval its recreational use plan for the Morris Sheppard project in conformance with Section 4.41 R of Commission's Regulations under the Federal Power Act.

Article 30. The Licensee shall, for the conservation, and development of fish and wildlife resources, construct, maintain, and operate, or arrange for the construction, maintenance and operation of such facilities and comply with such reasonable modifications of the project structures and operation, as may be ordered by the Commission upon its own motion or upon the recommendation of the Secretary of the Interior or the fish and wildlife agency or agencies of any State in which the project or a part thereof is located, after notice and opportunity for hearing and upon findings based on substantial evidence that such facilities and modifications are necessary and desirable, reasonably consistent with the primary purpose of the project, and consistent with the provisions of the Act.

Article 31. Whenever the United States shall desire, in connection with the project, to construct fish and wildlife facilities or to improve the existing fish and wildlife facilities at its own expense, the Licensee shall permit the United States or its designated agency to use, free of cost, such of Licensee's lands and interest in lands, reservoirs, waterways and project works as may be reasonably required to complete such facilities or such improvements thereof. In addition, after notice and opportunity for hearing, the Licensee shall modify the project operation as may be prescribed by the Commission, reasonably consistent with the primary purpose of the project, in order to permit the maintenance and operation of the fish and wildlife facilities constructed or improved by the United States under the provisions of this article. This article shall not be interpreted to place any obligation on the United States to construct or improve fish and wildlife facilities or to relieve the Licensee of any obligation under this license.

Article 32. The Licensee shall construct, maintain and operate or shall arrange for the construction, maintenance and operation of such recreational facilities including modifications thereto, such as access roads, wharves, launching ramps, beaches, picnic and camping areas, sanitary facilities and utilities, as may be prescribed hereafter by the Commission during the term of this license upon its own motion or upon the recommendation of the Secretary of the Interior or other interested Federal and State agencies, after notice and opportunity for hearing and upon findings based upon substantial evidence

that such facilities are necessary and desirable, and reasonably consistent with the primary purpose of the project.

Article 33. So far as is consistent with proper operation of the project, the Licensee shall allow the public free access, to a reasonable extent, to project waters and adjacent project lands owned by the Licensee for the purpose of full public utilization of such lands and waters for navigation and recreational purposes, including fishing and hunting, and shall allow to a reasonable extent for such purposes the construction of access roads, wharves, landings, and other facilities on its lands, the occupancy of which may in appropriate circumstances be subject to payment of rent to the Licensee in a reasonable amount: *Provided*, that the Licensee may reserve from public access, such portions of the project waters, adjacent lands, and project facilities as may be necessary for the protection of life, health, and property and *Provided further*, that the Licensee's consent to the construction of access roads, wharves, landings, and other facilities shall not, without its express agreement, place upon the Licensee any obligation to construct or maintain such facilities. These facilities are in addition to the facilities that the Licensee may construct and maintain as required by the license.

(E) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license amendment. In acknowledgment of the acceptance of this license amendment, it shall be signed for the Licensee and returned to the Commission within 60 days from the date of issuance of this order.

(F) This amendment in the manner set out above shall not operate to alter or amend the license in any other respect, and shall not in any way constitute a waiver of any other part, provision or condition of the license.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

IOWA POWER AND LIGHT COMPANY, DOCKET NO. E-7252

ORDER AUTHORIZING ACQUISITION OF FACILITIES

(Issued December 22, 1965)

Iowa Power and Light Company (Applicant), filed an application on November 12, 1965, with the Federal Power Commission pursuant to Section 203 of the Federal Power Act, seeking authority to acquire certain electric facilities in the Town of Milo, Iowa.

Applicant is incorporated under the laws of the State of Iowa with its principal place of business office at Des Moines, Iowa and engages in the generation, transmission, distribution and sale of electric energy in 26 counties in central and southwestern Iowa.

Milo is an incorporated town in Warren County, Iowa and operates a municipal electric distribution system used to supply electric energy to customers within or adjacent to the Town. Maintenance of Milo's system is presently performed by the Applicant in accordance with an arrangement with Milo.

Under a Contract of Sale between the Town of Milo, Iowa, and the Applicant, entered into on October 18, 1965, the Applicant proposes to acquire the Town's entire municipal electric distribution system used and useful in supply-

ing electric energy to consumers in and adjacent to the Town, including the street lighting system.

At a special election held in the Town on November 22, 1965, the sale of the system by the Town to the Applicant as provided in the Contract of Sale was approved by a vote of 163 to 69, and a twenty-five year electric franchise to the Applicant was also approved at the same election by a vote of 157 to 69.

According to the application, Applicant proposes to pay $68,000 for the electric facilities of Milo, a price which Applicant states was arrived at by negotiations in which consideration was given to the original cost and reproduction cost, less depreciation, of the facilities, to the customers served thereby and to the revenues estimated to be derived therefrom. Applicant estimates that the depreciated original cost of the electric plant together with materials and supplies is $33,518. The transaction will therefore result in the creation of an electric plant acquisition adjustment of $34,482 which amount will be eliminated by a debit to Account 216, Unappropriated Earned Surplus.

After the acquisition the Applicant proposes to apply its standard rates for retail service and these rates will result in an overall reduction of 18.6%. Service for street lighting and other municipal use is presently unmetered and not charged, but under the Applicant, this service will be subject to metering and billing at the Applicant's standard rates.

According to the application, after the transaction is completed the Applicant's customers in the Town of Milo will receive better maintenance and repair service and the integration of the Milo distribution system into Applicant's surrounding area distribution system will benefit both Applicant and its customers.

Written notice of the application has been given to the Public Utilities Commission of Iowa and to the Governor of that State. Notice was also published in the Federal Register on November 25, 1965 (30 F.R. 14695), stating that any person desiring to be heard or to make any protest with reference to said application should on or before December 6, 1965, file with the Federal Power Commission, Washington, D.C. 20426, petitions or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10).

The Commission finds:

(1) Applicant, a corporation, is a public utility within the meaning of Section 203 of the Federal Power Act, subject to the jurisdiction of the Commission as heretofore described and set forth in the Commission's order issued July 24, 1964, *Iowa Power and Light Company* in Docket No. E-7169 (32 FPC 345).

(2) By the proposed transaction, Applicant will merge or consolidate its facilities subject to the jurisdiction of the Commission with those of Milo, another person, within the meaning and subject to the requirements of Section 203 of the Federal Power Act.

(3) The proposed acquisition of facilities by Applicant, as described above, upon the terms and conditions set forth in the application, and subject to the provisions of this order will be consistent with the public interest as expressed in Section 203 of the Federal Power Act.

(4) The period of public notice given in this matter is reasonable.

The Commission orders:

(A) The proposed acquisition by Applicant of the aforementioned electric facilities, all as described above, is authorized and approved upon the terms

and conditions and for the purposes set forth in the application subject to the provisions of this order.

(B) Applicant shall record the proposed transaction herein authorized and the facilities and properties referred to above as provided in the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees.

(C) This authorization shall expire unless the transaction herein authorized and approved is consummated within 90 days from the date of issuance of this order.

(D) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determination of cost, or any matter whatsoever now pending or which may come before this Commission or any other regulatory body and nothing herein shall be construed as an acquiescence by this Commission in any estimate or determination of cost or any valuation of property claimed or asserted.

OPINION NO. 483

PUBLIC SERVICE COMPANY OF INDIANA, INC., DOCKET NO. E-7163

OPINION AND ORDER DETERMINING JURISDICTION AND DENYING MOTION FOR ORAL ARGUMENT

(Issued December 22, 1965)*

Syllabus

1. Commission is not obliged to show by tracing methods that out-of-state energy reaches the physical points of sale where, as here, generation from each source in system contributes directly or indirectly, and to ever varying extent, to energy present in all parts of system which are not isolated from out-of-state sources. P. 1517.
2. Since sales in question are from an electrically integrated interstate system and are pool sales, they are sales in interstate commerce subject to Commission jurisdiction. PP. 1517; 1534.
3. A sale is no less interstate in nature because interstate component is the result of conscious efforts of system's own operators rather than those of affiliated company—nor is it material that Power Company has no scheduled or firm purchases of power from out-of-state sources. PP. 1517, 1518.
4. It was entirely proper to exclude evidence on question of whether Power Company violated Power Act in acquiring municipal electric facilities. PP. 1518, 1519.
5. In a proceeding arising under Sections 201, 205 and 206 of the Federal Power Act, Commission *determines* it has jurisdiction over Power Company's sales and *denies* motion for oral argument.

Commissioner O'Connor *concurring* in part; *dissenting* in part.

Cameron F. MacRae and *H. G. Skinner, LeBoeuf, Lamb* and *Leiby* and *Paul G. Jasper* and *Greg Kimberlin* for Public Service Company of Indiana, Inc.

Daniel Goldstein, Donald M. Malone and *Ernst Liebman* for the Staff of the Federal Power Commission.

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*Initial decision appears on p. 1531. Affirmed, *Public Service Company of Indiana, Inc. v. F.P.C.*, 375 F. 2d 100 (CA7–1967); Cert denied, 387 U.S. 931 (1967).

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

BAGGE, *Commissioner:*

This is a proceeding to determine whether wholesale sales made by Public Service Company of Indiana, Inc. (PSCI) to its municipal and cooperative customers in the State of Indiana (listed in Appendix A hereto) are subject to this Commission's jurisdiction under Sections 201, 205, and 206 of the Federal Power Act. The proceeding was initiated by order of May 1, 1964 (31 FPC 1064), instituting an investigation. It is presently before us on exceptions filed by PSCI and staff to the initial decision of Presiding Examiner Martin E. Rendelman. While the facts differ somewhat from those in *Indiana & Michigan Electric Company*, 33 FPC 739, Opinion No. 458, Docket No. E–7089, issued April 14, 1965, and *Arkansas Power & Light Company*, 34 FPC 747, Opinion No. 473, Docket No. E–7090, issued September 7, 1965, the basic principles expressed in those cases are applicable here. We agree with the examiner that PSCI's wholesale sales are subject to our jurisdiction under the Act and that it is, as a consequence, required to file its contracts with its wholesale customers as rate schedules in accordance with our Regulations.

As ordered by the Commission, the hearing began on November 9, 1964. It terminated on December 15, 1964. No petitions to intervene were received, so the only parties to the proceeding were PSCI and our staff. After the exchange of briefs the examiner issued his decision on June 16, 1965. PSCI and staff filed exceptions and briefs opposing exceptions. PSCI filed a motion for oral argument.

PSCI, by its own admission a "public utility" under the Federal Power Act, is an Indiana corporation with principal business office at Plainfield, Indiana. Its operations are confined wholly to Indiana where it serves large areas but not the larger municipalities. The company owns and operates five steam generating plants interconnected with 220, 138 and 69 kv lines. It is interconnected within Indiana with Indianapolis Power and Light Company (IP&L), Northern Indiana Public Service Company (NIPSCO) and Southern Indiana Gas and Electric Company (SIGE), which serve areas only within Indiana, and Indiana & Michigan Electric Company (I&M), which operates in Indiana and Michigan. It is also interconnected at the state line with Louisville Gas and Electric Company, which operates in Kentucky, and Cincinnati Gas & Electric Company, which operates in Ohio. Staff excepted to the examiner's finding that, although some of the interconnection agreements contemplate transactions in firm energy, PSCI does not purchase firm energy from or sell firm energy to these six interconnected companies. We see no reason to rule on that exception. Even if PSCI's interstate transactions are confined to economy and emergency energy interchanges, its sales at wholesale of such energy are subject to our jurisdiction.

Under the Federal Power Act (Section 201(b)), the jurisdiction of the Commission applies to the "sale of electric energy at wholesale in interstate commerce." A sale of electric energy at wholesale is defined as a "sale of electric energy to any person for resale" (Section 201(d)). A sale in interstate commerce is not defined. Therefore, the principal issue here is whether PSCI's sales at wholesale to its cooperative and municipal customers are "in interstate commerce". In *Indiana Michigan* and *Arkansas*, *supra*, we found that the wholesale sales involved were made from an integrated, interstate electric system. As such, we concluded that they were sales in interstate commerce and, as a consequence, were subject to our jurisdiction under Section 201 of

the Act. The record in this case now before us dictates that we reach the same conclusion.

The record shows that the PSCI system, as well as the systems to which it is directly and indirectly interconnected, is essentially a system to which all operating electric generators in the entire interstate network are interlocked electro-magnetically. Electric power is generated within the PSCI system and its connected systems in three phases, each at 60 cycles per second All generators within the PSCI system and its connected systems must operate at exactly the same frequency if the systems are to remain interconnected. Electric energy cannot be stored in electrical form. It is delivered when needed at the speed of light. On an electrical system operating at constant frequency, total generation must always equal load plus losses. Under any other circumstances, there would be an unbalance causing a change in frequency. Such a system cannot supply one connected load and not supply another connected load. It is incapable of distinguishing between loads on the system. All of the electric energy produced by all of the generating units is, as a consequence, delivered to the common transmission network. This acts as a single unit from which all customers are supplied. When a sudden load is added to the system, every generating unit on the system of PSCI, together with every generating unit on connected systems, responds by experiencing a loss in speed. The mechanical energy of rotation is thereby converted to electrical energy. This effect tends to stabilize the frequency and is one of the inherent advantages of interconnection.

A stable frequency is essential to industrial operations, in the accurate operation of electric clocks and in preventing non-scheduled transfers of net energy between systems. It is necessary, in order to avoid frequency fluctuations, that PSCI operate its system, principally through control of generation, so that the energy being generated on its system and on interconnected systems is sufficient to meet all loads plus transmission losses. To determine the generating capability needed, PSCI measures generation and interchange at all interconnections. The amounts are telemetered to PSCI's Central Load Supervisor's office in Plainfield, Indiana. Generation is then varied to maintain net interchange equal to scheduled arrangements with the interconnected companies. However, while PSCI can control the net transfers over tie lines, the actual flows of energy correspond to the electrical characteristics of the system. Even when no interchanges are scheduled, there are energy flows in or out of PSCI's system over the tie lines.

Frequency varies on PSCI's system, as on other systems. This occurs as a consequence of the inability to match load variations simultaneously with changes in generation. A technique known as tie-line control with frequency bias is used to maintain frequency at 60 cycles.

PSCI has entered into broad relationships with the interconnected companies in addition to those made necessary by reason of the physical interconnections. Thus, PSCI is one of 140 members of the Interconnected Systems Group, a network of utilities covering the eastern half of the United States. Each important generating station in the Group is assigned an appropriate share or "band" of generating capacity to be raised or lowered in the event of a system frequency deviation above or below a normal frequency.

Under arrangements with the interconnected companies PSCI participates in the correction of time errors resulting from frequency deviation. For this purpose it is notified by the Canton office of Ohio Power Company, a member of the American Electric Power System with which PSCI is interconnected through Indiana & Michigan Electric Company. Upon receiving such notice,

PSCI takes appropriate action through its load supervisor's control center. Through its interconnections PSCI also obtains assistance during emergencies.[1] Service is, therefore, more reliable because of the interconnections.

Under the contracts with the interconnected companies, operating committees are established. The contract between PSCI and Louisville Gas and Electric Company, dated March 1, 1955, provides that the Operating Committee is to review operations in order to obtain the greatest mutual benefits from the interconnection. To achieve this goal, the Committee is to provide for the interchange of (1) firm capacity and energy when the parties agree; (2) emergency energy; (3) economy energy when either party has energy available at a cost that will result in a saving in operating costs by using such energy to displace generation on the system of the other party; and (4) unintentional energy, that is, energy which may unintentionally flow where interconnections are "floating". Similar provisions are found in PSCI's contract with the Cincinnati Gas & Electric Company and in PSCI's interconnection agreements with the Indiana Companies, SIGE, I&M, IP&L and NIPSCO.

Furthermore, PSCI has a policy of providing a 5 percent spinning reserve over the peak period of the day to meet sudden increases in load. It does not maintain such a spinning reserve on its own system but rather relies on the spinning reserve of interconnected companies. In fact, in 42 out of 69 consecutive weeks in 1963 and the first four months of 1964, PSCI did not maintain on its own system a spinning reserve equal to 5 percent of weekly peak load.

An analysis of the movement of energy onto and from the PSCI system reflects the importance of its interconnections. In 1963 PSCI generated 6,945,324,400 kwh and received from other companies 823,812,000 kwh of which 386,971,000 kwh or 5.6 percent of total net generation was received from companies generating solely in Ohio and Kentucky. This amount of out-of-state energy does not include out-of-state energy received through the facilities of the other Indiana companies. PSCI treats the greater part of this energy as transferred and argues that it purchases but 0.1 percent of its total energy requirements (including for this purpose economy and emergency energy). In reaching this result, PSCI has netted the flows in one direction against the flows in the other direction so that its net receipts become a very small percentage of generation. However, what we consider significant are not the net receipts but the substantial amount of out-of-state energy introduced into the system of PSCI. The label given the energy by PSCI is not decisive. It is purely a matter of accounting to characterize a large part of it as transfer energy. We agree with the statement in PSCI's brief opposing exceptions that the means of accounting for the energy transfer are of no assistance in determining the jurisdictional question.

PSCI also contends that the record, unlike that in the *Indiana Michigan* case, *supra*, does not show pool operation. It contends that its transactions with interconnected companies are limited to the interchange of emergency and economy energy and energy transfers and that it neither buys nor sells firm energy. One of PSCI's witnesses stated that the interconnection agreements do not provide for any multi-state pool-type operation or any central discipline of regulation and that, in keeping the system intact for the purpose of supply-

[1] For example, when generating capability of its Gallagher generating station was curtailed on January 29, 1963, because of inability to receive cooling water under icing conditions, substantial amounts of power were received from the interconnected companies, particularly from Cincinnati Gas & Electric Company and Louisville Gas & Electric Company.

ing its customers, the interconnections have no place in the application of company judgment. While admitting benefits from pooling, such as the reduction in its spinning reserve, PSCI argues that the *Indiana Michigan* case, *supra*, is not applicable.

There are obvious differences between the present case and *Indiana Michigan*, *supra*, and *Arkansas*, *supra*, both of which involved corporate control and centralized operation, but this is not "mere connection" on the part of PSCI. These interconnections "transmit energy actually moving in interstate commerce." *Jersey Central Co.* v. *F.P.C.*, 319 U.S. 61, 72. As indicated above, it is tied to six other companies at 17 points and is part of an interstate power network. Hence, there is a pooling operation here, and PSCI's sales are, as a consequence, sales made from an interstate pool.

PSCI argues that we are obliged to show by the tracing methods used in the past that out-of-state energy reaches the physical points of sale involved herein. While there was a difference of opinion between witnesses for PSCI and our staff as to whether it is possible to make such a tracing study, such polemics are now irrelevant in light of our decision in *Arkansas*, *supra*. As we observed in that case, it is an oversimplification to talk in terms of a flow of electricity from point to point in an integrated power network. Instead, generation from each source in the system contributes directly or indirectly, and to an ever varying extent, to the energy present in all parts of the system which are not isolated from out-of-state sources. This rationale is equally applicable here. There is nothing in this record which establishes that the points of sale at wholesale are isolated from out-of-state sources. On the contrary, the record here demonstrates that the nature of PSCI's system is such that out-of-state energy could, at one time or other, reach all of PSCI's customers during the periods it admittedly was brought into and permeated the backbone transmission system.

On the basis that the PSCI sales in question are sales from an electrically integrated interstate system and are pool sales, we conclude that they are sales in interstate commerce subject to our jurisdiction.

PSCI also argues that we do not have jurisdiction because it generates a greater amount of energy within Indiana than it sells to the wholesale customers, that it has not been established that PSCI's sales to the wholesale customers are effected otherwise than over facilities used in local distribution, that sales to cooperatives are not sales for resale, and that the Commission does not have jurisdiction over PSCI's sales to cooperatives and municipals because regulation of them is reserved to the State of Indiana. These arguments have been considered at some length in either the *Indiana Michigan* or *Arkansas* opinions, *supra*, or both, and do not warrant further discussion.

Commissioner O'Connor, in his dissenting opinion, distinguishes the case now before us from the *Indiana Michigan* and *Arkansas* cases, *supra*. In the latter cases the sales in issue were made by a company which was a subsidiary of a holding company operating its multi-state properties from a central dispatching station. PSCI, on the other hand, represents a much more common situation in which each constituent member of a pool is corporately independent and largely controls the extent to which generation from its plants will be used to meet its loads and the loads of companies with which it is interconnected and the extent to which it will depend upon generation from other companies to meet its loads. As we made clear in *Indiana Michigan*, *supra*, this is a distinction without any difference insofar as the essential jurisdictional question is concerned; a sale is no less interstate in nature because the interstate component is the result of the conscious efforts of the system's own operators

rather than those of an affiliated company. Nor is it material, if true,[2] that PSCI has no scheduled or firm purchases of power from out-of-state sources. For even if we lay aside the fact that PSCI uses its interstate interconnections to provide it with power in the event of emergency outages and regular maintenance shutdowns, its frequent economy purchases cannot be ignored because they are scheduled on the basis of day-by-day or hour-by-hour load and generation factors rather than by some more regular occurrence. It is immaterial that the economy sales from PSCI system tend to equate over a period of time with the purchases it makes with the result that the amount of money which changes hands is relatively small. To characterize PSCI's relationships with its neighbors, including those in or receiving power from other states, as mere interconnection is simply to ignore the record.

The dissent also appears to indicate that the nature of PSCI's system makes it "unlikely" that out-of-state energy reaches many of the wholesale purchasers. Such is not the case. The fact that the Gallagher and Wabash River plants are normally in constant operation does not make it "unlikely" that nearby wholesale purchasers receive interstate power; on the contrary, it was conclusively demonstrated that interstate power could and at times did permeate the transmission lines leading from these plants to the wholesale purchasers. The evidence from PSCI's own records establishes that PSCI's in-state plants do not isolate loads from interstate energy coming into the system from outside the state.[3] In short, it is PSCI, and the dissent, which talk in terms of theories, analogies, and assumptions, and the staff's comprehensive engineering evidence which demonstrates the reality of the situation.

The dissent admits that tracing may be impossible or extremely impractical in many situations and that it "is clear that such a situation cannot defeat our jurisdiction." But what would be our alternative in situations if we were unwilling to accept the engineering analysis upon which we relied in *Indiana Michigan, supra*, and *Arkansas, supra*, and which we have applied here? As we understand the dissent, in such circumstances engineering necessities dictate application of an irrefutable, albeit totally fictional presumption, that a load is served by the particular generator nearest thereto to the exclusion of distant power sources. This, of course, means that an unwillingness to consider anything but tracing would leave the Commission with no jurisdiction, where, as here, tracing is not possible.

The staff raises an issue as to whether PSCI violated the Power Act in acquiring the municipal electric facilities of Crothersville, Indiana, in July of 1964 without Commission approval. The examiner excluded all evidence on this matter and did not mention it in his decision. Our order instituting this proceeding (31 FPC 1064) is concerned only with the Commission's jurisdiction over PSCI's wholesale sales and whether the company should be required

[2] As indicated *supra* the examiner's finding to this effect is challenged by the staff.

[3] To take one example, staff witness Jessel testified that out-of-state energy from Kentucky commingled with energy from Gallagher and Edwardsport generating plants and went beyond those plants to the Freelandville substation located a few miles northeast of the Edwardsport plant (Tr. 533–540, Exh. 21; and see Tr. 1038–1042). PSCI's counsel admitted that PSCI's records showed this to be the fact (Tr. 539–540).

to file rate schedules. Therefore, the examiner's exclusions of the evidence on this question was entirely proper. Furthermore, we do not think that the public interest would be advanced by instituting a separate proceeding with respect to this transaction which took place at a time when our jurisdiction over PSCI was subject to doubt.

PSCI has filed a motion for leave to present oral argument, alleging the importance of the questions involved and the distinction between this case and the *Indiana Michigan* case, *supra*. In our opinion the record has been adequately briefed. No purpose would, therefore, be served by the additional time and expense of oral argument.

The Commission further finds:

(1) Public Service Company of Indiana, Inc. (PSCI) is a corporation organized and existing under the laws of the State of Indiana with its principal business office at Plainfield, Indiana.

(2) PSCI owns and operates facilities, among others, for the transmission and sale at wholesale of electric energy which is transmitted between the States of Indiana, Ohio and Kentucky and consumed outside the State in which it is generated, all of which facilities are in addition to and do not include facilities used for the generation of electric energy, facilities used in local distribution or only for the transmission of electric energy in intrastate commerce, or facilities for the transmission of electric energy consumed wholly by the transmitter.

(3) PSCI is a public utility within the meaning of that term as used in the Federal Power Act.

(4) PSCI is located in the midst of a large power pool and operates its facilities as part of an integrated, interstate electric system. PSCI receives on its system large quantities of energy generated outside Indiana. As a result, all wholesale sales by PSCI's system are sales from an integrated, interstate electric system, are pool sales, and are sales of electric energy in interstate commerce within the meaning of Section 201 of the Federal Power Act.

(5) PSCI sells electric energy to the customers listed in Appendix A hereto, and each such sale is a sale at wholesale in interstate commerce within the meaning of Sections 201, 205 and 206 of the Federal Power Act.

(6) The facilities of PSCI by which it delivers electric energy to its municipal and cooperative customers are not used in local distribution within the meaning of Section 201(b) of the Federal Power Act.

(7) PSCI has not filed rate schedules for service to its wholesale customers. PSCI, therefore, has been and is continuing to violate the provisions of Section 205 of the Federal Power Act and Part 35 of the Commission's Regulations promulgated thereunder.

(8) PSCI has not posted any of the rate schedules which it has submitted for filing under the Federal Power Act. PSCI, therefore, has been and is continuing to violate the provisions of Section 205(c) of the Federal Power Act and of Section 35.2(d) of the Regulations promulgated thereunder.

(9) PSCI should be ordered to file with the Commission its rates and charges for services to its wholesale customers, including the classifications, practices,

and regulations affecting such rates and charges, together with all contracts which in any manner affect or relate to such rates, charges, classifications, and services pursuant to the provisions of Section 205 of the Federal Power Act and the Regulations promulgated thereunder.

(10) PSCI should be ordered to comply with the posting requirements as set forth in Section 205(c) of the Federal Power Act and in Section 35.2(d) of the Regulations promulgated thereunder.

The Commission orders:

(A) Within 30 days after this order becomes final, PSCI shall file in accordance with Part 35 of the Commission's Regulations and Section 205 of the Federal Power Act its contracts with each of its wholesale customers listed in Appendix A as its rate schedules for its sales at wholesale of electric energy to those customers. Such rate schedules shall remain effective until and unless superseded by a change filed pursuant to Section 205(d) of the Act and Section 35.3 of the Regulations thereunder, or changed pursuant to order of this Commission.

(B) PSCI shall comply with the posting requirement of Section 205(c) of the Federal Power Act and Section 35.2(d) of the Regulations with respect to all of its rate schedules required to be filed with the Commission.

(C) The decision of the presiding examiner, to the extent not inconsistent herewith, is adopted as the decision of the Commission.

(D) Exceptions not granted herein are denied.

(E) PSCI's motion for oral argument is denied.

Commissioner O'Connor *concurring* in part and *dissenting* in part.

APPENDIX A

Municipalities

Advance
Bargersville
Bainbridge
Brooklyn
Centerville
Clayton
Coatesville
Covington
Crawfordsville

Darlington
Dublin
Dunreith
Edinburg

Flora
Frankfort
Greendale
Greenfield
Hagerstown
Jamestown
Knightstown
Ladoga
Lebanon
Lewisville
Linton
Logansport
Middletown
Montezuma
New Ross
Paoli
Paragon
Pendleton
Peru
Pittsboro
Rising Sun
Rockville
Rushville
Scottsburg
South Whitley
Spiceland
Straughn
Thorntown
Tipton
Veedersburg
Vevay
Waynetown
Williamsport

Rural Electric Membership Cooperatives

Bartholomew County
Boone County
Carroll County
Clark County
Daviess-Martin County
Decatur County
Dubois County
Fayette-Union County
Fulton County
Hancock County
Harrison County
Hendricks County
Henry County
Huntington County
Jackson County
Johnson County
Knox County
Kosciusko County
Miami-Cass County
Morgan County
Orange County
Parke County
Rush County
Shelby County
Southeastern Indiana
Sullivan County
Tipmont
Wabash County
Warren County
Wayne County
Utilities District of Western Indiana

O'CONNOR, *Commissioner, concurring in part* and *dissenting in part:*

The issue in this proceeding is whether certain sales for resale by PSCI are subject to the jurisdiction of this Commission. It is my opinion that, from the record before us, it cannot be concluded that energy generated in another state and transmitted into Indiana is present in each sale for resale transacted between Public Service Company of Indiana, Inc., and the 77 municipalities and rural electric cooperatives involved. Although the record shows, albeit with less clarity than may be desirable, that some of the contested sales are jurisdictional, there is no evidence showing out-of-state electrical energy present in all sales. I dissent, therefore, from a determination to assume that, solely for the reason PSCI is interconnected with three public utilities operating in other states, all its wholesale sales are jurisdictional.

I am convinced that, under the law and the facts, PSCI's sales in the northern sector of its system are solely in intrastate commerce; that most sales in the central sector of its system are probably in intrastate commerce; and that only the sales in the southern sector may reasonably be considered to be in interstate commerce. The majority's determination to assume all of PSCI's sales are jurisdictional not only constitutes a major, unwarranted extension of authority; it also effects a fundamental change in the division of authority between Federal and State governments, supplanting several decades of active State regulation.

I.

PSCI is the successor company of a number of small electric systems in southern and central Indiana which combined their resources during the period immediately prior to 1942. PSCI operates the largest electric utility system in Indiana, serving at retail a compact territory which includes 69 of the 92 counties in Indiana, and includes sales in 714 cities, towns, unincorporated communities, and adjacent rural areas. All facilities are located within the state. At present PSCI is directly interconnected across the State boundary with only two companies, and is interconnected within the State with four non-affiliated companies, only one of which operates in more than one state. It has filed with the Commission all sales and agreements with these companies. Within the State it owns and operates five major generating stations, including two large steam-electric plants which are connected to load for every day of the year. It has interconnected with neighboring companies since at least 1948, and it appears some interconnections of predecessor companies were in existence prior to that date. PSCI has been a "public utility" within the meaning of the Federal Power Act for a number of years, *Indiana & Michigan Electric Company*, and *Public Service Company of Indiana, Inc.*, 9 FPC 617, 619 (1950), and it does not contest this status.

PSCI's interconnections require that it operate in parallel with most electric companies in the eastern portion of the United States. It is a member of the Interconnected Systems Group. Each important generating station in the Group is assigned a particular "band" or share of the total generating capacity, which is to be raised or lowered in the event of a system frequency deviation above or below a normal frequency. Admittedly PSCI's system operations are more reliable because of the interconnections, and here is a recent, significant example of such emergency assistance. On January 29, 1963 (and reportedly again recently), the generating capabilities of its Gallagher station were curtailed by an inability during a sharp freeze to obtain sufficient cooling waters, and substantial amounts of power were received, primarily from Cincinnati Gas & Electric Company and Louisville Gas and Electric Company.

Even apart from this emergency it undoubtedly receives into its system energy generated in another State. On the other hand its transactions with interconnected companies are limited by contract to the interchange of emergency and economy energy transfers, and it neither buys nor sells significant amounts of energy. PSCI considers the greater part of the out-of-state energy it receives to be merely transferred, taking into account scheduled flows, inadvertent flows, and similar deliveries to other companies. It purchases less than one-tenth of one percent of its total energy requirements. PSCI measures all interchanges at its points of interconnection, and all of its generating capacity is under constant metering. Such amounts are telemetered at its central load supervisor's office in Plainfield, Indiana, where generation is automatically varied to maintain scheduled interchanges over its interconnections. PSCI controls net transfers. In addition, any transfers beyond scheduled transactions occur only upon approval of the load supervisor in Plainfield. From the standpoint of generating resources and transmission capability, PSCI is self-sufficient to the extent no reliance on interconnected systems is necessary. To keep its system intact for the purpose of meeting its customers' requirements, PSCI does not consider its obligations under the interconnection agreements. Through such central control of its own system, PSCI exercises full discretion over any transfers outside its system. There is no central discipline of its operations from outside the State, and there is no control by it over transmission and sale in other States. Its primary transmission system is capable of receiving power from out-of-state, but there is no evidence of the ability of its generation, transmission and interconnection facilities to transfer large blocks of power under all circumstances.

Of its sales to 77 rural cooperatives (REMC's) and municipalities, all rates for such service have been regulated continuously by the Public Service Commission of Indiana. The sales to municipalities have been regulated since the state commission was established in 1913, and the sales to REMC's have been under regulation since 1937, soon after passage of the Rural Electrification Act. The latest annual report of the state commission indicates active rate regulation, and the statutes authorizing it clearly contemplate such regulation of wholesales.

II.

The third in a recent series of cases involving the Commission's jurisdiction under Section 201 of the Federal Power Act, this proceeding involves the fundamental question of our authority over sales for resale to local systems where the public utility is interconnected with other companies at or across the borders of a State. In the two prior cases, *Indiana & Michigan Electric Company*, Opinion No. 458, issued April 14, 1965, 33 FPC 739 and *Arkansas Power & Light Company*, Opinion No. 473, issued September 7, 1965, 34 FPC 747, we were confronted with compelling cases of full integration and pooling across state lines where there was affiliated corporate control and central interchange of energy involving more states than one. Careful studies of system operations in each case showed that energy generated in another State probably reached each point of sale for resale, and the *Arkansas P&L* decision was assisted by a showing through conventional tracing methods that out-of-state energy probably reached each point of sale there in issue. Although the tracing study in *Indiana & Michigan* was of limited utility, largely because of the absence of meters on that system, there was the showing that, because of a complete shutdown of major generators at regular intervals, out-of-state energy probably reached each point of sale in issue. Most of the operating conditions present in those two cases are not present here, and certainly there

is no evidence to support a finding that out-of-state energy is present, even in minimal amounts, at every point of sale for resale. Contrary to the majority, it is my opinion that mere interconnection will not suffice under the Act, and that where there is no complete integration of the power pool, out-of-state energy must be shown to reach each point of sale for the Commission's burden of proof to be discharged. Because of the manner of operation of many electric systems, this is impossible to show.

Certain difficulties of electrical theory cannot be surmounted. Science cannot explain what electricity is. At best its effects can be measured and predicted, but its nature is unknown. It is not an entity, but a way in which entities behave. When we have told how facilities behave when they are electrified, and when we have described the circumstances in which they are energized, it appears that we have told all there is to tell. In the proceeding before us the experts have disclaimed expertise to define electricity or to analogize it to situations cognizable to the layman. By attempting to grapple with such theoretical problems the Commission is placed in an untenable position for it cannot determine the statutory prerequisite to the exercise of its jurisdiction. Absent a fully integrated power grid, where theory merges with practice, we cannot rely upon assertions in the briefs that electricity moves with the speed of light, that commingling occurs *per se*, and that there is a free flow of energy along a grid. None of these assumptions describe actual conditions of more limited interconnections. Undoubtedly electricity can flow to particular loads with the speed of light, thereby energizing portions of a transmission system; however, this theoretical assumption does not tell us, between particular interconnected systems, of complete commingling and free flow. Particularly irrelevant to power flow is the fact of parallel operation for, while it shows a measure of interstate activity, it does not mean power on the transmission system so flows. We must first know the complexity and nature of the interconnections, the presence of generators and their relation to loads, and of the losses necessary to energy transmission. The interconnections within a system's lines are important also, for, if they are kept open for such purposes as emergency isolation, then free flow is not possible. Absent the complete integration that prevails in a fully automated regional grid, theoretical assumptions are not helpful, and a careful engineering analysis of measureable effects based upon an analogy to liquids along the transmission system will inform us of the measure necessary to trigger our jurisdiction. Theories of perfect interconnection cannot support our authority; we must rely upon known effects of operation.

Principles of tracing attest to the validity of an engineering approach. Meters provide us a measure of the energy transmission that actually occurs, and to the engineer this is based on an effect analogous to the flow of liquids. Relating source to load, therefore, on the basis of metered flow, we are in a position to establish jurisdiction. Similarly as with theoretical concepts, there are difficulties in relying solely on meters. Many electric systems do not utilize meters except at points of sale. Thus, in *Indiana & Michigan*, there was no way to identify source to load by meter readings at substations. It is clear that such a situation cannot defeat our jurisdiction. Nevertheless, it does not appear that metering at all points along a transmission system is essential to a showing of jurisdiction. If significant amounts of out-of-state electricity can be measured at major substations, nearby points of sale will undoubtedly receive such power. The engineering techniques of electric generation and transmission is such that energy flow will seek the point of least resistance; that is, the effective flow will occur at the speed of light from

generator to nearest load rather than supporting service to a particular load from an out-of-state source more removed from the sale in question. The condition in a particular transmission network, therefore, is one of a field supplied by a particular major generator to the exclusion of distant power sources, and the changing circumstances of generation and load do not introduce an instability to support constant free flow. Regardless of what theory may postulate, the engineering necessities dictate such a concept of operations.

For PSCI an analysis of system operations indicates that out-of-state power will not be present in measurable amounts in the immediate vicinity of the power sources relied upon by the company. It is undisputed on the record that PSCI's major generating stations at Gallagher and at Wabash River are on constant run, and it is therefore unlikely that nearby sales would involve out-of-state power. One example will suffice here. At the hearing PSCI showed that for one particular period of time, supply from Paddy's Run at Louisville could not, by virtue of the construction of the bus bar, reach beyond Gallagher as a commingled electrical supply. Instead, PSCI showed that all the supply from Kentucky would move to the Edwardsport line. The argument is that nearest load was supplied from nearest source which is fully supported by Dean Moench's testimony. It is significant that Staff did not contest this showing. The pleading was that of confession and avoidance; while what you say is true, at other times the supply from Paddy's Run was such that supply went out along other points on the bus bar. It is difficult, if not impossible, to resolve this position with the argument that supply commingles and then flows along the transmission line in proportional amounts. The above example shows clearly that the opposite is likely true. On the other hand it becomes indisputable that some out-of-state energy moves into the PSCI system and is utilized at some points of sale for resale along the line to Edwardsport. The consequence of PSCI's manner of operations is that, because it relies largely upon its own generation, no out-of-state power can reach each point of sale along major loops of its 69 kv system. This conclusion is made all the more compelling by the nature of its participation in interconnections with neighboring utilities.

Although the term "power pool" is widely utilized, there is no generally accepted definition of what it is under various conditions. It is clear that power pools vary widely in size and complexity, depending on the purposes and services provided. The *National Power Survey Report* defines a power pool as "Two or more electric systems which are interconnected and coordinated to a greater or lesser degree to supply, in the most economical manner, electric power for their combined loads." This broad definition does not emphasize an ability to meet supply under all circumstances. On the record before us it cannot be determined whether there is sufficient power, absent PSCI's own generation, to meet the needs of its customers. In my opinion, "fully coordinated" or "integrated" should mean that the interconnected system, whether of a single company or a pool of many companies, is designed, planned, and operated as a unit, so that each part will fully reflect the duties which might be imposed upon it as a system. As a corollary the purpose would be that the system is operated for maximum economy consistent with continued service.

Furthermore, a power pool composed of independent companies cannot be considered to be integrated to the maximum degree absent some consideration of the agreements it has for purposes of transferring power. The examiner here found that there was not a full integration of facilities under the interchange agreements. PSCI is bound to exchange only minimal amounts of

power for emergency and economy supply. Significantly, PSCI retains control over transfers of power above that required to meet its system needs. Furthermore, there is no showing on this record of what is required to maintain full integration in the event of an emergency. The basis for load rejection and the nature of the interconnections themselves dictate full consideration of this matter.

For the present, particularly absent some prior indication to the industry, it is my opinion that our use of interconnections to trigger complete federal control must be restricted to the highly integrated operations of interstate systems, such as confronted us in *Indiana & Michigan* and *Arkansas Power & Light*. At the most we should not extend such a presumption of jurisdiction beyond closely integrated and centrally coordinated operations of independent companies, for, as we emphasized in *Indiana & Michigan*, the extent of integrated operations is the touchstone. (*Supra*, pp. 743, 744.) The present degree of integration is clearly of multifarious degrees, and until the state of the art has progressed to a full assurance of continuity of service, we cannot assume free flow as may occur in power grid. This condition has not been shown to prevail on the PSCI system. Mr. Philip Sporn has stated, in discussing the necessary tools of an integrated system, that "Because of the basic handicaps of size and distance, the full utilization of protective elements and regulating elements is essential if a system is to be economically sound and, from a service standpoint, reliable." Of critical importance, according to Mr. Sporn, is ultrarapid reclosure, and, as technical barriers arise from barriers of distance and area, reliable and effective communication and telemetering are essential. The emphasis is upon speed for the lag encountered by generation response and by intersystems communications can operate to frustrate theoretical assumptions of the possibility of free flow between independent electrical systems. For the present, particularly upon the records thus far presented for Commission decision, it appears that complete integration requires central control. PSCI maintains individual and separate controls. It thus has not committed the entirety of its system operations to interstate commerce.

Problems of interconnection and effective pooling are in a state of change. Some systems can respond fully, for their intersystems agreements are controlled on a group basis. Specifically, Staff testimony emphasized the example of the PJM system. However, many systems do not respond instantaneously to interconnection requirements. PSCI's agreements are of limited obligation, and we are without evidence of the capabilities of its system to respond to major changes in intersystem load requirements. Until such interconnections are negotiated and completed, we are not justified in applying theoretical perfection to imperfect conditions of energy flow. There is certainly no national grid in this Nation, and there are few fully integrated grids involving more than one State.

The majority, however, chooses to believe that all interconnections are the same, despite expert testimony that the Interconnected Systems Group is a "pool of the lowest order," and despite further testimony that varying degrees of business transactions among any member of an interconnected system necessitates full consideration of such purposes as emergency spinning reserve, types of energy transactions, joint facilities, and sharing of costs. Clearly there is a distinction between various types of interconnections, and the varying degrees of integration that exist dictate the ability of free flow to occur under all circumstances. Finally, it is significant that, absent a fully integrated, interstate system, the commingling that is essential for energy to permeate a system is based upon Staff's pulse theory. The majority apparently rejects that con-

cept. Their commingling must thereby fall, and we are left only with tracing principles to determine jurisdiction. Thus, the proof of energy flow is not made.

III.

This proceeding presents new matters of policy for determination. For present purposes, and in the absence of precise guidelines of the prerequisites for complete integration of a power pool or, more appropriately, of an interstate grid, it is my opinion that PSCI must be considered *sui generis*.

The long history of Commission administration of the Federal Power Act and the numerous judicial determinations of our authority thereunder establish that electric energy transmitted from one State and consumed at a point in another State must be shown to be present in a particular sale for resale in order that it become subject to Federal standards. In *Federal Power Commission* v. *Southern California Edison Company* (the *City of Colton* decision), 376 U.S. 205 (1965), the Court declared that "status as a public utility does not decide the question whether the FPC may assert jurisdiction over the rates." By the opinion today the distinction is probably eliminated. The Court went on to reaffirm the principle that federal jurisdiction of sales at wholesale "follows the flow of electric energy", and upon such a showing state regulation could not interfere. Two tests for rate jurisdiction were prescribed: power "moving in interstate commerce", and the absence of specific exemption in Section 201(b). Commission practice has similarly been not to undertake jurisdiction over a sale for resale unless that sale were shown to include some measure of out-of-state energy.

While shifting the burden of proof, of necessity, in *Indiana & Michigan*, we specified that "Of course, there may still be some power systems in which the flows are simple enough to be susceptible of the tracing analogy." (*Supra*, p. 746.) In this proceeding there are Staff exhibits showing the penetration of out-of-state energy on the PSCI system, and tracing is utilized for this showing. Although tracing may require more extensive proof, each sale should be shown, to the extent practicable, to be jurisdictional. Furthermore, as we declared in *Arkansas P&L*, "There may be situations where a public utility which is part of an integrated interstate power system can show that some of its wholesale sales are isolated from the interstate network, and, as such, are not in interstate commerce." (*Supra*, p. 751.) Furthermore, Arkansas P&L's system proved susceptible to tracing. PSCI is less complicated than either of those two systems, and, in my opinion, PSCI is embraced within the exceptions we provided.

Since PSCI is not fully integrated into an interstate grid, it need not provide the proof. Because of the limits on its interconnections, PSCI has large portions of its system isolated from the rest of the network. This is made clear by the historic evolution of its system. Originally a number of separate electric companies, it was successively interconnected by high voltage lines; nevertheless, the lines at 69 kv and less are allegedly maintained separate from each other: many of these subtransmission lines have open switches where they would otherwise be interconnected. It is not without significance that there is no record evidence of the smaller transmission networks. This points up the absence from the majority opinion of a convincing engineering analysis. In all likelihood, it cannot be shown. Here, the evidence lacking is that of a proper relationship between source and load to show that interstate energy is necessarily present. The principal deficiency in the record turns on this absence of load requirements. The record should be remanded.

IV.

Such a procedure is required for several reasons, in addition to the requirement under the Act that a showing of power flows in interstate commerce be made.

The thrust of the statute is to protect from Federal preemption such state regulation as may be exercised, although, of course, once out-of-state energy is shown to be present, preemption must follow. As the Court declared in *Connecticut Light & Power Co.* v. *F.P.C.*, 314 U.S. 515 (1945):

> The policy declaration that federal regulation is "to extend only to those matters which are not subject to regulation by the States" is one of great generality. It cannot nullify a clear and specific grant of jurisdiction, even if the particular grant seems inconsistent with the broadly expressed purpose. But such a declaration is relevant and entitled to respect as a guide in resolving any ambiguity or indefiniteness in the specific provisions which carry out this intent. It cannot be ignored.

By their sweeping determination today the majority of necessity ignores this presumption incorporated into Section 201(a).

In drafting provisions of the Wheeler-Rayburn Act of 1935, the legislators had two objectives: first, to assure adequate federal regulation of those aspects of the electric power industry which were immune, either legally or practically, from state regulation and control; and, second, to preserve the full regulatory authority of the states and to assist them, wherever possible, in making that regulatory authority more effective. In this proceeding all facilities of PSCI are located within one State, and thereby the costs to PSCI, except for the transfers out-of-state energy, are within the effective authority of the Indiana Public Service Commission. The transfers of the out-of-state energy are within the effective regulation of the Federal Power Commission. The regulatory scheme thus dovetails, and the issue of whether we should presume interstate power reaches each sale for resale here should not be resolved against the state commission.

Even more significant is the legislative history of Section 201, where there is clear evidence that all wholesale transactions were not outside state regulatory authority. Perhaps the most revealing exchange is the following [Hearings on H.R. 5423; House Interstate and Foreign Commerce Committee; 74th Congress; 1st Session; p. 432 (1935)]:

> Mr. PETTENGILL: Here [indicating] is Oregon; here is a generating plant and a wholesale buyer in Oregon.
>
> Now the rate that this [indicating] wholesale buyer in Oregon pays is regulated by the Oregon Commission, is it not?
>
> Commissioner SEAVEY: If it is intrastate; yes.
>
> Mr. PETTENGILL: Now here is a wholesale buyer across the [State] line * * *
>
> Let us assume he buys substantially the same quantity * * *
>
> Now, if he pays no more than this man [indicating] pays, and this man's rate is fixed by the Oregon Commission, there people [indicating] are indirectly benefited by the regulation that takes place in Oregon.
>
> Commissioner SEAVEY: That might be true; yes.
>
> Mr. PETTENGILL: And I want to know whether the fact that the juice crosses a State line is used by the generator in Oregon to gyp the California buyer. That is what I do not get through my head. Does he or does he not?

Commissioner SEAVEY: He might and maybe he does not. It depends upon whether he wants to charge and does attempt to charge more for the wholesale power that he delivers across the line without regulation than what he delivers inside the line with regulation.

The Chairman: Is this not the whole upshot of it, that the interstate end of it is not regulated by anything?

Commissioner SEAVEY: That is true.

The Chairman: The intrastate is in many instances.

Commissioner SEAVEY: That is true.

The Chairman: And the question of whether or not in one instance the transmission across the State line costs more or less is not the question. The question is whether you are going to regulate the interstate end of it.

Commissioner SEAVEY: That is true.

However, the intrastate sale for resale above described, although clearly it is a "mere" interconnection of the "lowest order," would no longer be non-jurisdictional by the standards invoked today. This indicates the disparity between legislative intendment and agency administration.

A fundamental distinction between Indiana & Michigan and Arkansas P&L, on the one hand, and PSCI, must be emphasized. During a period when many electric companies relied upon the interstate-intrastate distinction that prevailed for three decades, both companies expanded their operations across State lines, and they thereby triggered a substantial federal interest. Furthermore, since their operations were such that out-of-state energy probably reached each point of sale for resale, they properly incurred the substantial burden, on a record showing full integration of facilities in the interstate commerce, that no out-of-state power reached the sales in question. Presumably a showing might be possible, with complete metering studies, that some points of sale were isolated, not relying on energy from another State. PSCI, on the other hand, carefully observed its intrastate character to the extent that certain desirable aspects of interconnection were not, as of 1963, achieved. PSCI is continuously expanding its interconnections, and it undoubtedly will participate, should it be technologically feasible, in a fully integrated interstate pool. At that point, while it is fully aware of its obligations, we would be justified in asserting federal control. No such presumption is now proper where it is clear the company has relied upon past action of the Commission for purposes of system planning and financial undertakings.

Impressed as I am by the possibility that this agency has approached the limits of effective power from a central source and convinced that this agency can obtain greater effectiveness and greater vitality through the immediacy of participation in government by regional and local institutions, the conclusion on the record now before us is compelling that, absent a more convincing showing of the presence of some interstate power in each sale here in question, there is no basis for assuming such sales to be within the federal domain. The only way to assess the majority's jurisdictional bias is their conviction that regulation of all sales for resales is desirable and necessary to permit the most complete and thorough regulation of the electric power industry as is possible by a federal agency. Their objective assumes the scope of Commission jurisdiction under Section 201 to be co-extensive with an assessment of the need for consumer protection. This is incorrect. Of course, a primary aim of the Federal Power Act is consumer protection, but jurisdiction does not depend upon or follow consumer need; instead, it is established by law. The statute is a recognition and accommodation of conflicting interests—the preservation of local regulation of intrastate transac-

tions as opposed to pervasive federal regulation reaching constitutional limits; avoidance of the institutional conflict within the power industry; and accommodation of competing regional and intrastate systems.

Underlying the majority approach is a result which reinvokes and indeed encourages the fundamental difference that exists between the three institutional segments of the power industry: the conflict between proponents of private ownership and those endorsing public ownership of the power industry. Federal encouragement of that difference is certainly not within the purposes of the Power Act. To the contrary, it represents an entrapment of systems which have voluntarily interconnected upon the assumption that this difference would not be involved. While the statute is not specific, the jurisdictional test clearly requires regulation within the limited thrust of Section 201. In my opinion, where the federal interest is clear, ambiguities are less compelling, but, where the State interest is established, then the statutory declaration should be respected as a guide. The burden should remain on the proponent of federal regulation.

V.

Although we are not justified in presuming that out-of-state energy is present in each point of sale for resale, Staff nevertheless placed a limited tracing study in the record for rebuttal purposes. The study establishes that certain segments of PSCI's system receive out-of-state energy from Louisville and from Cincinnati. This, in my opinion, constitutes sufficient proof for our jurisdiction to attach. The record is far from complete on this point, primarily because there is no relation of the tracing evidence to load to show which points of sale for resale necessarily receive out-of-state energy. However, by the evidence of flows from the out-of-state sources, and knowing that the sub-transmission lines and primary distribution lines are interconnected, it necessarily follows that numerous sales for resale by PSCI are within the authority of this Commission. I emphasize that such a tracing study does not involve many of the fictions required by such a test of jurisdiction. What it does involve is a willingness to abandon zeal for jurisdiction in favor of adherence to the out-of-state energy requirement.

In its tracing study Staff showed, to my mind satisfactorily, that out-of-state power at times reaches most points of sale for resale in the southwestern sector of the PSCI system. In addition, the supply received from Cincinnati is of large proportions at times; thus, sales in the southeast sector are jurisdictional. More precisely, it is clear that up to Edwardsport it is necessary that loads in that area be supplied, in part, by power from Paddy's Run. Thus, from Staff Exhibit 48, the sale to the municipality of Paoli would be jurisdictional, and sales to the following REMC's would be jurisdictional: Davies-Martin Co., Dubois R.E.C., Inc., Harrison Co., Knox Co., and Orange Co. Similarly, based on Staff Exhibit 51 showing supply from Miami Fort up to the substations at Columbus, Five Points, Connersville, and Madison, the following municipalities are jurisdictional: Vevay, Rising Sun, Greendale & Lawrenceburg, and Rushville. And sales to the following REMC's are jurisdictional: Decatur Co., Fayette-Union Co., Rush Co., Shelley Co., and Southeastern Ind.

From the record it would appear that further jurisdictional sales might be established for the central region of PSCI's system, up to Wabash River and up to Noblesville; however, the record does not permit any conclusions on this matter. It further appears that sales in the area above Wabash River and Indianapolis could never be considered to receive energy generated in

another State. In any event there is no evidence which would support a conclusion that out-of-state energy is present in any of the sales for resales other than those listed above. The proceeding should be remanded for more complete evidence that out-of-state energy reached points beyond the above-mentioned stations.

VI.

Finally, I note my specific disagreement with the denial of oral argument in this proceeding. Certainly the fact that long briefs may have been prepared in this proceeding does not foreclose the necessity of a full discussion of the complex issues involved. Innumerable policy issues arise in any jurisdictional dispute, and this is particularly the case where our jurisdiction is dependent upon a showing of out-of-state energy reaching each of the wholesale purchasers. On this issue the complex engineering problems raise more questions than they provide answers. Furthermore, PSCI presents for the first time a clear case involving the separation of powers in federal-state relations, and it thus raises the central issue reserved by almost all such electric companies in the response to our list of public utilities issued in July, 1963. Repeated requests for oral argument should compel our efforts to perform an important service function as well as permit to the parties an opportunity to a hearing on the complex questions now before us.

INITIAL DECISION
OF THE PRESIDING EXAMINER DETERMINING JURISDICTION

(Issued June 16, 1965)

RENDELMAN, *Presiding Examiner:* This proceeding was initiated by an order of the Federal Power Commission dated May 1, 1964, 31 FPC 1064, directing that an investigation be instituted and that a public hearing be held to find and determine:

(1) Whether the sales by Public Service Company of Indiana, Inc. (PSCI) to Municipal Electric Systems (Municipals) and Rural Electric Membership Cooperatives (REMCs)[1] within the State of Indiana are sales at wholesale in interstate commerce, subject to the provisions of Sections 201, 205, and 206 of the Federal Power Act and Part 35 of the Commission's Regulations thereunder;

(2) Whether Public Service Company of Indiana, Inc. should be ordered to file rate schedules for service to such purchasers in accordance with the provisions and requirements of Section 205 of the Act and Part 35 of the Commission Regulations thereunder;

(3) Whether other orders or other actions may be necessary and appropriate to bring about compliance with the Federal Power Act and the Commission's Regulations thereunder.

The hearing herein commenced on November 9, 1964, and after appropriate recesses for preparation of answering and rebuttal testimony, with further hearing sessions for cross-examination thereon, was concluded on December 15, 1964. Briefs were thereafter filed by the parties. Following issuance of Commission Opinion No. 458, *Indiana & Michigan Electric Co.*, Docket No. E-7089, on April 14, 1965, 34 FPC 739, which bears directly on the issues concerned in this proceeding, the Presiding Examiner, by order dated April 19, 1965, afforded the parties an opportunity to file supplementary briefs.

[1] A complete list of the Municipals and REMCs herein concerned appears as Exhibit A to the Commission's order of May 1, 1964, *supra*, p. 1070.

PSCI thereafter filed such brief. Staff counsel did not file a supplementary brief but responded to PSCI's supplementary brief.

PSCI is an Indiana corporation with its principal business office at Plainfield, Indiana. It conducts operations wholly within the State of Indiana in the North Central, Central, and South Central parts of the State from the Illinois boundary to the Ohio boundary (exclusive of Indianapolis and Marion counties and a small adjacent territory). In all, PSCI does business in 69 of the State's 92 counties. The company serves none of the larger municipalities of Indiana, but does serve the smaller cities such as Terre Haute, Kokomo, Lafayette, Bloomington, and New Albany, in addition to large rural areas.

PSCI owns and operates five steam generating plants, having a net assured generating capacity of 1,466,000 kw interconnected by a network of 495 miles of 220 kv lines, 1,355 miles of 138 kv lines and 1,984 miles of 69 kv lines which makes it possible to readily transmit large blocks of power to all parts of the system. PSCI is also interconnected within the State of Indiana with Indianapolis Power and Electric Company, Northern Indiana Public Service Corporation and Southern Indiana Gas and Electric Company, all of which similarly serve areas only within the state, and with Indiana & Michigan Electric Company which operates in Indiana and Michigan and is one of the six operating subsidiary companies comprising the seven-state American Electric Company System which have been integrated into a single power network. PSCI is also interconnected at the state line with Louisville Gas and Electric Company which operates in Kentucky and the Cincinnati Gas & Electric Company which operates in Ohio. PSCI is tied to these investor-owned utilities at 17 interconnection points and operates synchronously and continuously with them, as well as with other members of the Interconnected Systems Group. However, PSCI neither buys from, nor sells firm energy to, these six interconnected companies. Its transactions with them are limited to the interchange of emergency and economy energy and the transfer of energy over its transmission system.

During 1963, PSCI generated a total of 6,945,324,400 kwh of which a total of 6,294,877,000 [2] kwh were distributed. Of the total distribution, 4,970,835,385 kwh were sold to 389,770 retail customers and 1,324,041,615 kwh, or 21 percent of the total distribution, to 31 REMCs and 46 municipals. In that year PSCI's total energy revenues amounted to $112,011,899, of which $12,311,081 or 10.99 percent devolved from sales to REMCs and municipals. The record shows that in each of the several years prior to 1963, sales to REMCs and municipals remained fairly constant at approximately 11 percent of total revenues.[3]

It is PSCI's position that before Commission jurisdiction over sales at wholesale can be determined, it must be proven that such sales are (1) sales of electric energy in interstate commerce (2) sales over transmission facilities and not over facilities used in local distribution and (3) sales at wholesale for resale.

In the recent case of *Indiana & Michigan Electric Company, supra*, the Commission stated that "where a public utility participates in and is dependent upon an integrated interstate power pool, all of its wholesale sales for resale are subject to the jurisdiction of the Commission." In connection with whether the sales herein concerned are sales in interstate commerce, PSCI readily admits its status as a public utility and that it "has bought and sold limited amounts of energy from out of state sources for a number of

[2] Total distribution less line loss, less own use.
[3] 1962—10.9%; 1961—10.87%; 1960—11.36%; 1959—11.12%.

years." The company urges, however, that its "status as a public utility does not decide the question whether the Federal Power Commission may assert jurisdiction over * * * rates, *F.P.C.* v. *Southern California Edison*, 376 U.S. 205, 208, n. 3," but that Staff must go further and "demonstrate * * * that any of the outside energy coming into PSCI's system finds its way to the REMC or municipal customers."

PSCI, moreover, contends that unlike the Indiana & Michigan Company, it "is not an integral part of any multistate system operated as a single unit." The evidence, however, definitely is to the contrary. PSCI admits that it purchases and sells energy from out of state sources; that its interconnections with the six investor-owned utilities to which it is tied have remained closed (to permit continuous operation) for more than 18 years; and that these interconnected utilities each continually coordinate their operations with the others so that the energy produced from each system's own generators plus the energy received from, or transmitted to, interconnected systems will be sufficient to meet all system loads at a frequency of 60 cycles. Thus, during normal operations, PSCI must supply the loads on its own system plus the net of scheduled deliveries and receipts of energy to and from other systems with whom PSCI has scheduled transfers of energy, whether directly connected or not. These interchanges of energy, and its own generation, is measured by PSCI at all interconnections. The quantities are then telemetered to the central load supervisor's office in Plainfield where PSCI's own generation is adjusted to the scheduled net interconnection transfers. PSCI's interconnected companies, and all 140 members of the interconnected systems group which includes PSCI, operate in similar fashion, *i.e.*, each schedules sufficient generation to meet its own load plus net interconnection schedules. It must also be noted that electric systems such as PSCI exercise no control over the actual transfers of energy at any particular connection. The flow of energy is always in the direction of the load and the only control exercised by the company is the net of the transfers over its tie lines into and out of its own system.

It is unnecessary to further itemize in detail the additional features which definitely categorize PSCI as an operating member of an interstate integrated power pool. It is not denied that power flows freely over interconnected tie lines and that the actual flows are controlled by the characteristics of the entire interconnected multistate network; that all members of this network, of which PSCI is a member, operate in synchronism, and for purposes of operating efficiency, attempt to maintain as close to a frequency of 60 cycles as is possible in order to keep the system load and generation in balance; that PSCI's generators, as all generators in a multistate network, are interlocked electromagnetically; and that a change in load is reflected by a change in the amount of energy produced by every generator in the system.

The basic facts are that transfers of energy by PSCI and its interconnected electric systems occur because of the uncontrolled free flow characteristics of electric networks, because of schedule transactions between PSCI and other connected electric systems and because of schedule transactions between other systems and the systems to which PSCI is connected. These operating characteristics make no other conclusion possible, but that PSCI is an operating member of an integrated interstate power pool.

The further point is made that even if it is found that PSCI is part of an integrated interstate power pool, Federal Power Commission jurisdiction cannot attach unless it is also shown "by engineering and scientific evidence

that out-of-state energy reaches a single municipal or REMC customer of PSCI's." PSCI argues that such proof can only be established by the introduction of tracing studies.

Staff witness, Dr. Jessel, has testified that it would be wholly impracticable to apply the tracing method to the PSCI system mainly because of the lack of a sufficient number of recording meters on the PSCI system, and that even if such tracing study could be performed, it would take from one to two years. Furthermore, states Dr. Jessel, such study would be wholly impractical and by the time it was completed would prove worthless, since conditions in all probability would have changed during that period. Respondent's allegation to the effect that even if such tracing study is impossible of performance, the burden of proving the sale of out-of-state energy at wholesale by that method nevertheless still rests with the Commission is, to say the least, not persuasive.

In any case, the Commission in the *Indiana & Michigan* case, *supra*, has, for the intent and purpose here concerned, decided this issue. From the physical evidence therein adduced the Commission concluded that out-of-state energy received into the system of a utility company, operated as part of an integrated power pool commingles with that company's own generation and permeates its entire system. Therefore, just as the Commission therein concluded that energy generated outside Indiana and Michigan "pervades Indiana & Michigan's facilities and is delivered to those portions of Indiana & Michigan's system serving the municipals and cooperatives," so is that conclusion also warranted on the almost identical facts in the instant case.

PSCI points to the fact that it is wholly self sufficient and capable of supplying its total load even at peak periods and that unlike Indiana & Michigan, has no corporate affiliations with any other company. Assuming that PSCI is individually capable of supplying its total load at all times, the fact still remains, as the Commission noted with reference to the Indiana & Michigan Co., that PSCI just does not operate that way. The only operating difference between PSCI and Indiana & Michigan, insofar as pool operations are concerned, is one of degree. Admittedly, the Indiana & Michigan Co.'s interstate operations are conducted on a larger scale than are PSCI's but this does not gainsay the fact that PSCI nevertheless operates as a participating member of an integrated interstate power pool for the purpose of obtaining the benefits of such operation. That PSCI has no corporate affiliations with any of its interconnected companies is immaterial. Each of its wholesale sales for resale here in issue is a pool sale and, in the light of the interstate nature of the pool, such sales are in interstate commerce and subject to Sections 201, 205 and 206 of the Act. The "Commission has complete authority to regulate all of this commingled power flow," *Pennsylvania Water & Power Co.* v. *Federal Power Commission*, 343 U.S. 414.

PSCI asserts that in 1963 it purchased only one-tenth of one percent of its total energy requirements from out of state, whereas Staff alleges that in that year PSCI received 5.5 percent of its total net generation from Louisville Gas & Electric Co. and Cincinnati Gas & Electric Co. Regardless of which percentage is correct, or whether the exact quantity lies somewhere in between, the Supreme Court in *Conn. Light & Power Co.* v. *F.P.C.*, 324 U.S. 515, 535, 536 unqualifiedly disposed of any argument with respect to the quantity of out of state energy necessary to confer jurisdiction on the Federal Power Commission when it therein stated:

> It is contended that the volume of energy passing over certain of these facilities is insignificant in proportion to the total. Only about one-fifth

> of one percent of all the energy received and generated by the Company throughout the State of Connecticut was transmitted out of the state during the time of the connection of Fishers Island with the Borough of Groton. Congress appears to have left to the Commission's sound administrative discretion to determine whether or not to assert its authority in such situations. * * * We do not find that Congress has conditioned the jurisdiction of the Commission upon any particular volume or proportion of interstate energy involved. * * *

There are additional factors which demonstrate the benefits derived by PSCI from its interconnections with other utilities for its everyday operations. The evidence shows that PSCI achieves a 5 percent "spinning reserve" over its daily peak period capacity solely by means of its interconnections. This spinning reserve, should conditions warrant, would enable PSCI to operate its own generators at top capacity in reliance upon the fact that there is additional capacity available from its interconnected companies in the event of a generator or transmission line outage, or sudden increase in system load.

PSCI, as did the Indiana & Michigan Company, urges that Staff has not sustained the burden of proving that sales to municipals and REMCs are affected otherwise than by the use of facilities used in local distribution. It is argued that Commission jurisdiction does not in any case attach to sales to REMCs, which are cooperative non-profit organizations, because such sales are at retail to ultimate consumers inasmuch as the REMCs merely act as the joint agent of its members.

The Commission's disposition of the local distribution argument in the *Indiana & Michigan* case appears equally applicable here. The Commission therein stated, *supra*, p. 748.

> Even on its own terms IM's local distribution argument is essentially that the lower voltage lines over which it ultimately delivers power to the facilities owned and operated by at least some of its municipal and cooperative customers are also used for direct retail sales to certain of IM's industrial, commercial or residential customers; therefore these lines are local distribution facilities. There are at least two answers to this contention. First it cannot be suggested that the only IM facilities involved in the sales to their municipal and cooperative wholesale customers are the ultimate lines leading directly to the connection with the facilities of the customers; obviously many other clearly jurisdictional facilities are also involved in the sale. See *Hartford Electric Light Co.* v. *F.P.C.*, 131 F. 2d 955 (CA2), certiorari denied 319 U.S. 471. Second, as the Supreme Court expressly noted in the *Colton* case, *supra*, at p. 210, note 6, the fact that a company may make a few direct sales off a line transmitting power to a wholesale customer does not convert the line into local distribution facilities. As the Court of Appeals stated in *Wisconsin Michigan Power Co.* v. *F.P.C.*, 197 F. 2d 472, 477, certiorari denied 345 U.S. 934: "at no point before delivery (to a wholesaler) has been completed, has interstate transmission terminated" and "there is no ground for the position that local distribution includes any transmission occurring before the wholesaler who sells at retail is reached."

Thus, there would appear to be nothing in the Federal Power Act which makes Commission jurisdiction over wholesale sales dependent upon the type of facilities used to bring the energy to the place of sale. Under the present state of the law as interpreted by the Commission, it would appear that the

general rule is that all wholesale sales for resale in interstate commerce by a public utility are subject to Sections 205 and 206 of the Act.

There is also little merit to PSCI's argument that sales to REMCs are not sales at wholesale for resale. The facts are that the Commission herein is asserting jurisdiction over sales by PSCI to the REMCs not sales by the REMCs to its members. The REMCs sell the energy purchased to its members at a price over and above that paid to PSCI. The Commission has adopted the view that a cooperative corporation, as any other privately owned corporation, is an entity separate and apart from its members. The following statement from *Hartford Electric Light Co.* v. *F.P.C.*, 131 F. 2d 953, 958, cert. den. 319 U.S. 741, bears directly on this issue:

> * * * The Exchange arrangements result in resales, whether they be regarded as sales to the Exchange [footnote omitted] and resales by the Exchange, or as sales by the Exchange as agent for the members, or an agency whereby each member acts as agent for the others in selling the energy supplied by the others. * * * There can be no doubt that petitioner is making sales at wholesale, as that term is defined in the Act.

Wholesale sales to cooperatives moreover, are covered by Sections 3(4) and 201(d) of the Act. Section 201(d) defines "the sale of electric energy" as "a sale of electric energy to any person for resale." Section 3(4) states that a "person" means an individual or a corporation, *United States* v. *Public Utilities Commission of the State of California*, 345 U.S. 295, 312. Each of the cooperatives concerned in this proceeding to whom sales are made by PSCI is an Indiana corporation which resells the energy purchased from PSCI and such wholesale sales for resale are therefore within the statute. The final word on the subject appears in the Commission's recent opinion in *Wisconsin Michigan Power Company*, Opinion No. 432, issued June 9, 1964, 31 FPC 1445 at p. 1451:

> The Company also seeks to defend the existing differences in rates by a challenge to our jurisdiction, which is plainly without merit. In substance Wis-Mich argues that the Commission lacks jurisdiction to determine discrimination as between jurisdictional rates to the Cities and allegedly non-jurisdictional rates to the co-ops, at least until the Commission has decided in a pending case whether electric cooperatives are subject to its rate-making jurisdiction.[9] The short answer is that we regulate sales of power at wholesale in interstate commerce and not purchases. It is Wis-Mich that we are here regulating and not the cooperative.

ADDITIONAL FINDINGS AND CONCLUSIONS

Upon consideration of the entire record in this proceeding, including the pleadings, the evidence adduced and the briefs filed, it has been found and concluded, in addition to the findings and conclusions heretofore stated that:

(1) Public Service Company of Indiana, Inc. (PSCI) is a corporation organized and existing under the laws of the State of Indiana with its principal business office at Plainfield, Indiana.

(2) PSCI owns and operates facilities, among others, for the transmission and sale at wholesale of electric energy which is transmitted between the States of Indiana, Ohio and Kentucky and consumed outside the State in which it is generated, all of which facilities are in addition to and do not include facilities used for the generation of electric energy, facilities used in local

[9] *Dairyland Power Cooperative, et al.* (FPC Docket No. E-7173).

distribution or only for the transmission of electric energy in intrastate commerce, or facilities for the transmission of electric energy consumed wholly by the transmitter.

(3) PSCI is a public utility within the meaning of that term as used in the Federal Power Act.

(4) PSCI is directly interconnected with Louisville Gas & Electric Company in Kentucky, The Cincinnati Gas & Electric Company in Ohio, and within the State of Indiana with Indianapolis Power & Light Company, Southern Indiana Gas and Electric Company, Northern Indiana Public Service Company, and Indiana & Michigan Electric Company. PSCI operates continuously in synchronism with the aforesaid six companies and other electric systems in Illinois, Ohio, Kentucky, West Virginia, Virginia, North Carolina, Georgia, Alabama, and Mississippi which are also members of the Interconnected Systems Group.

(5) PSCI is located in the midst of a large power pool and by means of its high capacity interconnections at all times operates its system as part of a coordinated multistate electric network.

(6) PSCI's municipal customers and Rural Electric Municipal Cooperative customers are those listed in Exhibit A to the Commission's order of May 1, 1964.

(7) At times, each delivery point to PSCI's municipal and cooperative customers receives out-of-state energy from a coordinated multistate power network which is commingled with energy generated within the State of Indiana.

(8) Each sale for resale by PSCI to the aforesaid municipal and cooperative customers is a pool sale from a coordinated multistate electric network, and hence, in light of the interstate nature of the pool is a sale in interstate commerce.

(9) Each of the sales by PSCI to the municipalities and cooperatives referred to in the Commission's order of May 1, 1964, is a sale of wholesale for resale in interstate commerce within the meaning of Sections 201, 205, and 206 of the Federal Power Act.

(10) The facilities used by PSCI to complete the transmission and sale of interstate energy to its municipal and REMC customers are not local distribution facilities within the meaning of Section 201(b) of the Federal Power Act.

(11) PSCI has not filed rate schedules for service to its municipal and REMC customers. PSCI therefore has been and is continuing to violate the provisions of Section 205 of the Federal Power Act and Part 35 of the Commission's Regulations promulgated thereunder.

(12) PSCI has not posted any of the rate schedules which it has submitted for filing under the Federal Power Act. PSCI therefore has been and is continuing to violate the provisions of Section 205(c) of the Federal Power Act and of Section 35.2(d) of the Regulations promulgated thereunder.

(13) PSCI should, therefore, be ordered to file with the Commission its rates and charges for services to its municipal and REMC customers including the classifications, practices, and regulations affecting such rates and charges, together with all contracts which in any manner affect or relate to such rates, charges, classifications, and services pursuant to the provisions of Section 205 of the Federal Power Act and the Regulations promulgated thereunder.

(14) PSCI should therefore be ordered to comply with the posting requirements as set forth in Section 205(c) of the Federal Power Act and in Section 35.2(d) of the Regulations promulgated thereunder.

312-270—69——100

ORDER

WHEREFORE, *It is ordered*, subject to review by the Commission:

Within 30 days after this order becomes the final act of the Commission, Public Service Company of Indiana, Inc. shall file in accordance with Part 35 of the Commission's Regulations and Section 205 of the Federal Power Act its contracts with each of its municipal and Rural Electric Municipal Cooperative customers as its rate schedules for its sales at wholesale of electric energy to those customers. Such rate schedules shall remain effective until and unless superseded by a change filed pursuant to Section 205(d) of the Act and Section 35.3(c) of the Regulations thereunder, or changed pursuant to order of this Commission.

MARTIN E. RENDELMAN,
Presiding Examiner.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

MALCOLM S. STEVENSON, PROJECT NO. 2502

ORDER DISMISSING APPLICATION FOR PRELIMINARY PERMIT

(Issued December 22, 1965)

On December 15, 1964, Malcolm S. Stevenson, 31 Central Street, Bangor, Maine, filed an application with the Federal Power Commission seeking a preliminary permit for the proposed Cross Rock Hydroelectric project, FPC Project No. 2502, to be located on the St. John River in Aroostook and Piscataquis Counties, Maine and in the Province of Quebec, Canada. Public notice of this application was issued on March 5, 1965. Reports on this application was requested from various state and federal agencies as well as from the International Joint Commission.

This proposed project would be located on the St. John River immediately downstream from its confluence with the Allagash River and some 290 miles from its mouth at the Atlantic Ocean.

On May 26, 1965, the Department of the Interior reported on this application and among other things stated:

> * * * legislation is pending in the Senate and House of Representatives and is also under consideration within the Executive Branch for construction of a project at Dickey, Maine, upstream from the confluence of the Allagash and Saint John River. The proposed Cross Rock project also would inundate this site.

On October 27, 1965, Congress enacted Public law 298 which among other things authorized the Dickey-Lincoln School project on the Saint John River. Since the site of the Dickey dam and reservoir would be inundated by the proposed Cross Rock project, the two projects are incompatible and mutually exclusive. In light of the specific Congressional authorization for the Dickey-Lincoln School project it would be inappropriate and inconsistent for this Commission to continue its consideration of the application for preliminary permit for the proposed Cross Rock project. See *Savannah River Electric Co.* v. *F.P.C.*, 164 F. 2d 408 (CA4).

The Commission's proceeding on this application should therefore be terminated and the application should be dismissed.

The Commission finds:

Under the circumstances recited above it is appropriate and in the public interest that the application of Malcolm S. Stevenson for a preliminary permit for the proposed Cross Rock project be dismissed.

The Commission orders:

The application of Malcolm S. Stevenson for a preliminary permit for the Cross Rock project, Project No. 2502, is hereby dismissed.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

MICHIGAN WISCONSIN PIPE LINE COMPANY, DOCKET NO. CP66-65

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued December 23, 1965)

Michigan Wisconsin Pipe Line Company (Michigan Wisconsin) filed an application on August 26, 1965 in Docket No. CP66-65 for a certificate of public convenience and necessity under Section 7(c) of the Natural Gas Act to acquire by merger and operate the facilities of American Louisiana Pipe Line Company (American Louisiana), all as more fully set forth in the application. Michigan Wisconsin and American Louisiana are both wholly owned subsidiaries of American Natural Gas Company.

Michigan Wisconsin proposes to acquire all the assets and liabilities of American Louisiana and will perform all acts, make all sales and render all services now being performed by and required of American Louisiana under outstanding certificates issued by the Commission. Upon consumption of the merger and the securing of all necessary regulatory approvals, the surviving corporation, Michigan Wisconsin having its principal place of business in Detroit, Michigan, will make all sales and will render all services presently being performed by the two corporations. American Louisiana, having been divested of all legal rights and responsibilities, presumably will be dissolved; at least it will no longer be a "natural-gas company" as defined in Section 2 of the Natural Gas Act. The sales contracts and tariffs of Michigan Wisconsin and American Louisiana will be adopted by the surviving corporation, which will carry out the obligations of both companies under their respective rate filings and settlement agreements.

Applicant has indicated its desire to have the merger take place as soon as possible. The merger has been recommended by the Public Service Commissions of the States of Michigan and Wisconsin, and the County of Wayne, Michigan. Approval by the Securities and Exchange Commission will be sought following the Commission's authorization. The certificate herein issued will be conditioned thereon.

Michigan Wisconsin commenced operations in 1949. In 1953 when the American Natural Gas system required an increased gas supply it was determined that this supply could best be obtained through the construction of a new line from the Louisiana Gulf Coast. Under Michigan Wisconsin's mortgage only 60% of the cost of constructing such a new line could be financed through the sale of Michigan Wisconsin bonds whereas a newly formed company could finance 75% of the initial cost by sale of bonds.

Since the initial cost of the American Louisiana pipeline was approximately $130,000,000, bonding at 75% rather than 60% permitted the issuance of an additional $19,500,000 of bonds. Additionally, the American Natural System desired to avoid any possibility of escalating the pricing provisions in then-existing gas purchase contracts. The indeterminate escalator provisions have recently been eliminated and there are a number of reasons hereinafter discussed why the customers of both companies and the public will benefit by this proposed merger.

In general, the proposal provides for the merger of American Louisiana into Michigan Wisconsin effective January 1, 1966, whereupon Michigan Wisconsin will succeed to all the rights and properties of American Louisiana and will assume all its liabilities and duties. American Louisiana's 205,000 shares of $100 par value common stock now issued and outstanding and held by American Natural Gas Company will be converted into an equal number of Michigan Wisconsin shares of $100 par value common stock and American Louisiana's First Mortgage Pipe Line Bonds in the amount of $68,000,000 4¼% Series due 1976, will be exchanged for an equivalent amount of Michigan Wisconsin's First Mortgage Pipe Line Bonds. The Mutual Life Insurance Company of New York and the Metropolitan Life Insurance Company, holders of all of the American Louisiana outstanding bonds, have consented to the exchange of bonds with the same interest rate, final maturity date and redemption prices.

With respect to the tariff of the merged company, the proposal involves the inclusion of an additional rate schedule in Michigan Wisconsin's tariff and also the incorporation of certain more liberal provisions into Michigan Wisconsin's small general service rate schedule. The additional rate schedule, which will be available to all customers on an optional basis, provides for 365-day firm service (compared to 190-day firm service in Michigan Wisconsin's presently effective rate schedule) and is designed to give more flexibility to the customer companies when contracting for gas supplies. The proposed demand and commodity rates of $2.88 per month and 27.65¢ per Mcf, respectively, are designed to recover the cost of American Louisiana gas which would be part of the merged system and, accordingly, reflect American Louisiana's cost of service, including a 6% rate of return, for the calendar year 1964 annualized for known changes.

American Louisiana presently has outstanding $29,000,000 of short-term bank loans which must be permanently financed early in 1966. This financing requirement, coupled with financing that will be required in connection with a 1966 expansion program involving approximately $75,000,000, would necessitate the issuance by American Louisiana of some $10,000,000 in common stock during 1966. If, however, this imminent financing is done on a merged basis, it is contemplated that all of the funds required can be obtained through the issuance of debt securities. This is possible because of Michigan Wisconsin's high equity ration of approximately 40% in contrast to American Louisiana's much lower equity ratio of approximately 25% Since common stock equity capital costs the consumer approximately 20% (10% after income taxes) and debt capital presently costs about 5%, the ability to sell the additional debt on a merged basis results in ultimate estimated savings of approximately $1,500,000 per year.

In addition to the fact that substantially more debt can be sold on a merged basis as noted above, it is Applicant's opinion that any debt sold over the

years will be less costly on a merged basis. With respect to the 1966 bond issue alone, Applicant estimates that the cost would be at least .125% lower on a merged basis and that the resultant interest savings on the single bond issue contemplated within the next few months would be approximately $450,000.

Customer companies of both pipelines will have complete flexibility in contracting for their requirements after the merger. Under Michigan Wisconsin's presently effective tariff, each customer has a firm annual entitlement of 190 times the Maximum Daily Quantity. This annual limitation, which is required to assure summer gas for storage, fits within the load requirements of most customers on the Michigan Wisconsin system; however, a number of customers have an immediate requirement for additional firm annual gas in addition to the 190 days' use of the MDQ. North Central Public Service Co., Wisconsin Fuel and Light Company, Wisconsin Michigan Power Company, Allerton Gas Company and Michigan Gas and Electric Company will have a need to purchase a portion of their requirements under the new rate schedule, which will be for high priority industrial service and none will be used for boiler fuel. These companies have had to rely upon the availability of annual overrun gas to meet their industrial commitments during the last several years. In the future, it is probable that other customers will desire to purchase some portion of their requirements under the new rate schedule. The cost of gas under the new rate schedule will be approximately 36.9¢, while the presently effective firm rate under Michigan Wisconsin's ACQ–1 rate schedule is 41.96¢. After the merger, customers of the merged system will have the opportunity to buy all the 365-day gas they desire and their proportionate share of all available overrun. As a result, every customer will be placed in exactly the same position when contracting for gas from the integrated pipe line system.

The general availability of the 365-day rate schedule will make possible the sale by distributing company customers of a more assured type of industrial service which will result in greater sales. These additional sales, coupled with the better price that a more assured type service can command, will benefit the residential consumers since most of the customers are located in states whose regulatory commissions require crediting the revenues from industrial sales to the cost of service for rate making purposes. This benefit is in addition to the prospects of avoiding future cost increases as discussed above.

Consummation of the merger will make possible operating savings and economies of $300,000 to $400,000 per year because of larger and fewer securities issued, better utilization of the total cash resources of both companies, further consolidation of departmental activities with a resultant reduction in cost, elimination of duplication in accounting and reporting, and simplification of regulatory proceedings and reduction in number of applications to be filed and processed.

Although there are certain immediate rate reductions inherent in Michigan Wisconsin's application (decrease in the average cost for customers purchasing 365-day gas; reduction in American Louisiana's small general service rate from 45¢ to Michigan Wisconsin's comparable 44.7¢ rate and reduction in Michigan Wisconsin's development rate from 44.7¢ to 43¢), operation on a merger basis indicates that a further overall reduction of approximately $500,000 would be appropriate. Although Michigan Wisconsin contends that such a reduction necessarily would be in anticipation of economies and savings

resulting from the merger, Michigan Wisconsin has stated that a certificate conditioned to require the following further reduction would be acceptable:

Rate Schedule ACQ–1 (Reduction of 2 cents per month per Mcf of billing demand)	$308, 186
Rate Schedule MDQ–1 (Reduction of 4 cents per month per Mcf of billing demand)	187, 368
Rate Schedule SGS–1 (Reduction of 0.1 cent per Mcf delivered)	4, 704
	$500,258

Approval of merger application as filed is conditioned on the filing by Michigan Wisconsin of the following reduced rates, representing a reduction of approximately one-half million dollars annually:

	Demand	*Commodity*
Rate Schedule ACQ–1	$3. 00	27. 65 cents
Rate Schedule MDQ–1	2. 84	27. 65
Rate Schedule SGS–1	------	44. 6

Due notice of the application was published in the Federal Register on September 9, 1965 (30 F.R. 11571).

Notices or petitions to intervene were filed by Wisconsin Fuel and Light Company, Wisconsin Power & Light Company, Northern Indiana Public Service Company, Wisconsin Public Service Corporation, St. Joseph Light & Power Company, the Public Service Commission of Wisconsin, Wisconsin Michigan Power Company, Wisconsin Natural Gas Company, Iowa Electric Light and Power Company, North Central Public Service Co., Iowa Southern Utilities Company, Madison Gas and Electric Company, The County of Wayne, Michigan, Milwaukee Gas Light Company, Ohio Valley Gas Corporation, Michigan Gas and Electric Company, American Gas Company, Michigan Gas Utilities Company, American Louisiana Pipe Line Company, Lincoln Natural Gas Company, Inc., Michigan Consolidated Gas Company and Illinois Power Company. Three public bodies, the state public service commissions of Wisconsin and Michigan, and the County of Wayne, Michigan support the proposed merger. None of the intervenors oppose the merger. A formal hearing was not requested by any party.

At a hearing held on December 22, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application of Michigan Wisconsin, its supplemental application, and the data submitted to the Commission staff by letter of October 25, 1965, all such items having been submitted in support of the authorization sought, and upon consideration thereof the Commission finds that a certificate should be issued as hereinafter ordered and conditioned.

The Commission further finds:

(1) Applicant, Michigan Wisconsin Pipe Line Company, a Delaware Corporation having its principal place of business in Detroit, Michigan, is a "natural-gas company" within the meaning of the Natural Gas Act, as hereinbefore found by the Commission in its order of November 30, 1946, in Docket No. G-669 (5 FPC 953).

(2) American Louisiana Pipe Line Company, a Delaware corporation having its principal place of business in Detroit, Michigan, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its opinion and order issued October 1, 1954, in Docket No. G–2306, *et al.* (13 FPC 380).

(3) The proposed merger and operation of American Louisiana's facilities, as hereinbefore described and as more fully described in the application in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(4) The sales of natural gas made from and other services rendered by the facilities to be acquired from American Louisiana will be in interstate commerce, subject to the jurisdiction of the Commission, and are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(5) The aforesaid merger and operation of facilities are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(6) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(7) The conditions attached to the certificates herein issued are required by the public convenience and necessity.

The Commission orders:

(A) A certificate of public convenience and necessity is hereby issued, upon the terms and conditions of this order and subject to all provisions of the Natural Gas Act and the Commission's Regulations thereunder, authorizing Michigan Wisconsin Pipe Line Company to acquire and operate all of the natural gas facilities of American Louisiana Pipe Line Company subject to the jurisdiction of the Commission, as more fully described in Michigan Wisconsin's application in Docket No. CP66-65.

(B) The name of Michigan Wisconsin Pipe Line Company be and the same is hereby substituted, effective as of the date of consummation of the merger for that of American Louisiana Pipe Line Company in all certificate and other authorizations heretofore issued pursuant to the Natural Gas Act by this Commission to the respective companies.

(C) The certificate issued by paragraph (A) above, and the amendments to the certificates effected by paragraph (B) above, and all rights granted thereunder are conditioned upon applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (d) (1), (d) (2) and (e) of Section 157.20 of the Commission's Regulations under the Natural Gas Act.

(D) The certificate issued by paragraph (A) above is hereby conditioned upon the actual exchange of American Louisiana's $68,000,000 4¼% Series due 1976 bonds for an equal amount of Michigan Wisconsin bonds having the same rate of interest and being identical in all other material aspects, all as heretofore set out, and more fully described in the applications and evidence in this case.

(E) Michigan Wisconsin will file the appropriate tariffs to effect the rate reductions heretofore described.

(F) Michigan Wisconsin shall cause to be substituted, as appropriate, the present tariff filings of American Louisiana and to make available to the present customers of American Louisiana all of its present and proposed rate schedules and services.

(G) The effectiveness of the certificates issued and amended by paragraphs (A) and (B) above is conditioned upon the applicant's first obtaining the necessary approval from the Securities and Exchange Commission.

(H) The certificate issued in paragraph (A) above shall be accepted in writing and under oath by the applicant within 30 days of the date of issuance of this order; upon consummation of the merger applicant shall, within 10 days thereof, report such fact to the Commission, together with the effective date thereof.

(I) The certificates herein issued and amended are not transferable and shall be effective only so long as the applicant continues the acts and operations hereby authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations and orders of the Commission.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

GEORGE MITCHELL & ASSOCIATES, INC., AGENT, DOCKET NOS. RI61-239 AND RI64-404

ORDER GRANTING MOTION FOR PARTIAL RELEASE OF TRUST FUNDS

(Issued December 27, 1965)

The above-named respondent (movant) on August 16, 1965, as amended on November 18, 1965, filed a motion requesting that CM & M Products Plant, Inc. (CM & M) be permitted to file an agreement and undertaking covering its interest in the above-entitled proceedings, and that all amounts previously deposited under escrow agreements applicable to its interest therein be released. In support thereof, CM & M submitted financial data to justify the request. Movant also requests that all amounts attributable to the interest of Mitchell & Mitchell Gas & Oil Corporation (M & M) below the area increased rate ceiling of 14.5¢ per Mcf inclusive of the applicable contract allowance of .25¢ per Mcf for dehydration be released from said escrow agreements subject to the corporate undertaking of M & M.[1] Movant further requests that M & M be permitted to file a surety bond to assure refunds with respect to any amounts collected above 14.5¢ per Mcf, inclusive of the contract charge for dehydration, applicable to its interest in the above-entitled proceedings in lieu of the existing escrow agreements.

Docket No. RI61-239 involves a rate increase from 140.3¢[2] to 15.09¢[2] per Mcf at 14.65 psia, designated as Supplement No. 29 to movant's FPC Gas Rate Schedule No. 19, for the sale of gas by movant to Natural Gas Pipeline Company of America (Natural) from Railroad District No. 10, which was placed in effect subject to refund under an escrow agreement as of May 27, 1961. Docket No. RI64-404 involves a rate increase from 15.09¢[2] to 16.120¢[2] per Mcf for the same sale, designated as Supplement No. 31, which was placed in effect subject to refund under an escrow agreement as of May 27, 1964. Both of the escrow agreements are with The Chase Manhattan Bank of New York (Chase).

Movant proposes herein only the release of those amounts deposited in escrow which relate to the interests of M & M and CM & M. The escrow agreements will thus remain in effect as to the other interests covered by the

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[1] Concurrently with the motion M & M and CM & M have tendered agreements and undertakings.

[2] Includes 0.25¢ per Mcf allowance for dehydration paid by buyer, which seller, in turn, pays a third party for dehydrating the gas, and an upward Btu adjustment for gas over 1,000 Btu charged by seller.

rate increases of movant involved here. As of September 30, 1965, according to movant, $1,871,908.49 has been deposited with Chase under the subject escrow agreements. Of this amount approximately $347,717.33 is attributable to the interest of CM & M and approximately $359,830.21 is attributable to the interest of M & M. The remainder is attributable to the other working interest owners and to royalty and overriding royalty interests. With respect to M & M's proposed surety bond, movant advises that $210,895.52 has been collected by M & M in excess of 14.25¢ per Mcf in the subject proceedings.

Based on the financial data submitted, the agreement and undertaking tendered by CM & M appears to be satisfactory and will be accepted for filing as hereinafter ordered. We shall also accept the agreement and undertaking of M & M insofar as it relates to amounts collected below 14.5¢ per Mcf, inclusive of the applicable allowances for dehydration, and shall require a surety bond in the amount of $210,000. Movant's proposal insofar as it relates to M & M is consistent with the action taken by us in an order issued June 16, 1965, 33 FPC 1265, in *Dorchester Gas Production Company*, Docket No. G–18671, where we permitted Dorchester, without submitting financial data, to file an agreement and undertaking to assure refund of any excess charges that might be determined in that proceeding with respect to amounts collected subject to refund below the applicable increased rate ceiling. Although M & M has not alleged that it is in financial difficulty as Dorchester did, this does not preclude them from receiving similar relief here. It should be noted, however, that unlike Dorchester, the seven percent interest obligation will be in effect for the entire refund period for both CM & M and M & M. The reason for this difference in treatment is that movant has always been under a seven percent interest obligation even though the money was put in trust, while Dorchester was not.

The Commission orders:

(A) The Chase Manhattan Bank of New York as trustee under the escrow agreements executed on June 14, 1961, in Docket No. RI61–239 and April 7, 1964, in Docket No. RI64–404 shall release $347,717.33 forthwith to CM & M plus any amounts attributable to CM & M's interest which have been deposited with it since September 30, 1965, and upon notification by the Secretary of the Commission that M & M has complied with the provisions of paragraph (C) hereof, it shall release $359,830.21 to M & M plus any amounts attributable to M & M's interest, which have been deposited with it since September 30, 1965. Except as specifically provided herein, these escrow agreements shall remain in full force and effect.

(B) The agreement and undertaking submitted by CM & M in the above-entitled proceedings is accepted for filing and the agreement and undertaking of M & M insofar as it relates to amounts collected below 14.5¢ per Mcf, inclusive of the applicable contract charge for dehydration, is also accepted for filing.

(C) Within 30 days of the date of issuance of this order, M & M shall file an acceptable surety bond in the amount of $210,000 in accordance with the form attached hereto.*

(D) CM & M may collect all future amounts attributable to its interest in the above-entitled proceedings pursuant to the agreement and undertaking accepted herein and upon the filing of an acceptable surety bond M & M may also collect all future amounts attributable to its interests in the above-entitled proceedings pursuant to such bond and the agreement and undertaking accepted herein.

* Omitted in printing

Before Commissioners: Joseph C. Swidler, Chairman; Charles R. Ross, David S. Black and Carl E. Bagge.

RECREATIONAL DEVELOPMENT AT LICENSED PROJECTS, DOCKET NO. R-294

ORDER NO. 313

ISSUING STATEMENT OF GENERAL POLICY

(Issued December 27, 1965)*

This order sets forth a statement of Commission Policy with respect to outdoor recreational development at projects licensed or to be licensed under the Federal Power Act.

There has been a dramatic increase in public utilization of outdoor recreation opportunity during the twenty years since World War II. During the period from 1952 to 1962, for example, visits to National Parks increased 87 percent, visits to other Federal recreation areas increased 238 percent, and visits to State parks increased 113 percent.

The population of the United States has increased substantially in the past two decades, with greater growth predicted for the future. A larger number of Americans than ever before are participating in one form or another of outdoor recreation at established recreational areas. Reservoirs at Federally licensed projects currently provide a significant source of outdoor recreation opportunity; but there is every indication that greatly expanded recreational development at such sites is possible both at existing projects and at those to be licensed in the future.

The Congress, in enacting Public Law 88-29[1] recognizing future recreational needs of the nation, set forth the following national policy on outdoor recreation:

> * * * the Congress finds and declares it to be desirable that all American people of present and future generations be assured adequate outdoor recreation resources, and that it is desirable for all levels of government and private interests to take prompt and coordinated action, to the extent practicable without diminishing or affecting their respective powers and functions, to conserve, develop, and utilize such resources for the benefit and enjoyment of the American people.

The President, by Executive Order 11017, dated April 27, 1962, established the Recreation Advisory Council to provide broad policy advice to the heads of federal agencies on all important matters affecting outdoor recreation resources and to facilitate coordinated efforts among federal agencies.

The Federal Power Commission has long been interested in recreational development at licensed projects. While section 10(a) of the Federal Water Power Act of June 10, 1920 (41 Stat. 1063) did not refer specifically to recreation, in 1935 when the Federal Water Power Act was re-enacted as Part I of the Federal Power Act (49 Stat. 838, 16 U.S.C. 791a–825r), the words "including recreational purposes" were added to section 10(a) to make clear that

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*Published in the Federal Register on December 27, 1965 (30 F.R. 16197).

[1] An act to promote the coordination and development of effective programs relating to outdoor recreation (77 Stat. 49, 16 U.S.C. 4601). This statute established the Bureau of Outdoor Recreation within the Department of the Interior to promote the coordination and development of effective programs relating to outdoor recreation.

recreation considerations were to be included in comprehensive development of the nation's water resources.

In the ensuing years the Commission, starting with a practice of considering project recreational possibilities on case-by-case basis at the time of initial application, has gradually developed a comprehensive general pattern. Standard license forms for various categories of projects have for a number of years provided for reasonable free public access to project reservoirs for recreational purposes, and obliging the licensee, upon notice and opportunity for hearing, to take such steps to install reasonable recreational facilities as might be required by public interest and consistent with the other objectives of the license. Recognizing the need for greater advance planning for development of outdoor recreation resources at licensed projects, the Commission, in 1962, issued a notice of proposed rulemaking (Docket No. R-223), proposing that license applicants submit a recreational use plan for all major projects. This proceeding culminated on April 25, 1963 in Order No. 260-A 29 FPC 777, 28 F.R. 4092), whereby the Commission amended § 4.41 of its Regulations under the Federal Power Act to require the filing of Exhibit R—a recreational use plan—as part of every application for major license filed after June 1, 1963. The requirements of Exhibit R were further particularized by Order No. 292, issued January 8, 1965 (33 FPC 32, 30 F.R. 523).

Reflecting its desire to make project recreational opportunities widely known to the general public, the Commission by Order No. 299, issued May 27, 1965, amended Regulations under the Federal Power Act by adding a new Part 8 requiring the publicizing of recreational features or operational procedures affecting recreation at licensed projects (33 FPC 1131, 30 F.R. 7313).

These various provisions constitute a comprehensive recreational package applicable to all new major licensees, whether their licenses are for constructed or unconstructed projects. We also intend in connection with any application for substantial amendment to a license, reasonably related to recreation, which does not presently incorporate an article requiring the filing of a recreational use plan, the standard free access article, or the article providing for the installation of such recreational facilities as the Commission might, after notice and opportunity for hearing, find consistent with the other objectives of the license and required by public interest, to require the licensee to show cause why such articles should not be incorporated into its license, if the license is otherwise amended in response to the application. And in the future we shall not approve any application or request by a licensee to dispose of any interest in lands within project boundaries, in the absence of a showing by the licensee that such disposal is not inconsistent with the approved public recreational plan for the project, or, in the absence of such a plan, that the lands in question do not have recreational value.

By separate order we are amending Section 4.41 of the regulations to make clear that we expect licensees to extend their project boundaries beyond the 200 feet from the exterior margin of reservoirs presently specified whenever appropriate to effectuate a comprehensive recreational plan. In addition, it is our view, as set out in the proposed policy statement below, that generally all recreational areas specified in an approved plan, should be acquired by the licensee in fee, and should include all lands immediately adjacent to the exterior margin of the reservoirs. We recognize, however, that in the case of some constructed though unlicensed projects or amendments to existing licenses, the latter two objectives on occasion may not be consistent with the economic well being of the project, or in isolated situations of low recreational potential, required by the public interest.

The Commission believes that irrespective of the requirements of their licenses, licensees whose projects comprise land and water resources with outdoor recreational potential have a responsibility for the development of those resources in accordance with area needs, to the extent that such development is not inconsistent with the primary purpose of the project. All licensees will therefore be encouraged to submit for Commission approval and incorporation into their licenses an appropriate recreational plan. In assuming this responsibility the licensee should consider each project on the basis of its physical and economic characteristics, its operational plan, and area needs for outdoor recreation. As an aid to both licensees and the Commission in this endeavor we are proposing to initiate a nationwide inventory of the recreational potential of all Commission licensees for which an appropriate recreational use plan had not been approved within the last five years.

When formulating plans for project recreational facilities, applicants and licensees are encouraged to consult and coordinate such planning with local, state and federal agencies concerned with outdoor recreation, as well as with professional recreational facilities designers and landscape architects. Pursuant to The Land and Water Conservation Act of 1965 (P.L. 88–578, 78 Stat. 897, 16 U.S.C. 4601–4), public funds may be made available by the Secretary of the Interior for both state and federal acquisition and for state development of recreational areas under appropriate circumstances. Cooperation with the Bureau of Outdoor Recreation of the Department of the Interior as well as with interested state agencies could result in state or federal developments adjacent to licensed projects reservoirs, thereby supplementing and enhancing project facilities.

The Commission recognizes that a licensee will incur costs in providing recreational facilities, and, therefore, will allow appropriate and reasonable expenditures for recreational facilities, including the purchase of additional land, to be included as part of the project cost. The Commission also recognizes that certain annual costs will be incurred by a licensee in the operation and maintenance of recreational facilities. Accordingly, the Commission will not object to the imposition by a licensee of reasonable user fees in order to help defray these costs.

In making project lands, waters, and facilities available for public recreation, licensee should, of course, comply with local and state regulations and also formulate such rules of use as may be appropriate to insure public safety.

Concurrently with the issuance of this order we are issuing a report entitled "Criteria and Standards for Outdoor Recreation Development at Hydroelectric Projects." The report consists of a selected compilation of criteria and standards utilized by federal and state agencies concerned with outdoor recreation development which are adaptable to hydroelectric projects. We are making it public in the hope that it will be of value to licensees, applicants for license, and recreational planners, in formulating plans for the development of recreational facilities at hydroelectric projects.

The Commission finds:

(1) The notice and effective date provisions of section 4 of the Administrative Procedure Act do not apply with respect to the amendment here adopted.

(2) It is appropriate and in the public interest in administering Part I of the Federal Power Act to promulgate Commission policy on recreational development at licensed projects.

The Commission orders:

(A) Part 2, General Policy and Interpretations, Subchapter A, Chapter I of Title 18 of the Code of Federal Regulations is amended by adding a new § 2.7, entitled "Recreational development at licensed projects," as follows:

§ 2.7 Recreational development at licensed projects.

The Commission will evaluate the recreational resources of all projects under federal license or applications therefor and seek, within its authority, the ultimate development of these resources, consistent with the needs of the area to the extent that such development is not inconsistent with the primary purpose of the project. Reasonable expenditures by a licensee for public recreational development pursuant to an approved plan, including the purchase of land, will be included as part of the project cost. The Commission will not object to licensees and operators of recreational facilities within the boundaries of a project charging reasonable fees to users of such facilities in order to help defray the cost of constructing, operating, and maintaining such facilities.

The Commission expects the licensee to assume the following responsibilities:

(a) To acquire in fee and include within the project boundary enough land to assure optimum development of the recreational resources afforded by the project. To the extent consistent with the other objective of the license, such lands to be acquired in fee for recreational purposes shall include the lands adjacent to the exterior margin of any project reservoir plus all other project lands specified in any approved recreational use plan for the project.

(b) To develop suitable public recreational facilities upon project lands and waters and to make provisions for adequate public access to such project facilities and waters.

(c) To encourage and cooperate with appropriate local, state, and federal agencies and other interested entities in the determination of public recreation needs and to cooperate in the preparation of plans to meet these needs, including those for sport fishing and hunting.

(d) To encourage governmental agencies and private interests, such as operators of user-fee facilities, to assist in carrying out plans for recreation, including operation and adequate maintenance of recreational areas and facilities.

(e) To cooperate with local, state, and federal government agencies in planning, providing, operating, and maintaining facilities for recreational use of public lands administered by those agencies adjacent to the project area.

(f) To comply with local and state regulations for health, sanitation, and public safety, and to cooperate with local law enforcement authorities in the development of additional necessary regulations for such purposes.

(g) To ensure public access and recreational use of project lands and waters without regard to race, color, sex, religious creed or national origin.

(h) To inform the public of the opportunities for recreation at licensed projects, as well as of rules governing the accessibility and use of recreational facilities.

(B) Licensees who have not already done so are encouraged to file comprehensive recreational plans for approval and incorporation within their licenses to the extent necessary and appropriate to provide adequate recreational facilities, the Commission will approve extensions of the boundaries of existing projects as part of its approval of any such plan.

(C) The Commission will not grant any authorization for a licensee to dispose of any interest in project lands, unless a showing is made that such

disposal is not inconsistent with any approved recreational plan or in the absence of such a plan, that the lands do not have recreational value. Pending a determination by the Commission that such lands are not needed for public recreational purposes, all project lands, buildings, or other property will be considered to be required to achieve the purposes of the license within the meaning of any article in the license relating to the leasing of such lands, buildings, or other property. The licensee, in the absence of specific Commission exemption from these requirements, shall include in the instrument of conveyance a covenant running with the land adequate to insure that, unless the Commission subsequently authorizes a different use as consistent with a comprehensive plan for improving or developing the waterway, the use of the lands conveyed will not endanger health, create a nuisance, or otherwise be incompatible with over-all project recreational use.

(D) The amendments prescribed herein will be effective upon the issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; Charles R. Ross, David S. Black and Carl E. Bagge.

HYDROELECTRIC LICENSES—APPLICATIONS—EXHIBIT K, DOCKET NO. R-295

ORDER NO. 314

AMENDING SECTION 4.41, EXHIBIT K REGULATIONS UNDER THE FEDERAL POWER ACT

(Issued December 27, 1965)*

In developing its general policy with respect to recreational development at projects licensed or to be licensed under Part I of the Federal Power Act, the Commission became aware of the need to amend § 4.41 *Exhibit K*, (1)(iii) of Regulations under the Federal Power Act, as hereinafter provided, to relax the requirements of that subsection with respect to the distance the project boundary may extend from the exterior margin of a reservoir. The purpose of this amendment is to permit the establishment of a project boundary extending more than 200 feet (horizontal measurement) from the exterior margin of the reservoir (in general, high-water level), as presently limited, in cases where the provision for or construction of project recreational facilities would make it appropriate and desirable to exceed the 200 foot limitation.

The Commission finds:

(1) The amendment of section 4.41 of the Commission's Regulations under the Federal Power Act, prescribed herein, is necessary and appropriate for the administration of the Federal Power Act.

(2) Since the amendment of section 4.41, prescribed herein, relaxes the requirements of the section, compliance with the notice and effective date provisions of Section 4 of the Administrative Procedure Act is unnecessary.

The Commission, acting pursuant to the provisions of the Federal Power Act, as amended, particularly sections 4 and 309 thereof (49 Stat. 839, 858; 16 U.S.C. 797, 825c, 825j), *orders:*

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*Published in the Federal Register on December 29, 1965 (30 F.R. 16198).

(A) Section 4.41 *Exhibit K*, Subchapter B, Chapter I of Title 18 of the Code of Federal Regulatons, is amended by amending paragraph (1)(iii) to read as follows:

§ 4.41 Required exhibits. * * *

Exhibit K * * *

(1) * * *

(iii) Except with respect to lands necessary or appropriate for recreation purposes, for which it is recognized that additional project area will generally be required, the project boundary shall be no more than 200 feet (horizontal measurement) from the exterior margin (in general, high-water level) of reservoirs, nor shall the width of the project area for canals, ditches, pipe lines, transmission lines, roads, and other so-called continuous structures exceed 200 feet, unless satisfactory reasons are given to the contrary. The project boundary shall be shown on the map in such manner that it can be readily identified on the ground. There shall be shown the location and description of monuments and other marks with reference lines therefrom to permanent objects in accordance with good practice in land surveying.

[Sections 4, 309, 49 Stat. 839, 858; 16 U.S.C. 797, 825c, 825j]

(B) The amendment herein prescribed will be effective upon issuance of this order.

(C) The Secretary shall cause prompt publication of this order to be made in the Federal Register.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

HYDROELECTRIC LICENSED PROJECTS—INSPECTIONS TO INSURE SAFE OPERATION, DOCKET NO. R-268

ORDER NO. 315

PROMULGATING NEW PART 12 OF REGULATIONS UNDER THE FEDERAL POWER ACT

(Issued December 27, 1965)*

On October 20, 1964, the Commission gave notice by publication in the Federal Register (29 F.R. 14643) that it proposed to require licensees under the Federal Power Act to provide complete safety inspections of hydroelectric project works by independent consultants at regular five-year intervals or more frequently, if necessary. The proposed regulations are not intended to relieve or release the licensee from any existing responsibility for maintenance, operation and inspection of its project to assure its stability and safety, or for immediate notification to the Commission's representative concerning any condition or development which could have an effect on the safety of project structures. They are designed to supplement existing Commission inspection procedures, thereby improving the Commission's effectiveness in carrying out its statutory responsibilities to protect the public safety. (16 U.S.C. 803(c)).

Comments were invited from interested persons to be submitted by December 9, 1964. At the request of several licensees, the time for filing written views

*See order dismissing notice of intervention, etc., issued February 25, 1966, 35 FPC 274. Published in the Federal Register on December 29, 1965 (30 F.R. 16199).

was subsequently extended through January 8, 1965 (29 F.R. 16997). In response to this notice and invitation, the Commission has received a number of comments[1] with regard to the proposed regulations and has taken them into consideration in preparing the text of the regulation which is herein promulgated.

While comments endorsed the objectives of the proposed rule to protect the public safety through periodic inspection of project facilities, doubts were expressed both as to its necessity and effectiveness. The comments indicated that the proposed regulation would in some instances duplicate existing state inspection programs and in others duplicate more stringent inspection programs currently maintained by licensees with their own personnel. There were many suggestions that run-of-river projects with little or no storage and small low-head developments be exempt. Strong preferences were expressed for revision of the rule to provide for inspection at periodic intervals by the licensee's staff, as opposed to independent inspections by outside consultants, in accordance with specific Commission requirements and subject to Commission staff review.

We intend that the licensee's own staff be eligible for participation in the inspections so long as they operate under the direction and supervision of an independent consultant. Use of the licensee's staff, under supervision of an outside consultant, may reduce costs without impairing the benefits secured by an independent examination. In order to achieve public confidence in the safety program, however, it is vital that an ultimate judgment be exercised by outside consultants to complement the inspection programs of the licensee and any state agency. Of course we expect that the licensee and his consutlants will give due consideration to the state's inspection program. Accordingly, while we have adopted a number of the suggestions to clarify and simplify the rule, we are unable to acquiesce in the general objections.

The purpose of the inspection program established by this order is to assure that adequate and timely measures will be taken to protect the public safety. Within this context we have provided in the regulation that inspection procedures shall apply only to those licensed projects having a dam exceeding 35 feet in height above stream bed or having a gross storage capacity in excess of 2000 acre feet, and that licensee's own personnel may be utilized so long as the inspections and the report thereof be made under the direction and with the approval of an independent consultant.

In setting the five-year interval between inspections, the Commission recognized the difficulty of accurately predicting the condition of project structures for longer periods of time. To avoid inequities the regulation includes a time schedule for initial inspections based on the length of time a project has been under license.

The Commission further finds:

(1) The detailed, objective inspections by or under the direction of independent consultants will provide important assistance to the Commission in carrying out its obligations under the Federal Power Act by assuring that the Commission and the licensees both have accurate and up-to-date information on the condition of project structures and facilities.

(2) In view of the foregoing, and upon consideration of all relevant matters presented, this amendment is necessary and appropriate for the purposes of the Federal Power Act.

[1] Comments were received from 49 licensees and from one individual.

The Commission, acting pursuant to the Federal Power Act, as amended, particularly sections 10(c), 304(a) and 309 thereof (49 Stat. 842, 855, 858; 16 U.S.C. 803(c), 825c(a), 825h), *orders:*

(A) Subchapter B, Regulations Under the Federal Power Act, Chapter I, Title 18, of the Code of Federal Regulations, is amended by inserting new Part 12, to read as follows:

Part 12—INSPECTION OF PROJECT WORKS WITH RESPECT TO SAFETY OF STRUCTURES

§ 12.1 Applicability

Unless otherwise ordered by the Commission, the provisions of this part shall apply with respect to projects licensed under Part I of the Federal Power Act having a dam exceeding 35 feet in height above stream bed or having a gross storage capacity in excess of 2000 acre feet.

§ 12.2 Periodic inspections

Notwithstanding any other terms and conditions of the license, the licensee shall cause a complete inspection of the project works, excluding transmission lines and generating equipment, to be made at least every 5 years, in order to determine whether there are any deficiencies or potential deficiencies in the condition of project structures, quality and adequacy of maintenance or methods of operation which might endanger public safety. Such inspections shall provide pertinent data with respect, but not limited, to such matters as settlement, movement, erosion, seepage, leakage, cracking examination of internal conditions of stress and hydrostatic pressures in structures, their foundations and abutments, functioning of foundation drains and relief wells, and stability of critical sections of reservoir shorelines and backslopes above structures. It is contemplated that the inspections may involve the use of special equipment, instrumentation, procedures and inspection staff. In the planning of the inspection and the preparation of the reports required by § 12.5, the licensee and the consultant responsible under § 12.4 shall give due consideration to pertinent reports made by or under the direction of federal or state agencies, prior reports submitted under this regulation, and reports made by other consultants.

§ 12.3 Additional inspections

When an inspection by the licensee or the Commission's staff reveals conditions of concern regarding the safety of any project structure or the operation of the project works, the licensee shall cause such additional inspection and investigation to be made as may be found by the Commission to be warranted under the circumstances.

§ 12.4 Responsibility for inspections.

The inspections provided for by §§ 12.2 and 12.3 of this part shall be performed by or under the responsibility and direction of qualified independent consultants.

§ 12.5 Report of inspections—recommendations

The arrangement between the licensee and the consultants shall provide that:

(a) A report shall be made by or under the direction of the consultants who shall certify approval thereof. It shall include a review of any and all items relating to the safety of the project, including records of observations of pressures, stresses, settlements and similar data, and recommendations, if any, as to corrective measures required. The report shall also include any recommendations considered appropriate on instrumentation or periodic observations of the behavior of any features of the project. If, during the course of an inspection, conditions are disclosed which indicate the need for

emergency corrective measures, the situation shall be reported to the Commission at once.

(b) Three copies of the report shall be filed with the Commission immediately upon its issuance.

(c) Within 30 days following submission of the report or within such other time as the Commission may direct, the licensee shall submit to the Commission any plan of action it proposes to take, which may include further investigation, for design and implementation of any corrective measures recommended in the report or design and implementation of any additional remedial measures which the licensee considers may be required.

§ 12.6 Initial inspection—Time for reporting

(a) *Licenses issued subsequent to the effective date of this part.* The initial inspection required by this part with respect to projects licensed after the effective date hereof shall be made so that the report required by § 12.5, together with licensee's proposal for remedial work, if any, can be submitted to the Commission within 5 years of the date of the first commercial operation of projects constructed under license and within two years of the date of the issuance of license for constructed projects.

(b) *Licenses issued prior to the effective date of this part.* The initial inspection required by this part with respect to the projects under license on the effective date hereof shall be made so that the report required by § 12.5, together with licensee's proposal for remedial work, if any, can be submitted to the Commission within the time specified in the following schedule:

If License Was Issued	*Initial Report Shall Be Submitted by*
Prior to January 1, 1940	March 1, 1967
January 1, 1940 to January 1, 1955	December 1, 1967
After January 1, 1955	September 1, 1968

[Sections 10(c), 304(a), 309, 49 Stat. 842, 855, 858; 16 U.S.C. 803(c), 825c(a), 825h]

(B) This amendment herein adopted shall become effective December 31, 1965.

(C) The Secretary shall cause prompt publication of this order to be made in the Federal Register.

Commissioner Ross *dissenting*, joined by Commissioner Bagge.

Ross, *Commissioner, dissenting:*

Delegating the responsibility and direction for inspection programs exclusively to independent engineering and geologic consultants, and refusing to accept the reports of state inspection agencies is, to say the least, quite unusual. Federal-State cooperation is something to be encouraged, particularly where duplicate costs can be avoided and where the knowledge and experience of existing state agencies effectively can be utilized. I naturally recognize that the public interest requires a state inspection agency to use the same standards as would an independent consultant or as would this agency. But state agencies should be given the opportunity independently to satisfy the requirements of this rule to the extent their programs are equal to or excel the program contemplated by the new regulation.

I therefore dissent to the new rule insofar as it requires investigations and reports duplicative of those made by state agencies.

Commissioner Bagge joins me in this dissenting statement.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

TEXAS GAS TRANSMISSION CORPORATION, DOCKET NO. CP66-60; GULF OIL CORPORATION, DOCKET NO. CI66-68

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND PERMITTING AND APPROVING ABANDONMENT

(Issued December 27, 1965)

On August 23, 1965, Texas Gas Transmission Corporation (Texas Gas) filed in Docket No. CP66-60 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain facilities, the continuance of the transportation of natural gas for a direct industrial sale and a transportation service for Gulf Oil Corporation (Gulf), all as more fully set forth in the application in Docket No. CP66-60.

Pursuant to Commission order issued January 22, 1951, in Docket No. G-1471 (10 FPC 689), as amended March 21, 1963, (29 FPC 566), Texas Gas was authorized to transport and deliver to Spencer Chemical Company (Spencer), located near Henderson, Kentucky, up to 11,500 Mcf of natural gas per day, on a high priority basis, and up to 10,000 Mcf per day, on an interruptible basis. Such service was provided for by contract, dated August 5, 1950, as amended. On April 29, 1964, Gulf acquired Spencer and succeeded to the rights and obligations of Spencer under the contract of August 5, 1950, as amended. Said contract was subject to determination on January 1, 1967. Texas Gas states that, as a result of discussions relating to an extension of the term of said contract, the parties entered into a transportation agreement and a sales agreement, each dated June 23, 1965. The new sales agreement supersedes the original industrial sales contract, as amended, and both new agreements are for a term of 12 years from January 1, 1965.

Texas Gas now proposes to continue the direct industrial sale to Gulf, on a high priority basis, in volumes up to 11,500 Mcf per day and also seeks authorization to render a transportation service for Gulf, on a high priority basis, in volumes up to 11,500 Mcf per day, provided that the total daily volume of gas to be sold and transported, on a high priority basis, shall not exceed in the aggregate 11,500 Mcf per day. Texas Gas will continue the direct interruptible sale of gas to Gulf in volumes up to 10,000 Mcf per day. Texas Gas states that the high priority sales and transportation services are subject to curtailment or discontinuance in order to supply the requirements of present or future customers of Texas Gas purchasing gas on a firm basis for resale; the interruptible sales are subject to curtailment or discontinuance at the sole option of Texas Gas.

The gas-subject to the transportation service will be produced by Gulf from acreage in the Church Point Field, Acadia Parish, Louisiana. Texas Gas proposes to construct a new meter station on its existing 20-inch line in Acadia Parish in order to receive gas from Gulf for transportation to Gulf's Spencer plant near Henderson, Kentucky. The estimated cost of this facility is $5,200, which cost will be financed from funds on hand.

On July 21, 1965, Gulf filed in Docket No. CI66-68 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon the sale of natural gas to Transcontinental Gas Pipe Line Corporation

(Transco) from the Church Point Field, Acadia Parish, Louisiana, all as more fully set forth in the application in Docket No. CI66–68.

Gulf states that Transco does not need the gas now being sold to it and does not, therefore, object to the proposed abandonment. The proposed abandonment will enable Gulf to make arrangements for disposing of its entire gas production from the Church Point Field thus avoiding further cumulation of under production. The gas now being sold to Transco will be transported by Texas Gas as proposed in Docket No. CP66–60. Gulf requests that the abandonment be made effective on the day Texas Gas commences transporting gas for Gulf.

Gulf never received certificate authorization for the subject sale to Transco since Gulf believed such sale to be nonjurisdictional prior to the *Lo-Vaca* decision[1] and, therefore, never filed with the Commission for such authorization. The date of initial delivery of gas to Transco was January 10, 1958. Gulf received an initial contract price of 22.80 cents per Mcf, inclusive of tax reimbursements, at 15.025 psia. On July 1, 1962, the price escalated to 24.80 cents per Mcf, inclusive of tax reimbursements, at 15.025 psia. These prices are above the guideline prices established by the Commission's Statement of General Policy No. 61–1, as amended. In light of the *Lo-Vaca* decision there exists a possibility that some portion of the rates collected by Gulf will have to be refunded. The abandonment will be permitted and approved in Docket No. CI66–68; however, such abandonment will be without prejudice to any future proceeding with respect to refunds in this matter and Gulf will remain responsible for any refunds which finally may be ordered.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the applications has been filed.

At a hearing held on December 16, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the applications and exhibits, submitted in support of the authorizations sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Texas Gas Transmission Corporation, a Delaware corporation having its principal place of business in Owensboro, Kentucky, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of March 30, 1949, in Docket No. G–859 (8 FPC 190).

(2) Applicant, Gulf Oil Corporation, is engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption, subject to the jurisdiction of the Commission, and is, therefore, a "natural-gas company" within the meaning of the Natural Gas Act.

(3) The facilities hereinbefore described, as more fully described in the application in Docket No. CP66–60, are to be used in the transportation and delivery of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof and the proposed transportation and delivery of natural gas by Texas Gas are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(4) Texas Gas is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

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[1] *People of the State of California, et al.* v. *Lo-Vaca Gathering Company, et al.*, 379 U.S. 366 (1965).

(5) The construction and operation of the proposed facilities and the proposed transportation and delivery of natural gas by Texas Gas are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(6) Public convenience and necessity require that the certificate issued hereinafter to Texas Gas and the rights granted thereunder be conditioned upon Texas Gas' compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(7) The sale of natural gas proposed to be abandoned by Gulf as hereinbefore described, all as more fully described in the application in Docket No. CI66-68, is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(8) The abandonment hereinbefore described is permitted by the public convenience and necessity and should be approved as hereinafter ordered.

(9) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that the abandonment hereinafter permitted and approved in Docket No. CI66-68 should be without prejudice to any future proceeding with respect to refunds involving the sale to be abandoned and Gulf should remain responsible for any refund which finally may be ordered with respect to said sale.

The Commission orders:

(A) A certificate of public convenience and necessity is issued authorizing Applicant, Texas Gas Transmission Corporation, to construct and operate the proposed facilities and to transport and deliver natural gas as hereinbefore described, all as more fully described in the application in Docket No. CP66-60, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Texas Gas' compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities authorized in Docket No. CP66-60 shall be constructed and placed in actual operation and the proposed transportation and delivery of natural gas shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act within 3 months from the date on which this order issues.

(D) The certificate issued in paragraph (A) above is granted on the express condition that the interruptible service authorized herein shall be curtailed or interrupted to the extent required to meet existing or future contracted maximum delivery obligations of Texas Gas for firm service to its customers.

(E) Permission for and approval of the abandonment of the sale of natural gas by Gulf, as hereinbefore described and as more fully described in the application in Docket No. CI66-68, is granted.

(F) Gulf shall advise the Commission of the date of the aforesaid abandonment within 10 days of the date thereof.

(G) The abandonment permitted and approved in paragraph (E) above shall be without prejudice to any future proceeding with respect to refunds involving the sale to be abandoned and Gulf shall remain responsible for any refund which finally may be ordered with respect to said sale.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

TEXAS GAS TRANSMISSION CORPORATION, DOCKET NO. CP66-97; ARKANSAS LOUISIANA GAS COMPANY, DOCKET NO. G-10591

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY, AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY, AND ACCEPTING FOR FILING REVISED TARIFF SHEETS

(Issued December 27, 1965)

On October 11, 1965, Texas Gas Transmission Corporation (Texas Gas), filed in Docket No. CP66-97 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing an increase in the Contract Demand of an existing customer, Arkansas Missouri Power Company (Arkansas Missouri), by 1,890 Mcf per day to a total Contract Demand of 9,890 Mcf. Applicant states that the increased service would be made from existing excess capacity and, accordingly, no additional facilities would be required, all as more fully set forth in the application.

On October 11, 1965, Arkansas Louisiana Gas Company (Arkansas Louisiana), filed in Docket No. G-10591 a petition to amend the order of the Commission issued in said docket, as amended, by authorizing Arkansas Louisiana to increase the volume of gas transported by it pursuant to said order from 8,000 Mcf per day to 9,890 Mcf per day, all as more fully set forth in the petition to amend.

The certificate of public convenience and necessity issued in the aforementioned Docket No. G-10591 on October 23, 1956, and amended October 24, 1958 (16 FPC 1086 and 20 FPC 545, respectively) authorized MidSouth Gas Co. to transport a maximum of 8,000 Mcf of gas per day for Arkansas Missouri which the latter purchases from Texas Gas Transmission Corporation (Texas Gas).

On October 19, 1961, the Commission issued an order in Docket No. CP61-334 (26 FPC 591) authorizing Arkansas Louisiana to acquire and operate all the facilities of MidSouth Gas Co. and the name of Arkansas Louisiana was by said order substituted for that of MidSouth Gas Co. in the certificate authorizations previously granted to MidSouth Gas Co. by the Commission, including the authorizations to MidSouth Gas Co. in Docket No. G-10591.

As noted above Texas Gas filed in Docket No. CP66-97 an application on October 11, 1965, pursuant to Section 7(c) of the Natural Gas Act for authority to increase the Contract Demand of its existing customer, Arkansas Missouri by 1,890 Mcf per day to a total Contract Demand of 9,890 Mcf. Accordingly, pursuant to an agreement between Arkansas Louisiana and Arkansas Missouri dated September 24, 1965, Arkansas Louisiana now requests the further amendment of the certificate heretofore issued in Docket No. G-10591, as amended, to which it has succeeded as aforesaid, to authorize it to transport a maximum of 9,890 Mcf of gas per day for Arkansas Missouri which Arkansas Missouri purchases from Texas Gas, all in accordance with its FPC Gas Rate Schedule XT-23. Arkansas Louisiana states that said rate schedule is being amended by appropriate tariff filings made contemporaneously with the instant certificate filing.

Arkansas Missouri has requested that the new service commence November 1, 1965, and has agreed to execute a new service agreement covering the increased allocation.

All gas sold by Texas Gas to Arkansas Missouri is delivered to Arkansas Louisiana and transported by it for the account of Arkansas Missouri pursuant to a certificate of public convenience and necessity issued October 23, 1956, in Docket No. G–10591, and amended October 24, 1958, to authorize the transportation of a maximum of 8,000 Mcf per day. To reflect the change in transportation volumes, Arkansas Louisiana filed First Revised Sheet Nos. 44, 45, 46 and 56 to its FPC Gas Tariff, First Revised Volume No. 2, which it proposes to supersede Original Sheet Nos. 44, 45, 46 and 56 of its FPC Gas Tariff, First Revised Volume No. 2.

Due notice of the filing of the application to amend and opportunity for hearing thereon have been given by publication in the Federal Register on October 30, 1965 (30 F.R. 13843). No protest, petition to intervene or notice of intervention has been filed in the proceeding concerning the amendment in Docket No. G–10591 or the application filed in Docket No. CP66–97.

At a hearing held on December 16, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits in said dockets, submitted in support of the authorization sought, and upon consideration of the record,

The Commission finds:

(1) Texas Gas Transmission Corporation, a Delaware corporation having its principal place of business in Owensboro, Kentucky, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of March 30, 1948, in Docket No. G–855 (7 FPC 213).

(2) The proposed sale and delivery of natural gas by Texas Gas to Arkansas Missouri Power Company as hereinbefore described, and as more fully described in the application, in this proceeding, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed sale and delivery of natural gas is required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Texas Gas is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Texas Gas' compliance with all applicable Commission Regulations under the Natural Gas Act, and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

(6) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued October 23, 1956, in Docket No. G–10591 be amended as hereinafter ordered and Arkansas Louisiana's First Revised Sheet Nos. 44, 45, 46 and 56 of its FPC Gas Tariff, First Revised Volume No. 2 be accepted for filing.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Texas Gas Transmission Corporation, authorizing the sale and delivery of natural gas to Arkansas Missouri Power Company, as hereinbefore described and as more fully described in the application in this proceeding, upon the terms and conditions of this proceeding.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Texas Gas' compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of such Regulations.

(C) Texas Gas and Arkansas Missouri Power Company execute a superseding service agreement in accordance with the Commission's Regulations reflecting the increase in daily contract quantity of 1,890 Mcf, and file the same with the Commission within 30 days after the issuance of this order.

(D) The Commission's said order issued in Docket No. G–10591 is further amended so as to authorize Arkansas Louisiana to increase the volume of natural gas to be transported by it from 8,000 Mcf daily to 9,890 Mcf daily, as requested in the application to further amend.

(E) Arkansas Louisiana's proposed First Revised Sheet Nos. 44, 45, 46 and 56 to its FPC Gas Tariff, First Revised Volume No. 2 are accepted for filing effective as of the date of this order.

(F) In all other respects said order in Docket No. G–10591 shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

TRANSWESTERN PIPELINE COMPANY, DOCKET NO. CP64–34

ORDER FURTHER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued December 27, 1965)

On September 13, 1965, Transwestern Pipeline Company (Petitioner) filed in Docket No. CP64–34 a petition to amend further the Commission's order issued December 16, 1963, 30 FPC 1520, in the subject docket, as amended December 4, 1964, 32 FPC 1403, to authorize Petitioner to sell and deliver up to 440,000 Mcf of gas per day on an annual average basis to Pacific Lighting Gas Supply Company (Pacific Lighting) for a period ending December 31, 1966, or until the commencement of a new service sought to be initiated in a proceeding now pending before the Commission in Docket No. CP63–204, *et al.*, whichever date is earlier. Petitioner also proposes to increase its maximum daily demand obligation for such deliveries to 430,000 Mcf effective January 1, 1966. Petitioner's proposals are more fully set forth in the petition to amend.

The Commission's order issued December 16, 1963, as amended, authorized Petitioner, among other things, to increase its annual average deliveries to Pacific Lighting from 345,000 Mcf per day to 430,000 Mcf per day and to increase its maximum daily delivery obligation to 410,000 Mcf for a temporary period ending December 31, 1965, or until the commencement of a new service sought to be initiated in a proceeding now pending before the Commission in Docket No. CP63–204, *et al.*, whichever date is earlier.

The petition indicates that Petitioner has the capacity in its facilities to deliver substantially more gas during cold weather months than it is now authorized to deliver. At a delivery pressure of 650 psig, Petitioner can deliver the proposed maximum daily obligation of 430,000 Mcf during the warm weather months and over 442,000 Mcf during the cold weather months. Accordingly,

Petitioner proposes an annual average limitation of 440,000 Mcf per day on sales to Pacific Lighting.

Due notice of the filing of the petition to amend and opportunity for hearing thereon has been given by publication in the Federal Register on September 24, 1965 (30 F.R. 12257). No protest or petition to intervene has been filed in this proceeding.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued December 16, 1963, as amended, in Docket No. CP64–34 be further amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order issued December 16, 1963, as amended, in Docket No. CP64–34 is further amended by increasing the volume of natural gas which may be sold and delivered by Petitioner to Pacific Lighting from 430,000 Mcf to 440,000 Mcf per day on an average annual basis and by extending the terms of the certificate through December 31, 1966, or until the commencement of a new service, if any, which may be authorized as a result of a proceeding now pending before the Commission in Docket No. CP63–204, *et al.*, whichever date is earlier; provided, however, this order shall not be construed as prejudicing the determinations to be made in the proceeding pending in Docket No. CP63–204, *et al.* Further, Petitioner is authorized to increase its maximum daily demand obligation for Pacific Lighting to 430,000 Mcf effective January 1, 1966.

(B) In all other respects said order, as amended, shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

ARKANSAS LOUISIANA GAS COMPANY, DOCKET NO. RP66–15

ORDER SUSPENDING PROPOSED CHANGE IN RATE AND PROVIDING FOR HEARING

(Issued December 28, 1965)

Arkansas Louisiana Gas Company (Ark-La), on November 1, 1965, tendered for filing Supplement No. 1 to its Rate Schedule XFS–20 proposing to increase the rate for sale of natural gas to National Fuels Corporation[1] (National), and Oklahoma Natural Gas Company (ONG) in the producing area of Major County, Oklahoma. The filing, proposed to become effective as of January 1, 1966, amounts to an annual increase of approximately $3,500 per year based on sales for the year 1964.

Ark-La's Rate Schedule XFS–20 presently provides for field sales of natural gas to National and ONG at a rate of 11.0¢ per Mcf[2] which Ark-La would increase to 12¢ per Mcf, pursuant to periodic price escalation provisions in its contract. The proposed rate exceeds the area price of 11.0¢ for increased rates in the "Other Oklahoma Area."

[1] Successor in interest to Warren Petroleum Corporation.
[2] At 14.65 psia.

The increased rate proposed by Ark-La has not been shown to be justified and may be unjust, unreasonable, unduly discriminatory, or preferential or otherwise unlawful.

The Commission finds:

It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of Ark-La's proposed change in rates, and that Supplement No. 1 to Ark-La's FPC Gas Rate Schedule XFS–20 be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly Sections 4 and 15 thereof, the Commission's Rules of Practice and Procedure and the Regulations under the Natural Gas Act [18 CFR, Chapter I], a public hearing shall be held, upon a date to be fixed by notice from the Secretary, concerning the lawfulness of Ark-La's proposed increased rate and charge contained in Supplement No. 1 to its FPC Gas Rate Schedule XFS–20.

(B) Pending a hearing and decision thereon, Supplement No. 1 to Ark-La's FPC Gas Rate Schedule XFS–20 is hereby suspended and the use thereof is deferred until May 1, 1966, and thereafter until such further time as it is made effective in the manner prescribed by the Natural Gas Act.

(C) Neither the supplement hereby suspended, nor the rate schedule sought to be altered thereby, shall be changed until this proceeding has been disposed of or until the period of suspension has expired, unless otherwise ordered by the Commission.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

COLORADO INTERSTATE GAS COMPANY, DOCKET NO. CP64–182

ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY, AND ACCEPTING TARIFF SHEETS FOR FILING

(Issued December 28, 1965)

Colorado Interstate Gas Company (Applicant), filed on November 8, 1965, in Docket No. CP64–182 an application to further amend the order of the Commission issued in said docket on June 2, 1964, 31 FPC 1339, which authorized the operation of existing facilities and the exchange of natural gas between Applicant and Natural Gas Pipeline Company of America (Natural) for the calendar year 1964, as more fully set forth in the application to amend.

By its "Order Amending Order Issuing Certificate of Public Convenience and Necessity and Accepting Tariff Sheets for Filing" issued April 14, 1965, 33 FPC 736, in this docket, the Commission authorized Applicant to continue operating its existing facilities and to continue the exchange of natural gas with Natural for the calendar year 1965. Such exchange was to allow Applicant to deliver up to 10,000 Mcf of gas per day on an interruptible basis to Natural in return for like volumes which Natural agreed to deliver to Cabot Corporation (Cabot) for Applicant's account. The gas so delivered is used by Cabot in its carbon black plants in the Panhandle of Texas.

Applicant continues to have a supply of gas temporarily in excess of its market requirements which Cabot continues to need. For the reasons stated above, Applicant and Natural have agreed to extend the term of the Exchange Agreement to April 1, 1967.

Applicant is filing concurrently revised sheets under its Rate Schedule X–20 to effectuate the extension of the term described above.

Due notice of the subject application to amend and opportunity for hearing has been given by publication in the Federal Register on November 24, 1965 (30 F.R. 14618). No protest, petition to intervene, or notice of intervention has been filed in the proceedings concerning this amendment.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued June 2, 1964, in Docket No. CP64–182 be further amended and Revised Tariff Sheets under its Rate Schedule X–20 be accepted for filing as hereinafter ordered.

The Commission orders:

(A) The Commission's order issued June 2, 1964, in Docket No. CP64–182, and as amended April 14, 1965, is further amended so as to authorize Colorado Interstate Gas Company to continue the operation of its facilities and the exchange of natural gas with Natural Gas Pipeline Company of America to April 1, 1967.

(B) The Revised Tariff Sheets under its FPC Rate Schedule X–20 to its FPC Gas Tariff are accepted for filing effective on the date of this order.

(C) In all other respects said order shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

EL PASO NATURAL GAS COMPANY, DOCKET NO. CP62–154

ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued December 28, 1965)

On September 27, 1965, El Paso Natural Gas Company (Applicant), filed in Docket No. CP62–154 an application and a supplement thereto on October 26, 1965, to amend the order of the Commission issued October 17, 1962, in Docket No. CP62–154, 28 FPC 614, authorizing Applicant to sell and deliver on an interruptible, best efforts basis, under its Rate Schedule G–X–2, FPC Gas Tariff, Original Volume No. 1, during the calendar year 1962, up to 25,700,000 Mcf of natural gas (at 14.9 psia) to Southern California Gas Company and Southern Counties Gas Company of California (jointly "Southern") for resale by Southern in the southern California market area.

Applicant seeks amendment of said order pursuant to a service agreement between Applicant and Southern dated September 1, 1965, providing for extended service to Southern, all as more fully set forth in the application to amend.

Southern will use the gas to increase the reserves in its storage reservoirs and to provide additional interruptible industrial service. Increase will be

under Applicant's Rate Schedule G–X–2 at a rate of 22.48 cents per Mcf for a limited period ending December 31, 1966.

Applicant states that service to Southern under Rate Schedule G–X–2 during portions of 1963 and portions of 1964 through April 30, 1964, was authorized to be continued by successive temporary certificates; and service to Southern under Rate Schedule G–X–2 for a period continuing through December 31, 1965, was authorized to be continued by order issued on August 31, 1964 (32 FPC 674). As evidenced by Southern's letter dated August 11, 1965, Southern has again requested extension of G–X–2 service for the calendar year 1966, and Applicant seeks amendment of the said order of October 17, 1962, necessary to make such service available to Southern.

Under the aforementioned service agreement between the parties dated September 1, 1965, the desired extension of service under Rate Schedule G–X–2 is proposed to be rendered by means of existing facilities and upon terms and conditions identical to those applicable to the G–X–2 service last certificated for the 16-month period terminating December 31, 1965.

Due notice of the filing of the application to amend and opportunity for hearing has been given by publication in the Federal Register on October 13, 1965 (30 F.R. 13028). No protest, notice of intervention, petition to intervene or request for hearing has been filed concerning this amendment.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act, and the public convenience and necessity require that the Commission's order issued October 17, 1962, in Docket No. CP62–154 be amended as hereinafter ordered.

The Commission orders:

(A) The Commission's order issued October 17, 1962, in Docket No. CP62–154 is amended so as to authorize, during the limited period commencing January 1, 1966, and continuing through December 31, 1966, the sale and delivery of a maximum of 174,680 Mcf of natural gas (at 14.73 psia) daily to Southern California Gas Company and Southern Counties Gas Company of California.

(B) Applicant shall report at the end of each thirty day period the volumes of natural gas sold and delivered to Southern.

(C) In all other respects said order shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

EL PASO NATURAL GAS COMPANY, DOCKET NO. CP65–45

ORDER AMENDING ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND ACCEPTING FOR FILING SERVICE AGREEMENT AND REVISED TARIFF SHEET

(Issued December 28, 1965)

On October 20, 1965, El Paso Natural Gas Company (Applicant) filed in Docket No. CP65–45 a petition to amend the certificate of public convenience and necessity issued by the Commission in said docket on November 9, 1964, 32 FPC 1285, which order authorized the delivery of natural gas to Pacific Gas & Electric Company (PG&E), as more fully set forth in the application to amend.

By the order of November 9, 1964, Applicant was authorized to deliver natural gas on an interruptible, best efforts basis under Applicant's Rate Schedule G–X–3, FPC Gas Tariff, Original Volume No. 1, limited to a quantity, during a limited term, which was not to exceed the quantity which PG&E had paid for in prior years. The gas which PG&E had paid for but not taken, but had the right to take without further payment under Rate Schedule G of Applicant's said tariff, was authorized to be delivered through December 31, 1965.

Applicant seeks to amend Commission authorization issued in Docket No. CP65–45, so as to extend for a one-year period the delivery to PG&E, an interruptible best efforts basis, of an amount of gas not to exceed that which PG&E has paid for in prior years under firm Rate Schedule G and has been unable to take. No additional facilities are proposed.

The present authorization issued on November 9, 1964, terminates on December 31, 1965.

Applicant is presently authorized to render firm service under Rate Schedule G to PG&E and jointly to Southern California Gas Company and Southern Counties Gas Company of California (Southern) up to specified maximum daily volumes. To the extent PG&E or Southern fails to take its authorized daily volumes under Rate Schedule G, such difference is deliverable to the other party under El Paso's Rate Schedule G–X. Total deliveries under G and G–X are not to exceed a specified daily volume.

Applicant estimates that the quantity of prepaid gas which PG&E will not have been recovered as of December 31, 1965, is 21,151,362 Mcf. PG&E requested extension of the service.

On November 9, 1965, Applicant filed a service agreement with PG&E and a modification of Rate Schedule G–X–3 (First Revised Sheet No. 27–M to FPC Gas Tariff, Original Volume No. 1) to cover the proposed service.

Due notice of the filing of the application to amend and opportunity for hearing thereon has been given by publication in the Federal Register on November 5, 1965 (30 F.R. 14023). No petition to intervene, notice of intervention, or protest to the granting of the application to amend has been filed.

The Commission finds:

It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order issued November 9, 1964, in Docket No. CP65–45, be amended; and a Service Agreement with PG&E and First Revised Sheet No. 27–M to El Paso's FPC Gas Tariff, Original Volume No. 1 be accepted for filing effective January 1, 1966.

The Commission orders:

(A) The Commission's order issued November 9, 1964, in Docket No. CP65–45 authorizing the delivery of natural gas on an interruptible, best efforts basis under Applicant's Rate Schedule G–X–3, FPC Gas Tariff, Original Volume No. 1, for a limited term, be amended so as to authorize Applicant to extend the period of delivery previously authorized for one year on the same basis and in volumes not to exceed that which Pacific Gas & Electric Company has paid for in prior years under Applicant's firm Rate Schedule G and has been unable to take.

(B) The Service Agreement dated September 13, 1965, and First Revised Sheet No. 27–M to Applicant's FPC Gas Tariff, Original Volume No. 1 be accepted for filing effective January 1, 1966.

(C) In all other respects said order shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

MICHIGAN WISCONSIN PIPE LINE COMPANY, DOCKET NO. CP65-191

ORDER AMENDING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND ACCEPTING SUPERSEDING SERVICE AGREEMENTS FOR FILING

(Issued December 28, 1965)

On November 4, 1965, Michigan Wisconsin Pipe Line Company (Petitioner) filed in Docket No. CP65-191 a petition to amend the certificate of public convenience and necessity issued by the Commission in said docket on March 30, 1965, 33 FPC 655, and amended by the order issued August 9, 1965, 34 FPC 445. The certificate, as amended, authorized Petitioner to construct and operate certain natural gas facilities and to sell and deliver an additional 79,868 Mcf of natural gas per day to certain existing customers. By the instant filing, Petitioner seeks authorization to increase the Maximum Daily Quantity (MDQ) of natural gas to be sold and delivered by it to American Gas Company (American Gas) and Keokuk Gas Service Company (Keokuk Gas), all as more fully set forth in the petition to amend.

American Gas has requested Petitioner to provide it with an additional MDQ of 528 Mcf of natural gas, for a total MDQ of 3,408 Mcf. Keokuk Gas has requested an additional MDQ of 500 Mcf of natural gas, for a total MDQ of 10,600 Mcf.

American Gas requires the additional quantity of gas in order to meet the terms of an agreement which it has recently entered into with a new industrial customer, and Keokuk Gas requires the increased quantities to meet the needs of an existing industrial customer.

Petitioner has submitted for filing superseding service agreements providing for the increased volumes to American Gas and to Keokuk Gas. Both contracts are dated October 12, 1965.

The American Gas service agreement provides for the purchase of gas under Petitioner's Rate Schedule SGS-1, at a rate of 44.7 cents per Mcf and the Keokuk Gas service agreement provides for the purchase of gas under Petitioner's Rate Schedule ACQ-1, which provides for a contract demand rate of $3.02 per Mcf and a commodity rate of 27.65 cents per Mcf.

Due notice of the filing of the petition to amend was published in the Federal Register on November 20, 1965 (30 F.R. 14537). No protest, petition to intervene, or notice of intervention has been filed in this proceeding.

The Commission finds:

(1) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the certificate of public convenience and necessity issued in Docket No. CP65-191 on March 30, 1965, and amended by the order issued on August 9, 1965, be amended as hereinafter ordered.

(2) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that the superseding service agreements between Petitioner and American Gas and between Petitioner and Keokuk Gas, each of which is dated October 12, 1965, be accepted for filing and made effective as of the date of this order.

The Commission orders:

(A) The certificate of public convenience and necessity issued to Michigan Wisconsin Pipe Line Company in Docket No. CP65-191 on March 30, 1965, and

amended by the order issued in said docket on August 9, 1965, is further amended by authorizing the sale and delivery by Petitioner to American Gas and to Keokuk Gas of an additional MDQ of natural gas to 528 Mcf and 500 Mcf, respectively, as hereinbefore described and as more fully described in the petition to amend.

(B) The superseding service agreements between Petitioner and American Gas and between Petitioner and Keokuk Gas, each of which is dated October 12, 1965, are accepted for filing and made effective as of the date of this order.

(C) In all other respects the certificate of public convenience and necessity, as amended, shall remain in full force and effect.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

PENNSYLVANIA ELECTRIC COMPANY AND CLEVELAND ELECTRIC ILLUMINATING COMPANY, PROJECT NO. 2280

ORDER ISSUING LICENSE (MAJOR)

(Issued December 28, 1965)

On February 14, 1962 the Pennsylvania Electric Company filed an application for license under Section 4(e) of the Federal Power Act for the proposed Kinzua pumped storage development, Project No. 2280, to be located on the Allegheny River in Warren County, Pennsylvania at the U.S. Army Corps of Engineers Allegheny River Reservoir Project. The application was supplemented by a filing submitted June 26, 1963. On May 26, 1964 the Pennsylvania Electric Company and the Cleveland Electric Illuminating Company (hereinafter referred to as Applicants) filed a joint application supplementing the original application for license and amending it to become a joint application.

The pending joint application for license was preceded by a preliminary permit issued to the Pennsylvania Electric Company on May 3, 1961, 25 FPC 909. Prior to that time, an application for preliminary permit to investigate the feasibility of installation of certain generating facilities at this location had been filed by Warren Electric Cooperative, Inc. However, that application was withdrawn on October 12, 1961.

The Kinzua project, as proposed by Applicant would consist of pumped storage generating facilities with installed capacity of 325 megawatts to be constructed concurrently with the Army Engineers' Allegheny River Reservoir Dam now under construction.

The Secretary of the Army and the Chief of Engineers have stated that the plans of the structures affecting navigation are satisfactory, but have recommended for inclusion in any license for the project a number of special provisions relating to project design, construction and operation. License Articles 43 through 52 and Articles 24 and 29 of attached Form L-6 substantially incorporate most of the Corps' recommendations. The conditions recommended by the Corps which are not included in this license are those which appear to the Commission to be unnecessary under the circumstances. The Corps requested a condition that would have required the Applicants to obtain easements for the use of Corps lands before beginning construction of the project. Such a condition is unnecessary since the license itself constitutes permission

of the Government to enter onto and use the Government land necessary to the development of the project. The interests of the Government in the utilized lands are protected by other license conditions which control project activities on the land. Furthermore, provision is made in Article 58, paragraphs (ii) and (iii), for recompensing the Government for the use of its lands.

The Corps also requested inclusion of a condition absolving the United States from all liability for loss of life, for injury to persons, or for damage occasioned to the property of others by activities relating to the Kinzua pumped storage project. We are of the opinion that this condition is also unnecessary since Section 10(c) of the Federal Power Act expressly provides that the United States shall in no event be liable for damage to the property of others occasioned by the construction, operation or maintenance of licensed project works. Moreover, the exceptions to the Federal Tort Claims Act found in 28 U.S.C. section 2680 clearly indicate that no such action as is contemplated by the language of the Corps' proposed condition would lie against the United States.

The Department of the Interior by a series of letters, dated September 27, 1962, November 27, 1964 and July 7, 1965, recommended several special conditions for the protection and propagation of fish life in the Allegheny River Reservoir, and in the river below the Reservoir. It appears that the objectives of these recommended special conditions can be fully realized, however, under the provisions of Article 15 of attached Form L–6. Further special conditions designed to control erosion and to provide for salvage of archeological relics in the project area were also recommended by Interior. These recommendations are incorporated in this license as Articles 53 and 56.

The Department of Agriculture submitted its comments and recommendations with regard to this application for license, including special conditions providing for timber removal from Government lands, control of erosion and stream siltation, and suppression of wildfires. These conditions are embodied in Articles 53, 54, and 55. On June 22, 1965, Agriculture filed a "Memorandum of Understanding" which has been executed between the Applicants and the Forest Service with respect to implementation of these terms and conditions.

The Department of Health, Education, and Welfare has advised that the proposed project should not have any adverse effects on water supply or water quality control provided that plant operations are coordinated with scheduled releases of the Corps of Engineers so that no major downstream flow variations will result, and provided that provision is made for withdrawing reservoir waters at such levels as will provide water of as high a quality as possible. The Department recommends that the level or levels of withdrawal should be made a subject of negotiation with the Corps of Engineers. The interests of water supply and water quality control will be adequately served by the provisions of Article 44 of this license. This article provides a framework for such negotiations or other proceedings as may be necessary to develop reasonable rules and regulations governing project operations.

After reviewing plans for the design and construction of the proposed project, we have concluded that the proposed structures as set forth in the amended application can be made safe and adequate, and would be best adapted to the comprehensive development of the Allegheny River. In the interest of insuring the safety and adequacy of the project works, we are incorporating Articles 38 through 42 into this license. By these articles, we require special safety features such as a spillway for the upper reservoir and duplicate automatic means for shutting off pumping units, and we provide for comprehensive re-

view of project design and construction by a board of independent engineering consultants, and by ourselves.

With regard to the recreational aspects of Project No. 2280 we conclude that the Exhibit R filed as part of the application substantially meets the requirements of Section 4.41 of the Regulations under the Federal Power Act with respect to present recreational needs and should to that extent be made a part of the license. However, for the purpose of examining recreational possibilities which may develop in the future, we are including Article 57 which requires the filing of a revised Exhibit R within two years after the project goes into operation. The revised Exhibit R will set forth proposals prepared in cooperation with Federal, State and local agencies for a fuller future development of the recreational potential of the project. It will be noted that Article 57 is drafted to require the revised Exhibit R to include, among other things, proposals to take advantage of any recreational fishing opportunities that develop in the area downstream from the Army dam. This is specifically mentioned in the expectation that the release of cooler water from the project power plant will enhance the fishery immediately downstream, giving rise to increased recreational use.

A petition to intervene was filed April 20, 1962 by Allegheny Electric Cooperative, Inc., on behalf of its ten member cooperatives, stating that the public interest would best be served by the installation of power facilities at the Allegheny River Reservoir Project by the United States, rather than by private utility companies. The same position was taken by the Departments of Agriculture and Interior in their comments upon this application for license. Allegheny Electric Cooperative requested that this Commission defer the issuance of any license until after the publication of a report by the Corps of Engineers on the feasibility of Government installation of power generating facilities at the Allegheny River Reservoir.[1] The Cooperative also requested that it be given time to study this report when it appeared, and that the Commission hold hearings on this matter. We granted the Cooperative's petition to intervene by an order dated September 17, 1965 and afforded the Cooperative an opportunity to file, within thirty days from the date of the order, a statement of facts and law in support of its position. However, on the last day of the thirty-day period the Cooperative filed a "Motion for Extension of Time in Which to File Statement". In support of the motion it was argued that the Cooperative could not file any statement of fact or law until after it had had an opportunity to study the above-mentioned Corps report. The Applicants objected to the granting of any further extension of time, noting that substantial increases in construction costs would result if construction of the project were further delayed. Since there was no assurance that the awaited Corps report would be published within a reasonable time, on December 1, 1965, we denied the motion for extension of time to avoid holding this proceeding any longer in abeyance. However, we stressed that we would welcome the filing of any later statement of fact and law by the Cooperative provided such filing were made prior to our taking action on the license application. On December 13, 1965, the Cooperative requested leave to withdraw from these proceedings. This motion is granted in paragraph (G) of this order.

The substance of the Cooperative's position was, as we mentioned above, that the development proposed by Applicants is one that should be undertaken by the Government. The Secretary of Agriculture expressed this position in his April 9, 1963 letter to the Chairman and said:

[1] This report was requested by the Committee on Public Works, U.S. Senate, by resolution dated May 13, 1961.

> It would appear reasonable to assume that if installation of power facilities at this Federal dam, whether conventional or pumped storage is feasible for the applicant, it would be feasible for the Government.

The opposition to private development of the proposed project is apparently predicated on this assumption. However, the information before us indicates that this assumption may be unwarranted. The Corps of Engineers reported, in its letter of August 20, 1962, that at the time the Allegheny River Reservoir project was designed it was determined that a conventional power installation would not be feasible. This conclusion was borne out by an independent determination made by Applicants and reported in their amended application of May 26, 1964. However, the Applicants concluded that a pumped storage installation with ancillary conventional generation facilities would be feasible. Applicant's conclusions were confirmed by a Commission staff study of the subject. Thus the only project which appears feasible of development here at this time is primarily a pumped-storage installation.

A pumped-storage installation is primarily useful as a source of peaking capacity. But the need for a peaking plant of this size presupposes the existence of a fairly sizable load. This the Applicants have, since they are interconnected with the General Public Utilities (GPU) Integrated System. However, it does not appear that the Government has any such sizable load, actual or potential in this area, nor has the Government an available power supply for the pumping requirements of the project, and we are therefore of the opinion that this project is economically better suited to private development rather than development by the Government.

We do not intend to suggest, however, that Government development of any power facilities at the Allegheny River Reservoir would be forever infeasible. The existence and operation of Project No. 2280 does not preclude the subsequent installations of government hydro facilities, and changed circumstances in the future may indicate the feasibility of installing such facilities. To provide for this eventuality, we are including in the license, as Article 46, a condition absolving the United States from any liability for damages to Project No. 2280 arising out of construction activities related to the installation of Government power facilities.

The Commission finds:

(1) Applicants, Pennsylvania Electric Company and the Cleveland Electric Illuminating Company are corporations organized, respectively, under the laws of the Commonwealth of Pennsylvania and the State of Ohio. Both have submitted satisfactory evidence of compliance with all applicable State laws insofar as necessary to effectuate the purposes of a license for the project.

(2) Public notice of the filing of the application has been given. Except for the petition to intervene filed by Allegheny Electric Cooperative, Inc., no other formal protests or petitions to intervene have been received. No conflicting application is before the Commission.

(3) The project is located upon, and will affect, lands of the Allegheny National Forest.

(4) The project will utilize surplus water or waterpower from a Government dam, but the issuance of a license therefor, as hereinafter provided, will not affect the development of any water resources for public purposes which should be undertaken by the United States.

(5) Subject to the terms and conditions hereinafter imposed, the project will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign com-

merce, for the improvement and utilization of waterpower development, and for other beneficial public uses, including recreational purposes.

(6) The installed horsepower capacity of the project hereinafter authorized for the purpose of computing the capacity component of the administrative annual charge is 473,000 horsepower and the amount of annual charges based on such capacity to be paid under the license for the project, for the costs of administration of Part I of the Act is reasonable.

(7) The exhibits designated and described in paragraph (B) following conform substantially to the Commission's rules and regulations and show the general characteristics of the project with respect to capacities of reservoirs, size of water passages, capacities of generating units and general design of structures, and should be approved as part of this license only insofar as they show these general characteristics. The Applicants should, as hereinafter provided, supply revised exhibits for Commission approval.

(8) The aforementioned Exhibit R conforms to the Commission's Regulations and should be approved as part of this license insofar as it relates to recreational needs.

The Commission orders:

(A) This license is hereby issued to the Pennsylvania Electric Company of Johnstown, Pennsylvania, and the Cleveland Electric Illuminating Company of Cleveland, Ohio (Licensees), under Section 4(e) of the Federal Power Act (Act) for a period of 50 years effective as of December 1, 1965, for the construction, operation and maintenance of Project No. 2280, affecting the United States Army Corps of Engineers' Allegheny River Dam and Reservoir and appurtenant lands and using water therefrom, and affecting as well lands of the United States within the Allegheny National Forest subject to the terms and and conditions of the Act and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) Project No. 2280 consists of:

(i) all lands constituting the project area and enclosed by the project boundary or the limits of which are otherwise defined, and/or interests in such lands necessary or appropriate for the purposes of the project, whether such lands or interests therein are held by the Licensees or by the United States; such project area and project boundary being more generally shown and described by certain exhibits which formed part of the application for license and which are designated and described as follows:

Exhibit J: (FPC No. 2280–2) GPU Integrated System (ii) Project works, which may be generally described as follows:

(1) *Upper Reservoir:* This is a high level 106-acre offstream reservoir above the left abutment of the Army Dam with a total capacity of 5,987 acre-feet of which 5,775 acre feet is usable power storage. The maximum operating water level of the reservoir is at elevation 2081.5 feet, with the minimum operating level at elevation 2020.0 feet. The upper reservoir is formed by a dam having maximum height of about 113 feet and approximately 2,380 feet long across the unnamed tributary of Bent Run, and a continuous rockfill impervious core dike approximately 6,430 feet long connecting the ends of the dam and completely encircling the reservoir.

(2) *Lower Reservoir:* Part of the project is the right subject to the terms and conditions of this license, to use the Allegheny River Reservoir (Kinzua), constructed and operated by the U.S. Army Corps of Engineers, with normal water surface regulation between elevations 1,260 and 1,355 feet. Normal tailwater below Allegheny River Reservoir is at approximate elevation 1,206 feet.

(3) *Pumping and Generating Facilities:* The pumping and generating station on the low left bank below the Allegheny River Reservoir Dam contains:

Unit No. 1—a reversible fixed-blade pump-turbine rated at 205,000 horsepower at 665 feet net head connected to a 150,000 kw motor generator. A conduit with 13 foot 3 inch inside diameter connects the unit to the Allegheny River Reservoir intake for pumping to the Upper Reservoir and for discharging into the Allegheny River Reservoir when generating.

Unit No. 2—A divided draft tube (DDT) unit with a reversible fixed-blade pump-turbine (rated at 205,000 horsepower at 665 feet net head when discharging from the Upper Reservoir into the Allegheny River Reservoir, but capable of producing 246,000 horsepower at 798 feet net head when discharging from the Upper Reservoir into the Allegheny River downstream from the Army Dam) connected to a motor generator (rated at 150,000 kw at 665 feet net head and 180,000 kw at 798 feet net head). A conduit with 13 foot 3 inch inside diameter is provided to allow use of the unit for pumping into the Upper Reservoir and discharging into the Allegheny River Reservoir and/or the Allegheny River below the Army Dam.

Unit No. 3—a high head turbine (HHT) of the conventional Francis type rated at 34,500 horsepower (25,000 kw) when operating at a head of 798 feet between the upper reservoir and discharging directly into the Allegheny River downstream from the Army dam.

A 19-foot diameter concrete and steel lined circular tunnel extends from a bellmouth intake in the floor of the upper reservoir a distance of about 2,400 feet to two bifurcations and three short steel penstocks leading to the three generating units. Each penstock contains a spherical valve near the entrance to each unit.

Other project works include transformers, a transmission line approximately 3,100 feet long, access roads, recreational and other appurtenant facilities.

The location, nature, and character of the project works are more specifically shown and described by exhibits which formed part of the application for license and which are designated and described as follows:

Exhibit L:

(FPC No. 2280–24) General Layout
(FPC No. 2280–25) High Head Conduit
(FPC No. 2280–26) Pumping and Generating Station Vicinity
(FPC No. 2280–27) Pumping and Generating Station–1
(FPC No. 2280–28) Pumping and Generating Station–2
(FPC No. 2280–29) Lower Hydraulic Structures
(FPC No. 2280–30) Upper Hydraulic Structures

Exhibit M: Three typewritten sheets entitled "General Description and Specification of Equipment", filed with the Commission October 12, 1964.

(iii) All other structures, fixtures, equipment as facilities used or useful in the maintenance and operation of the project and operation of the project and located on the project area, including such portable property as may be used or useful in connection with the project or any part thereof, whether located on or off the project area, if and to the extent that the inclusion of such property as part of the project is approved or acquiesced in by the Commission, also all riparian or other rights, the use or possession of which is necessary or appropriate in the maintenance or operation of the project.

(C) This license is also subject to the terms and conditions set forth in Form L–6 (revised November 1, 1963) entitled "Terms and Conditions of License for Unconstructed Major Projects Affecting Navigable Waters and Lands of the United States" (31 FPC 284) which terms and conditions desig-

nated as Articles 1 through 37 are attached hereto and made a part hereof, except for Articles 5, 6, 7, 8, 19, 26 and 27, and subject to the following special conditions set forth herein as additional articles:

Article 38. The Licensees shall provide a spillway for the upper reservoir capable of discharging a flow equal to the total continuous pumping rate of flow from all pumping units, and the dam and dikes surrounding the upper reservoir shall be built to a height that will provide at least three feet of freeboard above the surcharge elevation which would result from such pumping.

Article 39. The Licensees shall provide at the Kinzua plant duplicate automatic means for stopping the units from pumping when the water level of the upper reservoir exceeds Elevation 2081.5 feet.

Article 40. The Licensees shall retain a board of independent engineering consultants to review for safety and adequacy the specifications, design, and construction of project works. Among other things, the board shall assess the proposed plans for the upper reservoir dikes and the suitability and treatment of the dike foundations and of the reservoir floor. The board shall also examine the specifications, design, and construction of the powerhouse, high-head tunnel and shaft to assure that there will be no seepage into surrounding rock that might endanger the Army Dam or other parts of the project. In connection with its review of plans and construction of project works, the board shall, if necessary, conduct special studies, including hydraulic model studies for the bell-mouth intake in the upper reservoir. The board shall submit a report to the Commission concerning each portion of the project prior to the submittal of the revised Exhibit L drawings therefor. The board shall also submit a final report covering the construction of the project, and the Licensees shall receive Commission approval prior to the filling of the upper reservoir.

Article 41. The Licensees shall submit to the Commission a stability analysis of the typical dike section for the upper reservoir, using actual friction and cohesion factors for the materials to be used in the construction of the dikes. The Licensees shall receive the approval of the Commission before beginning construction of the dikes.

Article 42. The Licensees shall submit in accordance with the Commission's rules and regulations revised Exhibit L drawings showing the final designs of project works, and the Licensees shall not begin construction of any project structure until the Commission has approved such exhibits therefor.

Article 43. The Licensees shall, prior to initiating construction, furnish plans and specifications to the District Engineer, U.S. Army Engineer District, Pittsburgh, Pennsylvania, for approval of features which could affect the Government's structures and project operations, and shall agree to such changes as determined to be necessary and reasonable.

Article 44. The United States specifically retains and safeguards the right to regulate reservoir releases, either through the facilities of the Licensees or through facilities of the Government, in such amount, to be determined by the Secretary of the Army, as may be necessary for the purposes of flood control and low-flow regulation of the Allegheny River Reservoir Project; and the operations of the Licensees, so far as they affect the use, storage, and discharge from storage of waters in the Allegheny River Reservoir, shall at all times be controlled by such reasonable rules and regulations as the Secretary of the Army may prescribe in the interest of authorized Reservoir purposes, and as the Commission may prescribe in the interests of life, health, property, and the fullest practicable conservation and utilization of such waters for other beneficial public purposes, including recreational purposes. Licensees shall release water through their facilities at such rate in cubic feet per second, or

in such volume in acre feet per specified period of time, as the Secretary of the Army may prescribe in the interest of Allegheny River Reservoir Project purposes, or as the Commission may prescribe for the other purposes hereinbefore mentioned. No water shall be released through Government facilities when facilities of the Licensees are available for such release and when Licensees' operating requirements are such that release through the Licensees' facilities would be beneficial to the Licensees and when release through Licensees' facilities would result in downstream water temperatures generally similar to those which would result from releases through the Government's facilities. Procedures for the purpose of preventing impairment of the authorized functions of the Allegheny River Reservoir Project shall be as specified in an operating agreement entered into by the Licensees and the District Engineer, U.S. Army Engineer District, Pittsburgh, Pennsylvania prior to the operation of the Licensees' project; *Provided*, That such agreement shall be subject to review from time to time as requested by either party; and *Provided further*, That in the event that the Licensees and the District Engineer should fail to reach agreement with regard to such procedures, the Commission will, upon the motion of either party, or upon its own motion, prescribe necessary procedures and regulations, after notice and opportunity for hearing.

Article 45. The Licensees shall reimburse the United States for actual separable costs including interest, of provisions made by the Corps of Engineers for installation of power facilities by the Licensees. Reimbursable costs shall include engineering and design costs incurred by the Government. Details pertinent to the amount and terms of the reimbursement shall be specified in a formal agreement to be entered into by the Licensees and the District Engineer, U.S. Army Engineer District, Pittsburgh, Pennsylvania. In the event that agreement cannot be reached, the Commission will determine the amount of such reimbursement, after notice and opportunity for hearing.

Article 46. In the event that construction by the Government of hydro-electric facilities at the Allegheny River Reservoir Project is subsequently authorized, the Government shall be released from all liability for damage or operational difficulties sustained by the Licensees due to such construction activities, or to conditions necessitated by such construction activities.

Article 47. The Government shall be released from all liability for damages or operational difficulties sustained by the Licensees due to the construction or operation of the Allegheny River Reservoir, including, but not limited to, loss or damage due to: timing of release or impoundment of water in the reservoir, change in water levels because of drought, flood or other causes, or loss of head resulting from reservoir operations or from reallocation of storage for Allegheny River Reservoir Project functions; *Provided, however*, that any such reallocation of storage for Project functions shall take cognizance of the reasonable requirements of the Licensees.

Article 48. The Licensees shall be liable for any loss of Allegheny River Reservoir Project benefits that may occur as a result of construction, maintenance, or operation of the Licensees' project, including but not limited to, losses arising from increased evaporation and leakage. In the event that the Licensees and the District Engineer, U. S. Army Engineer District, Pittsburgh, Pennsylvania, are unable to agree on the amount of compensation Licensee should pay to the Government for such loss, the Commission will determine the compensation to be made, after notice and opportunity for hearing.

Article 49. Whenever the United States shall desire to construct, complete, or improve facilities in connection with the Allegheny River Reservoir Project,

the Licensees shall allow such right of passage through their project area and facilities, and shall permit such control of their facilities, consistent with the primary purpose of Licensees' project, as may be found necessary by the Commission after notice and opportunity for hearing.

Article 50. Upon request by the Chief of Engineers, and after notice and opportunity for hearing, the Commission may order the Licensees to construct at their own expense remedial works in the river below the Army dam in order to protect Government project structures by deflecting the current caused by discharge from Licensees' powerplant. The design, location, and time of construction of such remedial works shall be recommended to the Commission by the Chief of Engineers.

Article 51. Upon its own motion, or upon request by the Chief of Engineers, the Commission may, after notice and opportunity for hearing, require that the Licensees construct at their own expense any and all warning signs, devices, and barrier structures in the vicinity of the reservoir intake structures which may be found necessary to prevent conditions hazardous to persons utilizing the surrounding waters of the reservoir.

Article 52. Insofar as any material is dredged or excavated in the prosecution of any work authorized under this license, or in the maintenance of the project, such material shall be removed and deposited so it will not interfere with operation of the Allegheny Reservoir Project, and will be to the satisfaction of the District Engineer, U. S. Army Engineer District, Pittsburgh, Pennsylvania.

Article 53. The Licensees shall be responsible for preventing soil erosion and stream siltation that may be caused by construction, operation, or maintenance of the project; shall revegetate and keep vegetated with grass or herbaceous plants all ground where the soil has become exposed by project activities, and shall maintain all terracing, water bars, lead-off ditches, or other preventive works that may be required to accomplish this result as may be prescribed by, and to the reasonable satisfaction of, the agency of the United States having jurisdiction over the lands affected.

Article 54. The Licensees shall do everything reasonably within their power and shall require their employees, contractors and employees of contractors to do everything reasonably within their power, both independently and upon the request of officers of the agency concerned, to prevent, make advance preparations for suppression, and suppress fires on the lands to be occupied or used under the license. The Licensees shall be liable for and shall pay the costs incurred by the United States in suppressing fires caused by the construction, operation, or maintenance of the project works or of work appurtenant or accessory thereto under the license.

Article 55. Timber on lands of the United States cut, used, or destroyed in the construction and maintenance of the project works, or in the clearing of said lands, shall be paid for and the resulting slash and debris disposed of in accordance with the requirement of the agency having jurisdiction over said lands. Payment for merchantable timber will be at current stumpage rates, and payment for young growth timber below merchantable size will be at current damage appraisal value. However, the agency having jurisdiction may sell or dispose of the merchantable timber to others than the Licensees, with the provision that timber so sold or disposed of will be cut and removed from the area prior to or without undue interference with clearing operations of the Licensees and in coordination with project construction schedules. Such sale or disposal to others will not relieve the Licensees of the responsi-

bility for the clearing and disposing of all slash and debris from project lands.

Article 56. The Licensees shall consult with the Carnegie Museum of Pittsburgh regarding possible archeological values in the project area, and shall furnish funds in a reasonable amount to be approved by the Commission to survey or salvage archeological relics, if any.

Article 57. The Licensees shall, within two years after the project is ready for operation, file for Commission approval a revised Exhibit R in conformance with the requirements of Section 4.41 of the Commission's Regulations under the Federal Power Act. The revised Exhibit R shall be prepared in cooperation with the U. S. Army Corps of Engineers, the U. S. Forest Service, and other interested Federal, State, and local agencies, and shall contain, among other things, proposals to take advantage of any recreational fishing opportunities that develop in the area downstream from the Army dam.

Article 58. The Licensees shall pay to the United States the following annual charge beginning on the day the license becomes effective:

(i) For the purpose of reimbursing the United States for the costs of administration of Part I of the Act, a reasonable annual charge as determined by the Commission, in accordance with its regulations, in effect from time to time. The authorized installed capacity for such purposes is 473,000 horsepower.

(ii) For the purpose of recompensing the United States for the use, occupancy and enjoyment of its land within the Allegheny National Forest for project purposes (including transmission lines) an amount to be hereafter determined by the Commission.

(iii) For the purpose of recompensing the United States for the use of a Government Dam and reservoir, and for the utilization of surplus water or water power and lands in connection therewith, an amount to be hereafter determined by the Commission. Such an amount will be based on the sharing of power benefits.

Article 59. The Licensees shall commence construction within two years from the date of issuance of this license, shall thereafter in good faith and with due diligence prosecute such construction, and shall complete the project and place it in operation within five years from the date of issuance of this license.

(D) The exhibits designated in paragraph (B) above are approved and made a part of the license to the extent indicated in finding (7) above.

(E) The Exhibit R (FPC No. 2280–31) filed with the Commission May 28, 1965 is approved subject to the provisions of Article 57, and is made a part of the license to the extent indicated in finding (8) above.

(F) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgment of the acceptance of this license, it shall be signed for the Licensees and returned to the Commission within 60 days from the date of issuance of this order.

(G) The motion filed by the Allegheny Electric Cooperative, Inc., on December 13, 1965, for leave to withdraw from these proceedings, is hereby granted.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

CITY OF TACOMA, WASHINGTON, PROJECT NO. 2016

ORDER APPROVING REVISED PROJECT EXHIBIT L DRAWINGS

(Issued December 28, 1965)

On April 8, 1965, City of Tacoma, Washington, licensee for Project No. 2016, filed for Commission approval revised Exhibit L drawings relating to the proposed Mossyrock Development which, along with the constructed Mayfield development comprise the Cowlitz River Development designated as Project No. 2016. The filings were submitted pursuant to the requirements of Articles 47, 48 and 49 of the amended license.

The Board of Consultants, employed by licensee pursuant to Article 46 of the license as amended by order issued November 17, 1964, 32 FPC 1327, has reviewed and reported on the designs and specifications of the Mossyrock dam, the suitability and treatment of rock foundations and abutments, the treatment of the reservoir to minimize leakage, the design of a suitable spillway and associated means for preventing foundation and abutment erosion, and the design of the powerhouse structure and associated project works. The aforementioned Board reviewed and approved the designs and specifications shown on the revised Exhibit L drawings, which have also been reviewed and considered as adequate by Commission staff, provided certain recommended minor changes are made as a result of further foundation exploration. These changes involve a small amount of additional excavation in the left abutment which has been substantially completed and provision for drainage thereof which the licensee has agreed to undertake. The licensee is presently in a position where designs have been formulated to the point where required prior Commission approval of the revised Exhibit L drawings is sought to permit the licensee to proceed with construction of the Mossyrock development. By letter dated January 15, 1965, the licensee was advised that it would be satisfactory if final stress analyses and structural model reports be submitted to the Commission after the dam foundation is exposed prior to placement of concrete, and that minor changes in design could continue until construction commences.

In accordance with present standard engineering practice, the dam will contain sensitive instruments to check on its performance during construction and following the filling of the reservoir to measure: (1) foundation stresses and movements; (2) dam deflections under load; (3) stresses and temperatures in the concrete; and (4) the opening of construction joints to assist in the program of grouting of the dam. Such dam instrumentation is required by special Article 55 herein.

The model studies and analysis of the spillway required to be made by Article 47 of the license resulted in modification of the spillway design in order to minimize erosion below the spillway. In order to afford a check on possible future erosion below the dam following major floods, we are by special Article 56 herein, requiring the licensee to explore the stilling basin below the spillway after each discharge which exceeds 50,000 cfs, which is about the magnitude of the flood that occurred in December, 1964.

The Commission finds:

(1) The following described revised Exhibit L drawings conform to the Commission's rules and regulations and should be approved as part of the license for the project:

Exhibit L	*FPC No.*	*Title Cowlitz Power Development Mossyrock*
Sheet 1	2016–92	General Plan.
Sheet 2	2016–93	General Sections.
Sheet 5	2016–96	Powerhouse Plan El. 395.00.
Sheet 6	2016–97	Powerhouse Plan El. 433.00.
Sheet 7	2016–98	Powerhouse Plan El. 455.00.
Sheet 8	2106–99	Powerhouse Plan El. 475.00.
Sheet 9	2016–100	Powerhouse Transverse Section.
Sheet 10	2016–101	Powerhouse Longitudinal Section.

(2) License Exhibit L drawings, Sheets 1, 2, 5, 6, 7, 8, 9 and 10 (FPC Nos. 2016–80, 81, and 84 through 89, respectively), which have been superseded, should be eliminated from the license for the project.

The Commission orders:

(A) The revised Exhibit L drawings designated and described in finding (1) above are hereby approved as part of the license for Project No. 2016, and the superseded exhibits described in finding (2) above are hereby eliminated from the license for the project.

(B) The following special articles are hereby included in the license for the project:

Article 55. The Licensee shall install instruments in the dam and foundation for the purpose of measuring foundation stresses and movements, deflections of the dam, and stresses and temperatures in the concrete, and shall submit to the Commission annually, for a period of five years after completion of construction of the Mossyrock dam, reports evaluating the results of the instrumentation.

Article 56. After each spillway discharge exceeding 50,000 cfs, the Licensee shall explore the stilling basin below the Mossyrock dam and submit a report to the Commission evaluating the performance of the stilling basin.

(C) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this order. In acknowledgment of the acceptance of this order, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

ARKANSAS LOUISIANA GAS COMPANY, DOCKET NO. CP66–72

DECLARATION OF EXEMPTION

(Issued December 29, 1965)

Arkansas Louisiana Gas Company (Applicant) filed an application on September 13, 1965, for exemption from the provisions of the Natural Gas Act, pursuant to Section 1(c) thereof, of natural gas facilities constituting its Helena System in the State of Arkansas.

Applicant, a Delaware corporation with its principal place of business in Shreveport, Louisiana, is engaged in the transportation and sale of natural

gas in the State of Arkansas, and as such operates several separate and unrelated transmission pipeline systems for the transportation and sale of natural gas in interstate commerce subject to the jurisdiction of the Commission.

The Helena System which Applicant requests exemption for consists of natural gas facilities acquired from MidSouth Gas Company on October 31, 1961, and which has since been operated in accordance with the authority of a Certificate of Public Convenience and Necessity issued by the Commission to Applicant by its order entered October 19, 1961, in Docket No. CP61–334, 26 FPC 591. The system is comprised of about 40 miles of 12-inch gas pipeline extending from the delivery point by Texas Gas Transmission Corporation (Texas Gas) near the City of Helena, Arkansas, in a northwesterly direction to the delivery station for Arkansas Power & Light Company's Hamilton Moses generating station near the Town of Forrest City, St. Francis County, Arkansas, together with approximately 48 miles of 3-inch, 4-inch, and 6-inch gas pipelines extending east and northeast to the put-in stations for Applicant's gas distribution plants in Forrest City, Caldwell, Colt and Wynne, and extending west from the Hamilton Moses plant to Applicant's Palestine, Wheatley, Brinkley and Cotton Plant gas distribution plants, all in the State of Arkansas.

Applicant states that all of the gas transported by its Helena System is received in the State of Arkansas at Texas Gas' Helena put-in station and is consumed in the State of Arkansas. A portion of the gas so consumed is purchased by Arkansas Power & Light Company from Texas Gas and is transported by Applicant under its Rate Schedule XT–22, Applicant's FPC Gas Tariff, First Revised Volume No. 2, sheets 22–40. The balance from Texas Gas, received by Applicant at the Helena put-in station, and sold through its retail gas distribution systems in the Arkansas communities of Helena, West Helena, Marianna, Felton, Haynes, Forrest City, Caldwell, Colt, Wynne, Palestine, Wheatley, Brinkley and Cotton Plant and to rural consumers adjacent thereto. Applicant now proposes to supply 15 percent of the system requirements from its own intrastate system in addition to the gas supplied by Texas Gas.

The Arkansas Public Service Commission has certified to the Federal Power Commission that it has regulatory jurisdiction over the rates, service and facilities of the Applicant and is exercising such jurisdiction.

Wherefore, the Commission declares, by reason of the foregoing:

The Helena System of Applicant, Arkansas Louisiana Gas Company, is exempt from the provisions of the Natural Gas Act, and the orders, rules, and regulations of the Commission issued thereunder.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

ARKANSAS LOUISIANA GAS COMPANY, DOCKET NO. CP66–73

FINDINGS AND ORDER AFTER STATUTORY HEARING PERMITTING AND APPROVING ABANDONMENT AND ACCEPTING FOR FILING NOTICE OF CANCELLATION OF TARIFF SHEETS

(Issued December 29, 1965)

On September 13, 1965, Arkansas Louisiana Gas Company (Applicant) filed in Docket No. CP66–73 an application and an amendment thereto on October

25, 1965, pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon the transportation service being rendered Arkansas Power & Light Company under Applicant's FPC Gas Rate Schedule XT–22 of its FPC Gas Tariff, First Revised Volume No. 2, Sheets 22–40, as more fully set forth in the application.

Applicant by the instant application seeks to abandon a service being rendered under the terms of a service agreement dated November 17, 1952, originally executed by and between MidSouth Gas Company and Arkansas Power & Light Company, and assumed by Applicant upon acquisition of the facilities of MidSouth Gas Company under certificate authorization issued by the Commission in Docket No. CP61–334 on October 19, 1961, 26 FPC 591.

The proposed abandonment of service stems from Applicant's request in Docket No. CP66–72 (filed September 13, 1965) for an order declaring the facilities acquired from MidSouth to be exempt from the jurisdiction of the Commission pursuant to Section 1(c) of the Natural Gas Act. The said facilities sought to be exempted constitute Applicant's Helena System, are operated separately from Applicant's main transmission pipeline system, and are utilized in part in the transportation of natural gas received from Texas Gas Transmission Corporation near Helena, Arkansas, for Arkansas Power & Light Company.

In addition to the transportation service being rendered Arkansas Power & Light Company proposed to be abandoned, Applicant provides natural gas to a number of towns from the Helena System, for all of which Applicant purchases natural gas from Texas Gas under Texas Gas' Rate Schedule G–1. Applicant and Texas Gas entered into a new service agreement, dated July 1, 1965, which superseded an agreement dated November 1, 1964. Under the new agreement Applicant is permitted to furnish up to 15% of the annual gas requirements of the distribution systems on the Helena System from its own pipelines. The superseding service agreement was filed by Texas Gas as parts of its FPC Gas Tariff, Revised Volume No. 1, Revised Sheet No. 110. Notice of Cancellation of Applicant's FPC Rate Schedule XT–22 to its FPC Gas Tariff, First Revised Volume No. 2, sheets 22–40 (Arkansas Power & Light transportation service) was filed on September 13, 1965, to be effective upon the effective date of an order thereon.

Applicant proposes a future interconnection of its Helena System with an intrastate portion of its existing pipeline system at a point of crossing near Goodwin in St. Francis County, Arkansas.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on December 22, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence including the application, amendment, and exhibits, submitted in support of the authorization sought, and upon consideration of the record,

The Commission finds:

(1) Applicant, Arkansas Louisiana Gas Company, a Delaware corporation having its principal place of business in Shreveport, Louisiana, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of January 26, 1943, in Docket No. G–252 (3 FPC 910).

(2) The transportation service rendered Arkansas Power & Light Company proposed to be abandoned, as hereinbefore described, and as more fully described in the application herein, utilizes the natural gas facilities of Ap-

plicant in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and such abandonment is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(3) The proposed abandonment of the aforesaid transportation service is permitted by the public convenience and necessity and approval therefor should be granted as hereinafter ordered.

(4) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Notice of Cancellation of Applicant's FPC Gas Rate Schedule XT–22, FPC Gas Tariff, First Revised Volume No. 2, Sheet Nos. 22–40, filed on September 13, 1965, be accepted for filing effective as of the date of this order.

The Commission orders:

(A) Permission for and approval of the abandonment of the transportation service hereinbefore described, as more fully described in the application in this proceeding is granted to Applicant.

(B) Arkansas Louisiana Gas Company's Notice of Cancellation of its FPC Rate Schedule XT–22, FPC Gas Tariff, First Revised Volume No. 2, Sheet Nos. 22–40, filed on September 13, 1965, be accepted for filing effective as of the date of this order.

(C) Applicant shall advise the Commission of the date of abandonment of service as authorized in paragraph (A) above within ten days of such abandonment.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

ARKANSAS LOUISIANA GAS COMPANY, DOCKET NO. CP66–138

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued December 29, 1965)

On October 29, 1965, Arkansas Louisiana Gas Company (Applicant) filed in Docket No. CP66–138 an application pursuant to Section 7(c) of the Natural Gas Act, as implemented by Section 157.7(c) of the Regulations under the Act, for a certificate of public convenience and necessity authorizing the construction during the calendar year 1966 and the operation of natural gas facilities for the sale of natural gas to direct customers and distribution customer consumers and for miscellaneous rearrangements not resulting in any change of service rendered by means of the facilities involved, all as more fully set forth in the application in this proceeding.

Applicant proposes to construct approximately 200 pipeline taps on its existing system to deliver natural gas to individual domestic and commercial customers or for new town border connections or rural extensions to consumers and approximately 220 pipeline taps, and under proper conditions service lines or market laterals, for direct sales to types of consumers as set forth in the subject application, in areas outside of local distributors' franchise areas. Applicant also proposes to construct facilities necessary for a maximum of 25 miscellaneous rearrangements.

The total cost of facilities proposed under this application will not exceed a maximum of $300,000 and the total deliveries to any one customer will not exceed a maximum of 100,000 Mcf of natural gas per year.

The application indicates that the construction projects for which authorization is requested will not increase the capacity of Applicant's transmission systems and will not provide for any additional or increased gas sales volumes under jurisdictional rate schedules. Further, none of the gas delivered pursuant to this order will be used by any customer for boiler fuel purposes, as defined by subparagraph (9) of Section 157.7(c) of the Commission's Regulations.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on December 2, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Arkansas Louisiana Gas Company, a Delaware corporation having its principal place of business in Shreveport, Louisiana, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of January 26, 1943, in Docket No. G-252 (3 FPC 910).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation and/or sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(6) The authorization hereinafter granted should be limited to construction during the calendar year 1966 and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $300,000, with the total deliveries to any one customer not to exceed a maximum of 100,000 Mcf of natural gas per year.

(7) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit within 60 days after the expiration of the authorization granted hereinafter, a statement in compliance with Section 157.7(c)(8) of the Commission's Regulations under the Natural Gas Act.

(8) The certificate issued hereinafter should be conditioned upon Applicant's compliance with the provisions of Section 157.7(c)(7) of the aforesaid Regulations.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity is issued authorizing Applicant, Arkansas Louisiana Gas Company, to construct during the calendar year 1966 the proposed

facilities hereinbefore described, as more fully described in the application in this proceeding, and to operate such facilities for the sale of natural gas and for miscellaneous rearrangements as hereinafter provided.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(C) The authorization granted in paragraph (A) above is limited to construction during the calendar year 1966 and the total expenditures for facilities to be constructed thereunder are limited to a maximum of $300,000, with the total deliveries to any one customer limited to a maximum of 100,000 Mcf of natural gas per year.

(D) Applicant shall submit within 60 days after the expiration of the authorization granted by paragraph (A) above a statement in compliance with Section 157.7(c)(8) of the Commission's Regulations under the Natural Gas Act.

(E) The certificate issued by paragraph (A) above is expressly conditioned upon Applicant's compliance with the provisions of Section 157.7(c)(7) of the aforesaid Regulations and, further, the certificate is granted upon the express condition that any interruptible service resulting herefrom shall be curtailed or interrupted to the extent required to meet existing or future contracted maximum delivery obligations of Applicant for firm service to its customers.

(F) This certificate shall not entitle any industrial customers to whom firm deliveries are authorized herein to any priorities or rights to additional gas for meeting future increases in their requirements at the expense of resale customers desiring to acquire additional gas to meet any future increases in their requirements.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr., Charles R. Ross and Carl E. Bagge.

CALAVERAS COUNTY WATER DISTRICT, PROJECT NO. 2409; TUOLUMNE COUNTY WATER DISTRICT NO. 2, PROJECT NO. 2410

ORDER PERMITTING WITHDRAWAL OF APPLICATION FOR LICENSE AND WITHDRAWAL OF PROTEST

(Issued December 29, 1965)

By an agreement dated November 15, 1965, Calaveras County Water District and Tuolumne County Water District No. 2, applicants for license for mutually exclusive Project Nos. 2409 and 2410, have resolved their differences, including, it appears some conflicting claims to water rights under State law. By letter dated November 24, 1965, which forwarded a copy of the aforesaid agreement to the Commission and to all of the parties in these consolidated proceedings, Tuolumne requests permission to withdraw its application for license for proposed Project No. 2410 and its protest against proposed Project No. 2409.

The Commission orders:

Permission for withdrawal of the application for license for Project No. 2410 and withdrawal of the protest of Tuolumne County Water District No. 2 against proposed Project No. 2409 is hereby granted.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

DEL NORTE NATURAL GAS COMPANY, DOCKET NO. CP66-104; SOUTHERN UNION GAS COMPANY, DOCKET NO. G-513

ORDER AUTHORIZING EXPORTATION OF NATURAL GAS, TERMINATING AUTHORIZATION TO EXPORT NATURAL GAS AND DENYING PETITION FOR LEAVE TO INTERVENE

(Issued December 29, 1965)*

On October 12, 1965, Del Norte Natural Gas Company (Applicant) filed in Docket No. CP66-104 an application, as supplemented on November 18, 1965, pursuant to Section 3 of the Natural Gas Act for authorization to export natural gas from the United States to Mexico, all as more fully set forth in the application as supplemented.

Applicant proposes to export natural gas as successor in interest to Southern Union Gas Company (Southern Union) which was authorized to export natural gas by order issued January 2, 1945, in Docket No. G-513 (4 FPC 826). Concurrently with the subject application Applicant filed in Docket No. CP66-106 an application pursuant to Executive Order No. 10485 for a permit authorizing the operation and maintenance of facilities at the international boundary for the exportation of gas. On October 18, 1965, Southern Union filed in Docket No. G-513 an application for revocation of its Presidential Permit and authorization to export natural gas.

Applicant will sell natural gas to Juarez Gas Company, S.A. (Juarez Gas), the sole distributor presently serving Cuidad Juarez, Chihuahua, Mexico, and will initiate the sale and delivery of natural gas to Gas Natural de Juarez, S.A. (Gas Natural), a new distributor which will render natural gas service in Juarez. Estimated peak day and annual natural gas requirements of Juarez Gas and Gas Natural in Mcf for the first three years of operation by Applicant are estimated[1] as follows:

	First year	Second year	Third year
JUAREZ GAS			
Annual	367,500	378,000	388,500
Peak day	4,084	4,819	4,935
GAS NATURAL			
Annual	2,543,153	2,765,028	3,036,138
Peak day	15,230	18,037	21,084

The rates proposed to be charged Gas Natural are 1.6243 cents per cubic meter for all gas resold by said company for domestic and commercial use and 1.2535 cents per cubic meter for all gas resold by said company for industrial use. The rates proposed to be charged Juarez Gas are 34.85 cents per Mcf plus 50 percent of the excess above 40.85 cents per Mcf charged by Juarez Gas to ultimate consumers, including any minimum charge and any demand or readiness-to-serve charge, for gas sold for industrial use and 45.35

*Order issued February 1, 1966 denying rehearing and stay, 35 FPC 174.

[1]These estimates are contained in Exhibit I to the application filed in Docket No. CP66-105 by El Paso Natural Gas Company and El Paso Gas Transportation Corporation. These companies propose to sell and deliver gas to Applicant for resale and exportation.

cents per Mcf for gas sold for all other purposes. There is a minimum charge of $25.00 per month per industrial customer.

Applicant will export gas through facilities leased from Southern Union. Southern Union has assigned to Applicant Southern Union's rights under its contract with Juarez Gas.

Concurrently herewith a permit authorizing Applicant to maintain and operate facilities at the international boundary will be released in Docket No. CP66–106, and El Paso Natural Gas Company and El Paso Gas Transportation Corporation will be authorized in Docket No. CP66–105 to sell and deliver natural gas to Applicant for resale and exportation. Southern Union's Presidential Permit and authorization to export natural gas will be revoked.

After due notice no notice of intervention has been received. On November 5, 1965, Juaraz Gas filed in Docket Nos. G–513, CP66–104, CP66–105 and CP66–106 a petition for leave to intervene in opposition to the granting of the application in each docket. Juarez Gas contends that it is not consistent with the public interest to authorize the exportation of natural gas under Section 3 of the Act for the purpose of enabling a new and second distribution company to invade the franchise territory of an existing supplier. The Commission cannot assume the obligation of determining local franchise rights in Mexico. It is not the purpose of regulation under the Natural Gas Act to deal with franchise rights relating to the distribution of natural gas in foreign countries. In fact, we have held that it is not within the Commission's province to determine which of two distributors in the United States has the legal right to distribute natural gas in a community within a state where the issue has been raised. We have left the resolution of such controversies to the appropriate authorities of the state where the parties operate. *See American Louisiana Pipe Line Company, et al.*, Docket No. G–2306, *et al.* (28 FPC 41).

Juarez Gas alleges that Gas Natural is a "purely paper company", that the applications make no showing that Gas Natural will be able to dispose of the gas exported by Applicant, that it is probable that Gas Natural will not be able to secure all of the federal, state and municipal authorizations to distribute gas, and that the import authorization will be denied. Exhibits to the application filed in Docket No. CP66–105 indicate that Gas Natural has already begun construction of its distribution system under appropriate Mexican authorizations. The supplement filed November 18, 1965, to Applicant's applications indicates that some of the construction has been completed and that various authorizations have been received to undertake more construction. These are matters within the jurisdiction of the appropriate Mexican authorities and this Commission will not review them. The authorization issued to Applicant is conditioned upon the receipt of appropriate import authorization and is without prejudice to any action taken by any authority in Mexico.

The Federal Power Commission is not the proper forum in which Juarez Gas can receive relief from the alleged detriments to it occasioned by the distribution of natural gas by Gas Natural. This is, in essence, what Juarez Gas is seeking by its request to participate in these proceedings. Any determinations made by Mexican authorities having jurisdiction over such matters will be accepted by this Commission. Juarez Gas has failed to demonstrate that it has any interest in the subject applications which this Commission can consider, and it has failed to show any other reasons why it should be permitted to participate. Accordingly, the petition will be denied in each docket in which it is filed.

312–270—69——103

No petitions to intervene other than that filed by Juarez Gas have been received in Docket No. CP66–104.

The Commission finds:

The exportation of natural gas by Applicant, Del Norte Natural Gas Company, as hereinabove described and as more fully set forth in the application, as supplemented, in Docket No. CP66–104, will not be inconsistent with the public interest within the meaning of Section 3 of the Natural Gas Act provided that said exportation be on the terms and conditions hereinafter set forth:

(a) Applicant shall file statements or reports with the Commission from time to time under oath and in such details as the Commission may require with respect to the whole or any part of the instant export operation.

(b) The authorization granted herein is not transferable or assignable and shall remain in full force and effect only so long as Applicant continues the acts or operations herein authorized in accordance with the terms and conditions herein set forth.

(c) The authorization granted herein shall automatically terminate upon the termination or expiration of the contracts between Applicant and the gas purchasers attached as exhibits to or incorporated by reference in the subject application.

(d) Applicant shall not, during the term of the authorization granted by this order, materially change or alter its export operations without first obtaining the permission and approval of the Commission.

(e) In the event that Applicant should abandon or permanently cease for any reason whatsoever all or any part of the instant export operation prior to the termination dates of the contracts described in (c) above, Applicant shall forthwith notify the Commission of said fact and the reason therefor.

(f) The authorization granted herein is conditioned upon Applicant's obtaining any necessary authorizations to import gas into the Republic of Mexico.

(g) The annual and peak day volumes of natural gas exported and sold by Applicant shall not exceed 3,424,638 Mcf and 26,019 Mcf, respectively.

The Commission orders:

(A) Authorization is granted to Applicant to export natural gas from the United States to the Republic of Mexico, as hereinabove described and as more fully set forth in the application, as supplemented, in Docket No. CP66–104, upon the conditions herein set forth and subject to the provisions of the Natural Gas Act and the Commission's Regulations issued thereunder.

(B) The authorization granted herein is conditioned upon Applicant's obtaining and is without prejudice to any authorizations issued by the Republic of Mexico for the importation of natural gas.

(C) The annual and peak day volumes of natural gas exported and sold by Applicant shall not exceed 3,424,638 Mcf and 26,019 Mcf, respectively.

(D) The export authorization heretofore issued in Docket No. G–513 is terminated as of the date Applicant commences the service authorized herein.

(E) Inasmuch as Juarez Gas has not shown that its participation in the proceedings in Docket Nos. G–513, CP66–104, CP66–105 and CP66–106 is in the public interest or that the matters set forth in the petition affect interstate commerce or can properly be considered by the Commission in determining the merits of the subject applications, the petition is denied.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

EL PASO NATURAL GAS COMPANY, DOCKET NO. CP66-49

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued December 29, 1965)

On August 13, 1965, El Paso Natural Gas Company (Applicant) filed in Docket No. CP66-49 an application and a supplement thereto on October 18, 1965, pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the modification of Applicant's McMinnville-Amity Meter Station in Marion County, Oregon, to increase the capacity thereof and to sell additional gas to Northwest Natural Gas Company (Northwest) for initiation of natural gas service to six communities in Oregon, all as more fully set forth in the application and supplement thereto.

Northwest, an existing resale customer of Applicant, proposes to initiate natural gas service to consumers situated in the communities of Toledo, Newport, Sheridan, Tillamook, Lincoln City and Willamina, Oregon, and their respective environs. To effectuate such service, Northwest proposes to construct and operate certain transmission facilities extending from its existing facilities interconnecting with Applicant's McMinnville and Amity Meter Station, together with distribution facilities necessary to provide service to the aforementioned communities.

To accommodate Northwest's requirements, Applicant proposes to modify the McMinnville and Amity Meter Station so as to increase the capacity thereof and to make delivery to Northwest at the outlet thereof. The proposed modification will consist of replacing the existing double 4-½-inch O.D. orifice-type meter run with a double 8-⅝-inch O.D. orifice-type meter run and necessary appurtenances, including dual regulation.

The estimated maximum daily and annual natural gas requirements of Northwest aggregate 18,283 Mcf and 4,009,124 Mcf, respectively, during the third full year of proposed service. The sale and delivery of this gas are proposed to be initiated in accordance with and at rates contained in Applicant's Rate Schedules DL-1 and I-1 FPC Gas Tariff, Original Volume No. 3.

Applicant states that if the facilities and service embraced by the instant application are approved, they will be divested by Applicant to Northwest Pipeline Corporation under the authorizations sought by Applicant in Docket No. CP66-27, if such authorizations issue subsequent to the grant of the instant application. Otherwise, Northwest Pipeline Corporation will be substituted for Applicant under the instant application.

The estimated cost of Applicant's proposed modification is $27,500, which will be financed from currently available working funds. Northwest's estimated cost of construction is $5,447,400, which will be financed from the sale of mortgage and debenture bonds, common and preferred stock, and cash generated from operations.

After due notice no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on December 22, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence including the application, supplement and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, El Paso Natural Gas Company, a Delaware corporation having its principal place of business in El Paso, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of October 29, 1942, in Docket Nos. G–242 and G–257 (3 FPC 851).

(2) The proposed construction and operation of facilities and sale of natural gas, as hereinbefore described, and as more fully described in the application and exhibits in this proceeding are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) The aforesaid proposed construction and operation of facilities and sale of natural gas are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon El Paso's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to the Applicant, El Paso Natural Gas Company, in this proceeding authorizing the construction and operation of facilities and sale of natural gas, all as more fully described in the application and exhibits herein, subject to the jurisdiction of the Commission, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities authorized to be constructed and operated by Applicant shall be completed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the aforesaid Regulations within six months of the date on which this order issues.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

EL PASO NATURAL GAS COMPANY AND EL PASO GAS TRANSPORTATION CORPORATION, DOCKET NO. CP66–105

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND PERMITTING AND APPROVING ABANDONMENT OF SERVICE

(Issued December 29, 1965)

On October 12, 1965, El Paso Natural Gas Company (Gas Company) and El Paso Gas Transportation Corporation (Transportation Corporation) filed in Docket No. CP66–105 a joint application pursuant to Sections 7(b) and

7(c) of the Natural Gas Act for, on the part of Gas Company, permission and approval to abandon the sale of natural gas to Southern Union Gas Company (Southern Union) and a certificate of public convenience and necessity authorizing the sale and delivery of natural gas to Del Norte Natural Gas Company (Del Norte), and for, on the part of Transportation Corporation, permission and approval to abandon the transportation of natural gas for Southern Union and for a certificate of public convenience and necessity authorizing the construction and operation of facilities and the transportation of natural gas for Del Norte, all as more fully set forth in the application.

Gas Company proposes to sell natural gas to Del Norte which Del Norte will export and sell to Juarez Gas Company (Juarez Gas) and Gas Natural de Juarez (Gas Natural) for resale and distribution in Ciudad Juarez, Chihuahua, Mexico, a community adjacent to El Paso, Texas. Del Norte will export and sell gas at four points on the international boundary between United States and Mexico. Del Norte proposes to succeed to Southern Union in the exportation of natural gas to Juarez Gas at two of the export points. Southern Union presently exports and sells gas at these points which is sold by Gas Company and transported by Transportation Corporation. Gas Company and Transportation Corporation herein seek permission and approval to abandon this sale and transportation. Del Norte will initiate exportation and sale at the other two points to Gas Natural.

Natural gas available to Del Norte from Gas Company is deliverable at a point situated in El Paso, Texas. Transportation Corporation seeks authorization to transport such gas for the account of Del Norte from the point at which it is deliverable by Gas Company to three points of delivery to Del Norte on Transportation Corporation's existing system in El Paso. At each of the points of delivery to Del Norte, Transportation Corporation proposes to construct and operate a standard orifice-type measuring and regulating station. The estimated cost of said facilities is $32,100 to be financed from working funds.

During the third full year of service, the estimated peak day and annual volumes to be exported and sold by Del Norte are 26,019 Mcf and 3,424,638 Mcf, respectively. Sales by Gas Company to Del Norte will be made pursuant to Rate Schedules A–3 and B–2 of Gas Company's Gas Tariff, Original Volume No. 1. Transportation service to be performed by Transportation Corporation will be pursuant to Rate Schedule T–1 of Transportation Corporation's Gas Tariff, First Revised Volume No. 1.

Concurrently herewith an order authorizing Del Norte to export natural gas will be issued in Docket No. CP66–104 and a permit will be released in Docket No. CP66–106 authorizing the operation and maintenance of facilities at the international boundary by Del Norte.

After due notice a petition to intervene was filed in Docket Nos. G–513, CP66–104, CP66–105 and CP66–106 by Juarez Gas Company. Said petition is denied in all dockets in the order issued in Docket No. CP66–104, *et al.*, *supra* p. 1584, concurrently herewith. No other petitions to intervene or notices of intervention have been received.

At a hearing held on December 22, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits thereto, submitted in support of the authorizations sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, El Paso Natural Gas Company, a Delaware corporation having its principal place of business in El Paso, Texas, is a "natural-gas com-

pany" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of January 11, 1944, in Docket No. G–288 (4 FPC 486).

(2) Applicant, El Paso Gas Transportation Corporation, a Delaware corporation having its principal place of business in El Paso, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of August 31, 1948, in Docket No. G–287 (7 FPC 886).

(3) The sale and transportation of natural gas hereinbefore described, as more fully described in the application in this proceeding, will be in interstate commerce subject to the jurisdiction of the Commission, and said transportation and sale and the construction and operation of facilities therefor are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(4) Applicants are able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) The construction and operation of facilities and the transportation and sale of natural gas hereinbefore described, as more fully described in the application herein, are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(6) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder should be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(7) The service proposed to be abandoned as hereinbefore described, all as more fully described in the application in this proceeding, is subject to the jurisdiction of the Commission, and the abandonment thereof is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(8) The abandonment hereinbefore described is permitted by the public convenience and necessity and should be approved as hereinafter ordered.

The Commission orders:

(A) A certificate of public convenience and necessity is issued authorizing Applicants to construct and operate facilities and to sell and transport natural gas as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The construction authorized in paragraph (A) above shall be completed and the transportation and sale of natural gas shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act within six months from the date of this order.

(D) Permission for and approval of the abandonment of the service hereinbefore described, all as more fully described in the application in this proceeding, are granted.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

EL PASO NATURAL GAS COMPANY, DOCKET NOS. CP66–127 AND CP66–128

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

(Issued December 29, 1965)

On October 25, 1965, El Paso Natural Gas Company (Applicant) filed, with respect to its Southern Division, in Docket No. CP66–127 and with respect to its Northwest Division, in Docket No. CP66–128, applications pursuant to Section 7(c) of the Natural Gas Act, as implemented by Section 157.7(b) of the Regulations under the Act, for certificates of public convenience and necessity authorizing the construction, during the calendar year 1966, and the operation of routine field facilities to enable Applicant to take into the certificated main pipeline systems of its respective divisions natural gas which will be purchased from producers thereof, all as more fully set forth in the applications in these proceedings.

The purpose of these "budget-type" applications is to augment Applicant's ability to act with reasonable dispatch in contracting for and connecting to the pipeline systems of its respective divisions new or expanded supplies of natural gas in various producing areas generally coextensive with said systems.

Applicant states that it has filed the subject separate applications for its Northwest Division and its Southern Division in consideration of the forthcoming divestiture of Applicant's Northwest Division facilities to Northwest Pipeline Corporation, as ordered by the United States Supreme Court.[1]

The total cost of the facilities covered by the application in Docket No. CP66–127 will not exceed a maximum of $4,000,000, with no single project to exceed a cost of $500,000. The total cost of the facilities covered by the application in Docket No. CP66–128 will not exceed a maximum of $1,000,000, with no single project to exceed a cost of $500,000. The costs in both dockets will be financed from working funds.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the applications has been filed.

At a hearing held on December 22, 1965, the Commission on its own motion received and made a part of the record in these proceedings all evidence, including the applications and exhibits, submitted in support of the authorizations sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, El Paso Natural Gas Company, a Delaware corporation having its principal place of business in El Paso, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of January 11, 1944, in Docket No. G–288 (4 FPC 486).

(2) The facilities hereinbefore described, as more fully described in the applications in these proceedings, are proposed to be used in the transportation of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are sub-

[1] See Applicant's application in Docket No. CP66–27 and Northwest Pipeline Corporation's applications in Docket Nos. CP66–28, CP66–29 and CP66–30.

ject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit in each of the subject dockets within 60 days after the expiration of the authorizations granted hereinafter, a statement in compliance with Section 157.7(b)(3) of the Commission's Regulations under the Natural Gas Act.

(6) Public convenience and necessity require that the certificates hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(7) The authorizations hereinafter granted should be limited to construction during the calendar year 1966 and total expenditures for facilities to be constructed in Docket No. CP66–127 should be limited to $4,000,000, with no single project to exceed a cost of $500,000, and in Docket No. CP66–128 should be limited to $1,000,000, with no single project to exceed a cost of $500,000.

The Commission orders:

(A) Upon the terms and conditions of this order, certificates of public convenience and necessity are issued authorizing Applicant, El Paso Natural Gas Company, in Docket Nos. CP66–127 and CP66–128 to construct during the calendar year 1966 the proposed facilities hereinbefore described, as more fully described in the respective applications in these proceedings, and to operate such facilities only to take natural gas supplies from producers who have received authorization from the Commission to sell natural gas to said Applicant.

(B) Applicant shall submit in each of the subject dockets within 60 days after the expiration of the authorizations granted by paragraph (A) above a statement in compliance with Section 157.7(b)(3) of the Commission's Regulations under the Natural Gas Act.

(C) The certificates issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(D) The authorizations granted in paragraph (A) above are limited to construction during the calendar year 1966 and total expenditures for facilities to be constructed in Docket No. CP66–127 are limited to $4,000,000, with no single project to exceed a cost of $500,000, and in Docket No. CP66–128 are limited to $1,000,000, with no single project to exceed a cost of $500,000.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

IDAHO POWER COMPANY, DOCKET NO. E-7229

SUPPLEMENTAL ORDER PROVIDING FOR INVESTIGATION HEARING AND SUBMISSION OF SPECIAL REPORT

(Issued December 29, 1965)

This order directs a hearing on the lawfulness of Idaho Power Company's (Idaho Power), Rate Schedule FPC No. 30 as supplemented.

By order of June 11, 1965, we directed a hearing on the lawfulness of Idaho Power's Rate Schedule FPC No. 31 as supplemented and suspended the effectiveness of Supplement No. 1 thereto.[1] Under the two rate schedules, Company provides wholesale electric service to the Elko Division of Nevada Power Company (Nevada Power) (FPC No. 30) and the Wells Rural Electric Company (Wells) (FPC No. 31).

Idaho Power's service to the two customers is effected by means of Idaho's 138/69 kv substation located at Wells, Nevada. Service to the substation is provided over Idaho's 130 mile 138 kv line emanating from its King substation Hagerman, Idaho.[2]

Staff studies based on available office data indicate that Idaho Power's rates to Wells and Nevada Power (FPC Nos. 30 and 31, as supplemented) may result in excess rates or charges, may be unduly discriminatory, unduly preferential, or otherwise unjust, unreasonable, and unlawful within the meaning of the Federal Power Act.[3]

It therefore appears to be in the interest of all consumers served by Idaho Power or through that company, that Idaho be directed to submit a special report setting out cost and revenue data using 1965 as the test year showing Company's cost of service to Wells and Nevada Power.

The Commission further finds:

It is necessary and appropriate for the purposes of the Federal Power Act, particularly Sections 205, 206, 207, 208, 301, 304, 307, 308, and 309 thereof, that (1) this proceeding determine the lawfulness of Idaho Power's

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[1] Idaho Power's Rate Schedule FPC No. 31 on file with this Commission since July 15, 1960, was proposed to be changed by Supplement No. 1 thereto, effective June 14, 1965.

[2] Idaho also serves a small retail load at Border, Idaho, from this line.

[3] The Commission's order of June 11, 1965, was directed primarily to the effect of changes in contract demand of Idaho Power's service to Wells. The order states in part:

The proposed rate schedule would amend an earlier agreement of March 17, 1960 (Idaho Power Company's Rate Schedule No. 31) by increasing the Wells' contract demand at the Company's Wells Nevada Substation from 6,250 to 8,400 kw. * * * Pursuant to Section 5.5 of Company's Rate Schedule No. 31, Wells paid Company $550,000 'connection charge' as its share of the cost of constructing the transmission line and substation. * * *

Supplement No. 1 to Company's Rate Schedule FPC No. 31 may have the effect of unduly restricting this Commission in carrying out its regulatory duties under the provisions of the Federal Power Act. Unless suspended by order of the Commission that supplement will become effective pursuant to the provisions of the Federal Power Act on June 14, 1965. If Company's Supplement No. 1 to Rate Schedule FPC No. 31 were not suspended Wells might lose any remaining recourse under the Federal Power Act for requesting a refund of $140,000 from Company in lieu of an increased capacity entitlement * * *

Rate Schedule FPC No. 30 as supplemented, as well as Rate Schedule FPC No. 31, as supplemented, and (2) Idaho Power be directed to submit a special report, all as hereinafter provided.

The Commission orders:

(A) A public hearing shall be held concerning the lawfulness of Idaho Power's rate schedules as referred to in the above findings, at the time and place and in the manner all to be fixed by notice of the Secretary.

(B) Idaho Power shall file, on or before March 15, 1966, a special report using 1965 as the test year, showing Company's cost of rendering service to Wells and Nevada Power calculated in accordance with applicable Commission precedents and submitted in the form prescribed in Statements A through O, Section 35.13(b)(4)(iv) [18 CFR § 35.13(b)(4)(iv)] of the Commission's Regulations under the Federal Power Act.

(C) The foregoing showing shall not preclude or limit any additional showing by Idaho Power or others and shall be without prejudice to future action taken by the Commission or its staff, or to any future position Company or others may wish to take as to the significance of, or conclusions to be drawn from, the above factual showing.

(D) The foregoing showing shall be submitted in writing with sufficient copies to provide this Commission with an original and nine copies, to provide each State Commission affected with six copies and to provide two copies for each other party which has been or may hereafter be granted intervention in this proceeding.

(E) During the course of this proceeding Idaho Power shall submit or make available to this Commission staff any cost, revenue, operating or other pertinent data as may be requested by the staff.

(F) In view of the enlarged scope of this proceeding effectuated by this order, notices of intervention or petitions to intervene in this proceeding may be filed with the Commission on or before January 28, 1966, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.37).

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

NATURAL GAS PIPELINE COMPANY OF AMERICA, DOCKET NO. CP66-129

FINDINGS AND ORDER AFTER STATUTORY HEARING PERMITTING AND APPROVING ABANDONMENT OF FACILITIES

(Issued December 29, 1965)

On October 26, 1965, Natural Gas Pipeline Company of America (Applicant) filed in Docket No. CP66-129 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon pipeline and meter facilities in Duval County, Texas, all as more fully set forth in the application.

Applicant proposes to sell to Socony Mobil Oil Company, Inc. (Socony) approximately 13.2 miles of 10-inch pipeline, 1.5 miles of 8-inch pipeline and two meter stations used in the transportation of natural gas from the Lundell Field to Applicant's 20-inch Hagist Ranch lateral on its Gulf Coast line. The subject facilities are used by Applicant to transport gas purchased from Socony, Texaco Inc., Sinclair Oil & Gas Company, Humble Oil & Refining Company and Lundell Heirs. Said producers have exercised their contractual

right to process the gas before delivery to Applicant. The gas will be processed at the existing Hagist Ranch Gasoline Plant operated by Socony where Applicant is presently receiving gas from the Hagist Field at the tailgate of the plant. Applicant presently transports gas through facilities proposed to be abandoned to a point close to and downstream from the Hagist Gasoline Plant. Socony will use the facilities to transport gas to the plant and they will become a part of Socony's gathering system.

The subject facilities, which were constructed pursuant to "budget-type" authorization in Docket No. CP63–75, will be sold at their depreciated book value of $301,880.

After due notice no petition to intervene, notice of intervention or protest to the granting of the application has been received.

At a hearing held on December 22, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits thereto, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Natural Gas Pipeline Company of America, a Delaware corporation having its principal place of business in Chicago, Illinois, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of October 13, 1942, in Docket No. G–235 (3 FPC 830).

(2) The facilities proposed to be abandoned, as hereinbefore described and as more fully described in the application, are used in the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the abandonment thereof is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(3) The proposed abandonment is permitted by the public convenience and necessity and should be approved as hereinafter ordered.

The Commission orders:

(A) Permission for and approval of the abandonment of facilities, as hereinbefore described and as more fully described in the application, are granted.

(B) Applicant shall advise the Commission of the date of the abandonment authorized in paragraph (A) above within ten days thereof.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

TEXAS EASTERN TRANSMISSION CORPORATION, DOCKET NO. CP66–62

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued December 29, 1965)

On August 24, 1965, Texas Eastern Transmission Corporation (Applicant) filed in Docket No. CP66–62 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale and delivery of an additional 510 Mcf of natural gas to Huntingdon Gas Company (Huntingdon) and the sale and delivery of a Maximum

Daily Quantity of 306 Mcf of natural gas to Shamokin Gas Company (Shamokin), a proposed new customer, all as more fully described in the application.

Both Shamokin and Huntingdon are subsidiary companies of Penn Fuel Gas, Inc. (Penn Fuel), an existing customer of Applicant. Gas will be be delivered to Huntingdon at a point in Huntingdon County, Pennsylvania, and deliveries of gas to Shamokin will be made at a delivery point in Berks County, Pennsylvania.

Shamokin will receive its gas from Applicant through a single lateral which is jointly owned by four subsidiary companies of Penn Fuel. Shamokin proposes to lease a portion of the lateral after the grant of the certificate hereinafter issued to Applicant. Authorization by the Pennsylvania Public Utility Commission is required for the leasing arrangement.

Both the increased volumes to Huntingdon and the new sale to Shamokin will be made under Applicant's Rate Schedules GS–D and I–D. No additional facilities will be required for the proposed sales. The proposal is economically feasible.

Due notice of the filing of the application was published in the Federal Register on September 9, 1965 (30 F.R. 11570). No protest, petition to intervene or notice of intervention has been filed in this proceeding.

At a hearing held on December 22, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorizations sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Texas Eastern Transmission Corporation, a Delaware corporation having its principal place of business in Shreveport, Louisiana, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order issued March 30, 1949, in Docket No. G–1089 (8 FPC 228).

(2) The proposed sales of natural gas hereinbefore described, as more fully described in the application in this proceeding, will be sales for resale in interstate commerce subject to the jurisdiction of the Commission and are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The sales of natural gas, as proposed in the application, are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate hereinafter issued and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b) (c)(3) and (e) of Section 157.20 of said Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Applicant, Texas Eastern Transmission Corporation, authorizing the sale and delivery of increased quantities of natural gas to Huntingdon and the initial sale and delivery of natural gas to Shamokin, as hereinbefore described and as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3) and (e) of Section 157.20 of such Regulations.

(C) The sale of increased volumes of natural gas and the initial sale of natural gas authorized in paragraph (A) above shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, within six months from the date of this order.

(D) The certificate issued by paragraph (A) above, insofar as it authorizes the initial sale to Shamokin, is conditioned upon Shamokin's receipt of authorization from the Pennsylvania Public Utility Commission for its proposed lateral pipeline leasing arrangement, as hereinbefore described.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

UNITED GAS PIPE LINE COMPANY, DOCKET NO. CP66-78

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued December 29, 1965)

On September 17, 1965, United Gas Pipe Line Company (Applicant) filed in Docket No. CP66-78 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of new and larger facilities and the increased delivery of natural gas to Thiokol Chemical Corporation (Thiokol), Moss Point, Mississippi, all as more fully set forth in the application.

Applicant proposes to deliver an additional 900 Mcf of natural gas per day to Thiokol for use in Thiokol's synthetic rubber plant. Estimated annual and peak day deliveries, including the increased volume, are 264,000 Mcf and 1,500 Mcf of gas, respectively. The present facilities and delivery have not been specifically authorized.

Applicant proposes to construct and operate metering and regulating facilities to replace present facilities in order to accommodate the larger volume of gas proposed to be delivered. Estimated net cost of the proposed facilities is $3,453, to be financed from current working funds.

Although not requested in the subject application, it appears appropriate to include in the certificate hereinafter issued authorization to transport and deliver the total volumes of gas to Thiokol.

After due notice no petition to intervene, notice of intervention or protest to the granting of the application has been received.

At a hearing held on December 22, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits thereto, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, United Gas Pipe Line Company, a Delaware corporation having its principal place of business in Shreveport, Louisiana, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of November 10, 1942, in Docket No. G-232 (3 FPC 863).

(2) The construction and operation of the proposed facilities, as hereinbefore described and as more fully described in the application, will be used in the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof and the transportation of natural gas are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of facilities and the transportation of natural gas, as hereinbefore described and as more fully described in the application, are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder should be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Applicant authorizing the construction and operation of facilities and the transportation of natural gas, as hereinbefore described and as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued in paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The facilities authorized shall be completed and placed in actual operation, as provided by paragraph (b) of Section 157.20 of the Regulations under the Natural Gas Act, within three months from the date on which this order issues.

(D) This certificate shall not entitle Thiokol Chemical Corporation to whom firm deliveries are authorized herein to any priorities or rights to additional gas for meeting any future increases in its requirements at the expense of firm resale customers desiring to acquire additional gas to meet any future increases in their requirements.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

WESTERN INDIANA PUBLIC SERVICE COMPANY, INC. AND PANHANDLE EASTERN PIPE LINE COMPANY, DOCKET NO. CP65-380

FINDINGS AND ORDER DIRECTING PHYSICAL CONNECTION OF FACILITIES AND SALE OF NATURAL GAS

(Issued December 29, 1965)

On May 28, 1965, Western Indiana Public Service Company, Inc. (Applicant), filed in Docket No. CP65-380 an application together with sup-

plemental information on July 12, and September 8, 1965, pursuant to Section 7(a) of the Natural Gas Act for an order of the Commission directing Panhandle Eastern Pipe Line Company (Panhandle) to establish physical connection of its natural gas transmission facilities with the facilities proposed to be constructed by Applicant, and to sell and deliver natural gas to Applicant for resale and distribution in a service area which includes Bloomingdale, Marshall, Kingman, Veedersburg, Hillsboro, Covington and Waynetown, Indiana, all as more fully set forth in the application.

Applicant proposes to construct and operate distribution facilities to serve the seven communities, including the adjacent areas, and to construct and operate approximately 44.7 miles of lateral transmission lines extending from the proposed point of interconnection with Panhandle's main transmission line north of Rockville, Parke County, Indiana, to the city gate of each community proposed to be served. Applicant seeks the connection and the sale and delivery by Panhandle to Applicant of up to 5269 Mcf of natural gas per day for resale in the proposed service area.

The total estimated volumes of natural gas involved to meet Applicant's annual and peak day requirements for the initial three year period of proposed operations are estimated to be:

	First year	Second year	Third year
Annual (Mcf)	276,364	424,198	510,435
Peak day (Mcf)	2,992	4,300	5,269

The total estimated cost of Applicant's proposed distribution system and lateral is $1,750,000, which is to be financed from the sale of first mortgage bonds and common stock. Based on data in the application, as supplemented, Applicant's proposals appear to be economically feasible.

Applicant has obtained 25 year franchises from each of the seven communities it proposes to serve, and has pending before the Public Service Commission of Indiana an application for a state certificate of public convenience and necessity.

Due notice of the filing of the subject application and opportunity for hearing thereon have been given by publication in the Federal Register on July 11, 1965 (30 F.R. 7627).

On July 30, 1965, Respondent filed its reply to the application as part of its petition for leave to intervene, requesting in connection therewith that the matter be submitted to the procedures of an evidentiary hearing. Upon the filing of an amendment to the application by the Applicant, Respondent filed on September 29, 1965, a notice of withdrawal of its said petition to intervene stating it had no objection to the proposal of Applicant as amended.

On October 20, 1965, Indiana Gas & Water Co., Inc., withdrew its petition to intervene filed on June 30, 1965.

No other protest, petition to intervene, or notice of intervention or request for hearing has been filed in this proceeding.

The Commission finds:

(1) Panhandle Eastern Pipe Line Company, a Delaware corporation having its principal place of business in Kansas City, Missouri, is a "natural-gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of October 17, 1945, in Docket No. G–254 (4 FPC 1081).

(2) Applicant, Western Indiana Public Service Company, Inc., an Indiana corporation having its principal place of business in Rockville, Indiana, is a corporation legally authorized to engage in the local distribution of natural gas to the public.

(3) It is necessary and desirable in the public interest to direct Respondent to establish physical connection of its transmission facilities with the facilities proposed to be constructed and operated by Applicant, and to sell and deliver to Applicant under a service agreement to be executed by Applicant with Respondent in accordance with the Commission's Regulations, up to 5269 Mcf per day of natural gas for distribution and resale as hereinbefore described.

(4) The requirement that Respondent serve Applicant, as hereinafter ordered, will not impair Respondent's ability to render adequate service to its existing customers.

(5) Applicant should be prepared to receive natural gas from Respondent for distribution in the area and to the communities hereinbefore described within one year from the date of the issuance of this order.

The Commission orders:

(A) Panhandle Eastern Pipe Line Company is directed to establish physical connection of its facilities with the facilities proposed to be constructed and operated by Applicant, as herein described, and to sell and deliver up to 5269 Mcf of natural gas daily to Applicant under a service agreement to be executed by Applicant with Respondent in accordance with the Commission's Regulations. Such service shall be rendered pursuant to Panhandle Eastern's presently filed appropriate rate schedule.

(B) Respondent shall report to the Commission in writing the date of commencement of service to Applicant within 15 days after such service begins.

(C) Applicant shall obtain certificate authorization from the Public Service Commission of Indiana and be prepared to receive service as directed herein within one year from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

ALABAMA POWER COMPANY, PROJECT NO. 2146

ORDER APPROVING PLAN FOR CLEARING OF PROJECT RESERVOIR AREAS

(Issued December 30, 1965)

On September 13, 1965, Alabama Power Company (Licensee) filed an application for Commission approval of plans for the clearing of areas within the Lock 3 Reservoir, the Lay Reservoir, and the Jordan No. 2 Reservoir of Project No. 2146. The application was filed in compliance with Article 32 of the license for the project, as modified by Commission order issued July 22, 1965, 34 FPC 105.

The Licensee's application contains plans for the selective clearing of the Lock 3 and Lay Reservoirs. However, with regard to the Jordan No. 2 Reservoir, Licensee proposes complete clearing rather than selective clearing on the ground that selective clearing of Jordan No. 2 is not practicable. Upon consideration of the facts, we agree with the Licensee that complete rather than selective clearing is reasonable in the Jordan No. 2 Reservoir. The Reservoir at the Jordan No. 2 development is a small forebay averaging about two miles in length and 0.6 mile in width, with a total area of perhaps 1.2 square miles.

Because this is a relatively small area, and because high velocity flows may be expected through the reservoir, it appears that the entire reservoir area should be cleared.

Article 32 requires the plans for reservoir clearing to be developed in cooperation with the Alabama State Department of Conservation, the Alabama State Department of Public Health, and the United States Fish and Wildlife Service. Enclosed with the application for approval, the Licensee submitted copies of letters from each of these agencies in which their complete approval of Licensee's clearing plans is indicated. Licensee also enclosed a letter dated September 1, 1965, from the District Engineer, U.S. Army Engineer District, Mobile, Alabama, which states the Corps of Engineers' approval of the Licensee's clearing plans, subject however, to the clearing of specified additional areas. The application declares that the additional clearing suggested by the Corps has been incorporated into the clearing plan.

The specifics of the proposed plan are set out in full in 36 drawings submitted with the application, including those drawings described and designated as follows:

17 drawings entitled "Lock 3 Reservoir Clearing Maps", and designated as: Lock 3; D–144247, sheets 17–20, 24–29, 32, 33, 33A, 34, 34A, 35, and 37; and

17 drawings entitled "Lay Dam Reservoir Clearing Maps", and designated as: Lay; D–144409, sheets 54, 55, 57–60, 62–72.

The Commission finds:

It is consistent with the public interest to approve the aforesaid plans providing for:

(a) selective clearing of the Lock 3 Reservoir and the Lay Reservoir, as shown on the above-designated drawings, and incorporating the modifications requested by the Corps of Engineers' September 1, 1965 letter, and (b) complete clearing of all lands within the Jordan No. 2 Reservoir area.

The Commission orders:

The plans specified in the above finding are approved, subject to such further modifications in the interests of navigation, recreation, fish and wildlife resources, public health and safety, or the operation of the project, as may be found necessary or desirable by the Commission after notice and opportunity for hearing.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

BROWN-NEW HAMPSHIRE, INC., PROJECT NOS. 2300, 2311, 2326 AND 2327

ORDER MODIFYING LICENSES (MAJOR)

(Issued December 30, 1965)

Pursuant to our staff's letter-suggestion dated October 26, 1965, Brown-New Hampshire, Inc., licensee for major Project Nos. 2300, 2311, 2326 and 2327, requested on November 2, 1965, that its licenses for the above-designated projects be modified so that the recreational requirements at the projects be consistent and in conformity with the recreation license requirement set forth in its licenses for Project Nos. 2422 and 2423, respectively.

All six projects are located on the Androscoggin River in or near Berlin, New Hampshire where the river is heavily polluted with industrial and sewage wastes and offers little or no present recreational opportunities. A report

dated July 15, 1963 on the Androscoggin River Basin,[1] gives special emphasis to fish and wildlife resources, the pollution problems, existing storage and water power developments, and the effects of these developments on the fish and wildlife resources and stream pollution. Upon abatement of pollution and probable rehabilitation of Atlantic salmon runs in the Androscoggin Basin, the forebays of all six projects could be developed into important recreational areas.

The Commission finds:

In the circumstances, it is in the public interest to modify the licenses for project Nos. 2300, 2311, 2326 and 2327 to provide therein consistent requirements for recreation, in conformity with the license requirements set forth in the licenses for Project Nos. 2422 and 2423.

The Commission orders:

(A) The license for Project No. 2300 is hereby modified to include therein the following additional Article 25:

Article 25. Licensee shall cooperate with State and local agencies in the development and maintenance of access areas and roads and such other facilities necessary for full recreational utilization by the public or project lands and waters, consistent with the terms of the license and the operation of the project. At the end of three (3) years from the date of issuance of this order and every fifth year, thereafter, licensee shall advise the Commission of the results of cooperation with State and local agencies and of further recreation development at the project.

(B) The license for Project No. 2311 is hereby modified to include therein the article set forth in paragraph (A) above, but redesignated as Article 30 in lieu of Article 30 presently included in the license for that project.

(C) The licenses for Project Nos. 2326 and 2327 are hereby modified to include therein the article set forth in paragraph (A) above, but redesignated as Article 31, respectively, in lieu of the Article 31 presently included in the licenses for the projects.

(D) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this order. In acknowledgement of the acceptance of this order, it shall be signed for the licensee and returned to the Commission within 60 days from the date of issuance of this order.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

THE LINCOLN NATIONAL LIFE INSURANCE COMPANY (LICENSEE) AND ARIZONA PUBLIC SERVICE COMPANY (LESSEE), PROJECT NO. 2069

ORDER APPROVING REVISED PROJECT EXHIBIT M

(Issued December 30, 1965)

On July 16, 1965, Arizona Public Service Company, lessee and operator of Project No. 2069, filed for Commission approval a revised Exhibit M show-

[1] Prepared jointly by this Commission and the Departments of the Interior and Health, Education, and Welfare at the request of the Chairman, National Resources and Power Sub-committee, Committee on Government Operations, House of Representatives.

ing certain changes in the Childs Plant and the Irving Plant comprising the project. Project No. 2069 is located on Fossil Creek, a tributary of Verde River in Yavapai and Gila Counties, Arizona, and affects lands of the United States within the Coconino and Tonto National Forests.

The revised exhibit shows the replacement of manual control equipment with automatic control equipment at the Childs and Irving plants for operation of the plants from Phoenix, Arizona, and the relocation of the transformer bank at the Childs plant.

The Commission finds:

Revised Exhibit M, June 14, 1965, in four typewritten pages entitled "Specifications of Electrical and Mechanical Machinery and Transformers", conforms to the Commission's rules and regulations and should be approved as part of the license for the project, and Exhibit M, signed December 1, 1950, now part of the license and which has been superseded, should be eliminated from the license for the project.

The Commission orders:

The revised Exhibit M described in the above finding is hereby approved as part of the license for Project No. 2068, and the exhibit referred to in the same finding as being superseded is hereby eliminated from the license for the project.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr. and Charles R. Ross.

NIAGARA MOHAWK POWER CORPORATION, DOCKET NO. E–7241

ORDER AUTHORIZING MERGER OF FACILITIES

(Issued December 30, 1965)

Niagara Mohawk Power Corporation (Niagara Mohawk), filed an application with the Federal Power Commission on August 20, 1965, seeking authority pursuant to Section 203 of the Federal Power Act to merge its facilities with the facilities of Paul Smith's Electric Light & Power & Railroad Company (Paul Smith) pursuant to a merger agreement dated July 8, 1965.

Niagara Mohawk is incorporated under the laws of the State of New York and operates wholly within that state. It is engaged in the generation, purchase, sale at wholesale, transmission and distribution of electric energy in 42 counties in upstate New York.

Paul Smith operates a small electric utility system and generates, purchases, sells at wholesale, transmits and distributes electric energy in four counties in upstate New York. Paul Smith's College of Arts and Sciences is the beneficial owner of all common stock of Paul Smith. The facilities of Paul Smith are represented to have a depreciated original cost of $3,882,470 and these facilities are presently serving approximately 4,930 customers.

Although the service area of Paul Smith is contiguous to that of Niagara Mohawk, there is now no direct interconnection between the two systems. Presently, they are interconnected through the facilities of New York State Electric and Gas Corporaton. Applicant proposes to construct a 115 kv H–frame transmission line about 30 miles in length to interconnect its existing system to Paul Smith.

According to the application, Applicant proposes to make its scheduled rates and charges for residential, commercial and industrial service available to

retail customers of Paul Smith. Applicant states that such rates are substantially less than present rates charged by Paul Smith. Applicant does not propose any immediate change in the present wholesale rates of Paul Smith to two municipal systems, Lake Placid, New York and Tupper Lake, New York, but states it intends to review them. Paul Smith's wholesale electric rates to these municipalities exceed the rate level of Niagara Mohawk's wholesale electric rates in its eastern division (the geographic area of Lake Placid and Tupper Lake) as well as the wholesale rates of Niagara Mohawk applicable in its western division. To facilitate an assessment of the effects of the merger and interrelation of the disparate wholesale rates and charges which Niagara Mohawk proposes to continue, we shall direct Niagara Mohawk, unless it otherwise eliminates the differential in rates prior to that date, to submit by April 1, 1966, cost of service data showing Niagara Mohawk's cost of serving all of its comparable wholesale customers including Lake Placid and Tupper Lake, New York, plus any justification it may have for charging higher rates to the latter two customers.

In consummating the proposed merger, two steps are contemplated. Initially, Niagara Mohawk would issue 41,750 shares of common stock with an $8.00 par value in exchange for all of Paul Smith's outstanding common stock consisting of 12,500 shares with a $100 par value. Thereafter, Paul Smith's stock would be cancelled and that company merged into Niagara Mohawk according to the laws of the State of New York. For book purposes, Niagara Mohawk would acquire and record Paul Smith's utility plant, other assets, and other debits and would assume and record all of Paul Smith's liabilities, other credits and reserves including accumulated provision for depreciation.

Niagara Mohawk's common stock had a market price of $27¼ a share on the date of the merger agreement. According to the application, the common stock of Paul Smith is not listed on a market exchange and within recent years there have been practically no sales of this stock. On the basis of its market price on the date of the merger agreement, the 41,750 shares to be issued by Niagara Mohawk would have a total market price of about $1,137,700. This amount is $737,096 less than Paul Smith's net assets of $1,874,796 which are to be merged with Niagara Mohawk. These amounts are subject to adjustments as of the closing date of the merger.

As set forth in the aplication, Niagara Mohawk proposes to record the facilities to be acquired from Paul Smith at the stated original cost thereof, according to the records of the latter company. Accumulated provision for depreciation applicable to the properties of Paul Smith similarly would be transferred to accumulated provision for depreciation.

In recording the proposed merger transaction, Niagara Mohawk proposes the following accounting entries respecting proprietary capital: a credit to Niagara Mohawk's Account 201 Common Stock Issued in the amount of $334,000 (41,750 shares of Niagara Mohawk's common stock at stated par value thereof of $8 per share); a credit to Account 207 Premium on Capital Stock in the amount of $916,000 (the difference between the total par value of Paul Smith's common stock and the par value of Niagara Mohawk's common stock to be exchanged therefor); and a credit to Account 216 Unappropriated Earned Surplus in the amount of $624,796 stated to be the amount of earned surplus as recorded on the books of Paul Smith as of May 31, 1965.

We concur in the proposed credit to Account 201. However, under the requirements of our Uniform System of Accounts, Account 207 should only be credited with the difference between the $334,000 which represents the par value of the 41,750 shares of Niagara Mohawk stock being issued and the

aggregate market value of the said shares of stock based upn the closing market price per share as of the date of the consummation of the merger. Further, we believe that the use of Account 216, Unappropriated Earned Surplus to record the amount of earned surplus on Paul Smith's book is inappropriate because the merger should not affect the earned surplus of Niagara Mohawk. We believe that the difference between the net book value of Paul Smith's common stock and the market value of the Niagara Mohawk stock given represents a contribution to the capital accounts of Niagara Mohawk and should be treated as such. Therefore, the Commission prescribes the following accounting entries with regard to proprietary capital:

Account 201, Common Stock Issued, shall be credited with $334,000 (41,750 shares at $8 par value).

Account 207, Premium on Capital Stock, shall be credited with the difference between $334,000 (41,750 shares at $8 par value) and the aggregate market value of the 41,750 shares of common stock based upon the closing market price per share as of the date of consummation of the merger.

Account 211, Miscellaneous Paid-In Capital, shall be credited with an amount by which the net book value of Paul Smith's common stock, as of the date of the consummation of the merger, exceeds the closing market value on that same date, of the 41,750 shares of Niagara Mohawk's common stock.

While no adjustments to the accounting entries of Niagara Mohawk recording the assets and liabilities of Paul Smith as set forth in the application are necessary, we believe Niagara Mohawk should record the properties and plant records of Paul Smith so that they can be separately indentified for a two-year period. During that time, the Commission proposes to initiate a review of adequacies of the accumulated provision for depreciation applicable to the property of Paul Smith with any adjustments therein to be made by transfers from Account 211, Miscellaneous Paid-In Capital, to the extent available and thereafter by transfer from Account 207, Premium on Capital Stock.

Niagara Mohawk represents that the proposed transaction is in the public interest because, among others things, it will make available better and more adequate facilities for construction, extension, maintenance, and operation of Paul Smith's present distribution system and the merger will ultimately result in a single transmission and distribution system in Paul Smith's present territory and provide more adequate means for obtaining the required capital for the necessary future expansion and development of the present system.

Written notice of the application has been given to the New York Public Service Commission and to the Governor of that State. Notice was also published in the Federal Register on September 2, 1965, (30 F.R. 11294), stating that any person desiring to be heard or to make any protest with reference to said application should on or before September 20, 1965, file with the Federal Power Commission, Washington, D.C. 20426, petitions or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). No protest or petition or request to be heard in opposition to the granting of the application has been received.

The Commission finds:

(1) Niagara Mohawk, a corporation, is a public utility within the meaning of Section 203 of the Federal Power Act subject to the jurisdiction of the Commission as heretofore described and set forth in the Commission's order issued May 25, 1961, *Niagara Mohawk Power Corporation*, Docket No. E-6990 (25 FPC 1025).

(2) By the proposed transaction, Niagara Mohawk will merge or consolidate its facilities subject to the jurisdiction of the Commission with those of Paul Smith another person within the meaning and subject to the requirements of Section 203 of the Federal Power Act.

(3) The proposed merger of the facilities of Paul Smith with those of Niagara Mohawk, as described above, and subject to the provisions of this order will be consistent with the public interest as expressed in Section 203 of the Federal Power Act.

(4) It is necessary and appropriate for purposes of the Federal Power Act, particularly Sections 203, 205, 206, 304 and 309 thereof, that Niagara Mohawk be directed to submit cost of service and other data as hereafter provided.

The Commission orders:

(A) The proposed merger of the facilities of Paul Smith with those of Niagara Mohawk, all as described above, is authorized and approved upon the terms and conditions and for the purposes set forth in the application subject to the provisions of this order.

(B) Niagara Mohawk shall record the proposed transaction herein authorized and the facilities and properties referred to above as provided in the Commission's Uniform System of Accounts prescribed for public utilities and licensees and subject to the specific accounting entries as prescribed above with respect to Accounts 201, 207 and 211.

(C) Niagara Mohawk shall record the properties and plant records of Paul Smith so that they can be separately identified until December 31, 1967.

(D) Niagara Mohawk shall after the consummation of the merger and on or before April 1, 1966, submit a special report setting out cost and revenue data using 1965 as the test year, showing Niagara Mohawk's costs of rendering service to each of the following wholesale customers calculated in accordance with applicable Commission precedents and submitted in the form as prescribed in Statements A through O, Section 35.13(b)(4)(IV) of the Commission's Regulations under the Federal Power Act: Village of Holley, N.Y.; Village of Brocton, N.Y.; Ellicottville Elec. Lt. Co.; City of Jamestown, N.Y.; Rochester G&E; Green Island Ltg. Comm., Canton Electric Lt. & Pwr. Co.; Village of Richmondville, N.Y.; Adams Electric Lt. Co.; Village of Solvay; and Village of Westfield. Estimated cost and revenue data covering service to Lake Placid and Tupper Lake should also be submitted in the same form. An original and nine conformed copies of the report shall be submitted. Additionally, Niagara Mohawk shall submit such additional cost, revenue and other data as may be requested by Commission's staff.

(E) This authorization shall expire unless the transaction herein authorized and approved is consummated within 90 days of the date of issuance of this order.

(F) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuation, extensions or determinations of cost, or any matter whatsoever now pending or which may come before this Commission or any other regulatory body and nothing herein shall be construed as an acquiescence by this Commission in any estimate or determination of cost or any valuation of property claimed or asserted.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

BUDGET-TYPE CERTIFICATE APPLICATIONS, DOCKET NO. R-296

ORDER NO. 316

STATING GENERAL POLICY

(Issued December 30, 1965)*

By Order No. 185 issued February 8, 1956, 15 FPC 793; 21 F.R. 1485, the Commission prescribed amendments to its Regulations under the Natural Gas Act relating to the filing of rate schedules and tariffs under Part 154 and applications for certificates of public convenience and necessity under Part 157 of said Regulations (18 CFR 154.1, *et seq.*, and 157.5, *et seq.*).

By Order No. 247 issued June 7, 1962, 27 FPC 1119; 27 F.R. 5606, as amended by Order No. 281 issued April 21, 1964, 31 FPC 971; 29 F.R. 5544, the Commission prescribed Section 2.58 (18 CFR 2.58) announcing its policy on budget-type certificate applications under Section 7 of the Natural Gas Act.

The recitals in Order No. 185 respecting our policy on budget-type certificate applications should be included in Section 2.58 (18 CFR 2.58) of our Rules. By this order we are prescribing the pertinent part of such recitals as part of our policy and interpretations.

The Commission finds:

(1) The amendments herein prescribed are for purposes of codification of pronouncements heretofore made.

(2) The amendments are of a clarifying nature and represent matters of policy and procedure which do not require notice or hearing under Section 4(a) of the Administrative Procedure Act.

The Commission, acting pursuant to the provisions of the Natural Gas Act, as amended, particularly Sections 7 and 16 thereof (52 Stat. 824, 830; 56 Stat. 83; 15 U.S.C. 717f, 717o), *orders*, Part 2, Subchapter I of Title 18 of the Code of Federal Regulations is amended as follows:

(A) Delete from the first paragraph of § 2.58 the folowing:

> In accordance with the Commission's advice in Order No. 185, issued February 8, 1956 (15 FPC 793 at 794) * * *

and insert in lieu thereof the following:

> In accordance with the Commission's advice set forth in paragraph (e) of this section * * *

(B) Insert to follow paragraph (d) of § 2.58 the following new paragraph (e):

> (e) In its Order No. 185, issued February 8, 1956, 15 FPC 793, 794; 21 FR 1485, the Commission advised any interested natural-gas company subject to the Natural Gas Act that it may file under § 157.6 of the Rules a single certificate application covering in general outline along the lines of a budget estimate the proposed routine construction intended to be undertaken by it during the current or ensuing fiscal year. A hearing could then be held on such a proposal and a certificate issued in accordance with the general application. At the end of the period, a statement shall be filed showing the actions taken under the certificate and any authority thereunder which was not exercised.

*Published in the Federal Register on January 7, 1966 (31 F.R. 215).

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr. and Charles R. Ross.

SIGNAL OIL & GAS COMPANY (OPERATOR), DOCKET NOS. R161-438 AND RI64-659

ORDER ACCEPTING OFFER OF SETTLEMENT, REQUIRING FILING OF CONTRACT AMENDMENT, PROVIDING FOR REFUNDS, AND TERMINATING PROCEEDINGS

(Issued December 30, 1965)

On November 26, 1965, Signal Oil & Gas Company (Operator), hereinafter referred to as Signal, submitted pursuant to Section 1.18(e) of the Commission's Rules of Practice and Procedure an offer of settlement of the above-entitled rate suspension proceedings. The subject proceedings relate to the sale of residue gas to Cities Service Gas Company (Cities Service) at the tailgate of Signal's Fox Gasoline Plant in Carter County, Oklahoma, under Signal's FPC Gas Rate Schedule No. 1. The proceedings involve increased rates, collected subject to refund, from 11.0¢ per Mcf to 16.8¢ per Mcf effective September 20, 1961, in Docket No. RI61-438 and to 17.9¢ per Mcf effective November 1, 1964 in Docket No. RI64-659.

Under the terms of the offer, Signal proposes (1) a settlement rate of 14.0¢ per Mcf of gas at 14.65 psia; (2) to amend its contract with Cities Service to delete therefrom both the favored-nation and periodic price redetermination provisions and substitute therefor fixed periodic escalations of 1¢ per Mcf on July 1, 1968, and each five years thereafter during the term of the contract; (3) a moratorium on future increased rate filings until July 1, 1968, except for tax reimbursement filings permitted by its contract; and (4) to refund all monies collected subject to refund above the settlement rate from May 23, 1962, through October 22, 1965, plus applicable interest.[1]

Signal also reserves the right to file rate increases or rate decreases to conform with the just and reasonable rate determination found by the Commission as a result of an applicable area rate proceeding.

Signal states in its offer, among other things, that although it has consented to the May 23, 1962 refund commencement date at the insistence of the staff, such date being eight months after the effective date of its increased rate, its position is that the refund commencement date should be moved up to September 23, 1962, which would be approximately one year after the effective date of Signal's increased rate. Signal contends that this action would afford Signal the same treatment as the Commission gave to the owners of the Garvin County plants in approving their settlement offer in *Warren Petroleum Corporation (Operator), et al.*, Docket No. G-20478, *et al.*, order issued June 3, 1965, 33 FPC 1212.[2] We believe that the May 23, 1962 refund commencement date is more appropriate as it takes into consideration the fact that here no additional acreage is to be dedicated while in the Garvin County Plants settlement additional acreage was to be dedicated under contract as a result of the settlement.

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[1] The refund, exclusive of interest, is estimated at approximately $1,623,000 through October 22, 1965. Cities Service is required to flow-through the refunded amounts in accordance with the Commission's orders issued in Docket Nos. RP62-1 and RP64-9.

[2] Signal also points out that the Commission, in *National Fuels Corporation* and *Warren Petroleum Corporation*, Docket No. G-20426, order issued May 24, 1965, 33 FPC 1048, permitted the owners of the Madill Plant to commence making refunds fourteen months after the effective date of their increased rate.

The proposed 14.0¢ settlement rate is the same rate approved by us for sales from the Garvin County Plants and the Madill Plant. No protests have been filed to the proposed settlement and the interveners have expressed their concurrence.

We desire to make it clear that acceptance of Signal's offer of settlement shall not be construed as approval of any future increased rate filed in accordance with its reservation of the right to file increases to cover future tax increases, and is without prejudice to any findings or order of the Commission in any future proceedings, including area rate or other similar proceedings, involving Signal's rate and rate schedule.

The Commission finds:

The proposed settlement of the above-designated proceedings, on the basis described herein, as more fully set forth in the offer of settlement filed with the Commission by Signal on November 26, 1965, is in the public interest and appropriate to carry out the provisions of the Natural Gas Act and should be approved and made effective as hereinafter ordered.

The Commission orders:

(A) The offer of settlement filed with the Commission by Signal on November 26, 1965, is hereby approved in accordance with the provisions of this order.

(B) Signal shall file, within 30 days from the date of issuance of this order, a notice of change in rate providing for the 14.0¢ per Mcf settlement rate approved herein, and an executed contractual amendment to its FPC Gas Rate Schedule No. 1, eliminating the favored-nation and the price redetermination provisions therefrom and substituting therefor periodic escalations as specified in its offer of settlement. Both contractual amendment and the notice of Change shall be submitted in accordance with Part 154 of the Commission's Regulations under the Natural Gas Act.

(C) Signal shall compute for the respective periods in which it has refund obligations in the above-entitled proceedings the difference between the rate collected subject to refund and the settlement rate for the period from May 23, 1962, to the date of this order for the subject sales of natural gas to Cities Service, with applicable interest to the date of this order, and within 30 days from the date of this order it shall submit a report to the Commission, and serve a copy on Cities Service, setting out the amount of refunds, plus applicable interest, it has computed it is obligated to make (showing separately the principal and interest), the bases used for such determination and the period covered.

(D) Signal shall within 60 days from the date of issuance of this order, refund with applicable interest to the date of issuance of this order to Cities Service the monies it has computed in accordance with paragraph (C) above, and shall within 10 days thereafter file with the Commission a release from Cities Service showing receipt of the refunds in conformity with the settlement proposal as approved herein.

(E) Upon notification by the Secretary of the Commission that Signal has complied with the terms and conditions of the order, the rate and charge of 14.0¢ per Mcf at 14.65 psia, specified in Signal's offer of settlement, shall be effective as of the date of issuance of this order, and Docket Nos. RI61–438 and RI64–659 shall be deemed terminated.

(F) The acceptance by the Commission of Signal's offer of settlement, is without prejudice to any findings or determinations that may be made in any proceeding now pending, or hereafter instituted by or against Signal including area rate or other similar proceedings.

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black and Carl E. Bagge.

SOUTHERN NATURAL GAS COMPANY, DOCKET NO. CP66-116

FINDINGS AND ORDER AFTER STATUTORY HEARING ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued December 30, 1965)

On October 20, 1965, Southern Natural Gas Company (Applicant) filed in Docket No. CP66-116 an application, as supplemented on November 26, 1965, pursuant to Section 7(c) of the Natural Gas Act, as implemented by Section 157.7(c) of the Regulations under the Act, for a certificate of public convenience and necessity authorizing the construction, during the 12 months' period commencing on the date this order issues, and the operation of natural gas facilities for the sale of natural gas to direct customers located in areas outside the franchise area of any local distributor and to existing distributors for resale in existing market areas and for miscellaneous rearrangements not resulting in any change of service rendered by means of the facilities involved, all as more fully set forth in the application in this proceeding.

For proposed sales to existing distributor customers, Applicant states that the maximum number of new delivery points, consisting of line taps and metering and regulating stations, will not exceed ten and that the maximum number of lateral and loop pipelines will not exceed ten. For proposed sales to direct customers, the maximum number of new line taps and metering and regulating stations will not exceed ten and the maximum number of lateral and loop pipelines will not exceed ten. For miscellaneous rearrangements, Applicant will construct a maximum number of pipelines, including lateral and loop lines, not exceeding twenty.

The total cost of facilities proposed under this application will not exceed a maximum of $300,000 and the total deliveries to any one customer will not exceed a maximum of 100,000 Mcf of natural gas per year. Further, none of the gas delivered pursuant to this order will be used by any customer for boiler fuel purposes, as defined by subparagraph (9) of Section 157.7(c) of the Commission's Regulations.

After due notice, no petition to intervene, notice of intervention or protest to the granting of the application has been filed.

At a hearing held on December 22, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, Southern Natural Gas Company, a Delaware corporation having its principal place of business in Birmingham, Alabama, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of October 6, 1942, in Docket No. G-296 (3 FPC 822).

(2) The facilities hereinbefore described, as more fully described in the application in this proceeding, are proposed to be used in the transportation and/or sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(5) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder be conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(6) The authorization hereinafter granted should be limited to construction during the 12 months' period commencing on the day this order issues and the total expenditures for facilities to be constructed thereunder should be limited to a maximum of $300,000, with the total deliveries to any one customer not to exceed a maximum of 100,000 Mcf of natural gas per year.

(7) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit within 60 days after the expiration of the authorization granted hereinafter, a statement in compliance with Section 157.7(c)(8) of the Commission's Regulations under the Natural Gas Act.

(8) The certificate issued hereinafter should be conditioned upon Applicant's compliance with the provisions of Section 157.7(c)(7) of the aforesaid Regulations.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity is issued authorizing Applicant, Southern Natural Gas Company, to construct during the 12 months' period commencing on the day this order issues the proposed facilities hereinbefore described, as more fully described in the application in this proceeding, and to operate such facilities for the sale of natural gas and for miscellaneous rearrangements as hereinafter provided.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a) and (e) of Section 157.20 of said Regulations.

(C) The authorization granted in paragraph (A) above is limited to construction during the 12 months' period commencing on the day this order issues and the total expenditures for facilities to be constructed thereunder are limited to a maximum of $300,000, with the total deliveries to any one customer limited to a maximum of 100,000 Mcf of natural gas per year.

(D) Applicant shall submit within 60 days after the expiration of the authorization granted by paragraph (A) above a statement in compliance with Section 157.7(c)(8) of the Commission's Regulations under the Natural Gas Act.

(E) The certificate issued by paragraph (A) above is expressly conditioned upon Applicant's compliance with the provisions of Section 157.7(c)(7) of the aforesaid Regulations and, further, the certificate granted upon the express condition that any interruptible service resulting herefrom shall be curtailed or interrupted to the extent required to meet existing or future contracted maximum delivery obligations of Applicant for firm service to its customers.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr. and Charles R. Ross.

T. L. JAMES & COMPANY, INC., ET AL., DOCKET NO. G-16492, ET AL.[1]

ORDER APPROVING OFFERS OF SETTLEMENT, SEVERING PROCEEDINGS, TERMINATING CERTAIN PROCEEDINGS IN WHOLE AND OTHERS IN PART, AND PRESCRIBING REFUNDS

(Issued December 30, 1965)

Respondents, as set forth in the appendix, have severally filed offers of settlement to resolve conflicting interpretations of the tax reimbursement provisions in their rate schedules covering jurisdictional sales of natural gas in Louisiana. All of the respondents' sales herein are made to Texas Gas Transmission Corporation (Texas Gas), except for sales by Pan American Petroleum Corporation (Pan American) which are made to Trunkline Gas Company (Trunkline). In summary the settlement proposals filed by respondents provide:

(1) A settlement rate of 1.75 cents per Mcf, in lieu of 1.875 cents per Mcf, as the applicable Louisiana gas severance tax reimbursement for respondents' sales to Texas Gas.

(2) A settlement rate of 1.80 cents per Mcf, in lieu of 2.05 cents per Mcf, as the applicable Louisiana gas severance tax reimbursement for Pan American's sales to Trunkline.

(3) Respondents selling to Texas Gas, in effect, propose to refund, with applicable interest, one-half of the amount collected in excess of the proposed settlement rate of 1.75 cents per Mcf in the above-entitled proceedings for the period prior to September 1, 1965, and all amounts collected in excess of 1.75 cents per Mcf thereafter.

(4) Pan American proposes, under its FPC Gas Rate Schedule No. 258 for the period prior to April 1, 1964,[2] to refund to Trunkline $8,992.31 with interest at 6 percent per annum, which amount represents slightly more than one-half of the $14,987.18 collected subject to refund.

(5) Pan American proposes, under its FPC Gas Rate Schedule Nos. 259 and 260, to refund to Trunkline, with interest at 6 percent per annum, 0.15 cents per Mcf tax reimbursement for all gas delivered under said rate schedules,[3] which is also slightly more than one-half of the amount in dispute.

Texas Gas has concurred in each of the settlement proposals involving it and Trunkline has concurred in Pan American's settlements proposal. No objections to any of the proposed settlements have been received from interveners or other interested parties.

We believe the proposals are consistent with the public interest and the provisions of the Natural Gas Act, and consequently shall approve the same.

Our action herein should not be construed as constituting approval of any future rate increases, if any, that may be filed under the subject rate sched-

[1] The docketed matters proposed for settlement herein are set forth in the appendix.

[2] Tax reimbursement applicable to gas delivered from and after April 1, 1964, under Pan American's FPC Gas Rate Schedule No. 258 is being paid at the rate prescribed in the settlement approved by Commission order issued March 20, 1964, 31 FPC 616.

[3] Pan American further agrees to pay Trunkline, as soon as such amount can be determined, an additional amount equal to the difference between tax reimbursement at 1.80 cents per Mcf on gas delivered after approval of this settlement proposal and such lower tax reimbursement, if any, as is provided by any general rate settlement into which Pan American enters or as is allowed by the Commission's final order in Southern Louisiana Area Rate Proceedings, Docket No. AR61-2, *et al.*, whichever shall first occur.

ules, and is without prejudice to any findings or order of the Commission in future proceedings, including area rate or similar proceedings, involving Respondents' rates and rate schedules, their successors or assignees.

The Commission finds:

The proposed settlements of the subject proceedings on the bases described herein, as more fully set forth in the settlement proposals filed by Respondents as set forth in the appendix, are in the public interest and it is appropriate in carrying out the provisions of the Natural Gas Act that they be approved and made effective as hereinafter ordered, and good cause exists for approving these settlements, for severing proceedings, for terminating certain proceedings in whole and others in part, and for providing for refunds.

The Commission orders:

(A) The several offers of settlement filed with the Commission by Respondents as set forth in the appendix are approved in accordance with provisions of this order.

(B) Respondents shall file, within 90 days from the date of issuance of this order, notices of change in rates under their FPC Gas Rate Schedules to reflect the settlement rates applicable to severance tax reimbursement. The notices of change shall be submitted in accordance with Part 154 of the Commission's Regulations under the Natural Gas Act.

(C) Respondents shall compute the difference between the rates collected subject to refund in the above-entitled proceedings and the settlement rates for the periods set forth in the appendix, with applicable interest to the date of this order, and shall within 45 days from the date of issuance of this order submit a report to the Commission, with a copy to its jurisdictional pipeline purchasers, setting out the amount of refunds (showing separately the principal and applicable interest) the basis used for such determination, the period covered, and ten days thereafter shall submit to the Commission a copy of a letter from its jurisdictional pipeline purchasers agreeing to the correctness of such amounts.

(D) Respondents shall retain these amounts of monies shown in the report required under Ordering Paragraph (C) above, subject to further order of the Commission.

(E) Respondents may deposit the retained refunds in a special escrow account, and shall tender for filing within 60 days of the date of issuance of this order an executed Escrow Agreement, conditioned as set out below, accompanied by a certificate showing service of a copy thereof upon its jurisdictional pipeline customers. Unless notified to the contrary by the Secretary within 30 days from the date of filing thereof, the Escrow Agreement shall be deemed to be satisfactory and to have been accepted for filing. The Escrow Agreement shall be entered into between Respondents and any bank or trust company used as a depositor for funds of the United States Government and the agreement shall be conditioned as follows:

(1) Respondents, the bank or trust company, and the successors and assigns of each, shall be held and formally bound unto the Federal Power Commission for the use and benefit of those entitled thereto, with respect to all amounts and the interest thereon deposited in the special escrow account, subject to such agreement, and such bank or trust company shall be bound to pay over to such person or persons as may be identified and designated by final order of the Commission and in such manner as may be therein specified, all or any portion of such deposits and the interest thereon.

(2) The bank or trust company may invest and reinvest such deposits in any short-term indebtedness of the United States or any agency thereof or in any form of obligation guaranteed by the United States which is, respectively, payable within 120 days as the said bank or trust company in the exercise of its sound discretion may select.

(3) Such bank or trust company shall be liable for such interest as the invested funds described in Paragraph (2) above will earn and no other interest may be collected from it.

(4) Such bank or trust company shall be entitled to such compensation as is fair, reasonable and customary for its services as such, which compensation shall be paid out of the escrow account to such bank or trust company. Said bank or trust company will likewise be entitled to reimbursement for its reasonable expenses necessarily incurred in the administration of this escrow account, which reimbursement shall be made out of the escrow account.

(5) Such bank or trust company shall report to the Secretary quarterly, certifying the amount deposited in the bank or trust company for the quarterly period.

(F) If Respondent elects to commingle the retained refunds with its general assets and use them for business purposes, it shall notify the Secretary of the Commission of its intention to do so within sixty days of the issuance of this order, and shall pay interest on such monies at the rate of 4.5% per annum from the date of issuance of this order to the date on which they are paid over to the person or persons ultimately determined to be entitled thereto by final order or orders of the Commission.

(G) Upon notification by the Secretary of the Commission that each of Respondents has complied with the terms and conditions of this order, the Section 4(e) proceedings in the appendix hereto shall terminate in whole and in part as designated, and the proceedings in the appendix hereto shall be severed from consolidated proceedings in Docket No. G–16492, *et al.*

(H) The Secretary of the Commission shall, by separate letter, direct the pipeline purchasers to report its plans for distribution of the refunds provided for herein. In the event that the pipeline purchaser states that it will flow-through the entire amount of refunds received, the Secretary of the Commission is authorized to release by his letter the escrowed refunds.

(I) The acceptance by the Commission of Respondents offers of settlement is without prejudice to any findings or determinations that may be made in any proceeding now pending, or hereafter instituted by or against Respondents and is without prejudice to claims or contentions which may be made by Respondents, the Commission staff, or any affected party hereto, in any proceeding.

APPENDIX

Docket Nos.	Respondent	Offer to settlement filed	Rate schedule No.	Refund period with applied interest, from [1]	Proceedings severed and terminated	Proceedings severed and terminated in part [5]	Settlement tax reimbursement figure per Mcf [2]
G–17712 & RI62–191	Benedum-Trees Oil Company (Operator), *et al.*	10/15/65	9	12/21/61	G–17712	RI62–191	1.75 cents.
G–17540 & RI62–214	The FO Corporation	10/25/65	1	4/8/60 to 3/1/63 [3]	G–17540	RI62–214	1.75 cents.
G–17820	Phillips Petroleum Company	10/25/65	202	6/2/62	G–17820	N.A.	1.75 cents.
G–17706	The Superior Oil Company (Operator), *et al.*	10/13/65	13	9/30/60	G–17706	N.A.	1.75 cents.
G–17707 & RI62–278	The Superior Oil Company	10/13/65	69	4/8/62	G–17707	RI62–278	1.75 cents.
G–20288	Pan American Petroleum Corporation	11/15/65	258	Refund [4]	G–20288	N.A.	1.80 cents.
			259	Refund [5]	G–20288	N.A.	1.80 cents.
			260	Refund [5]	G–20288	N.A.	1.89 cents.

[1] The period of refund is from the date indicated to the date of issuance of this order unless otherwise indicated.

[2] The proceedings that are terminated in part involve matters in addition to the tax reimbursement conflicts and said proceedings are terminated only insofar as the Louisiana gas severance tax reimbursement issue is involved.

[3] The refund period ends on March 1, 1963 as the tax reimbursement figure was reduced to 1.75 cents per Mcf on that date.

[4] Pan American shall refund $8,992.31 with interest at 6 percent per annum to Trunkline.

[5] Pan American shall refund 0.15 cent for Mcf for all gas delivered under its FPC Gas Rate Schedule Nos. 259 and 260 for which Pan American has been paid by Trunkline tax reimbursement at the rate of 2.05 cents per Mcf, plus interest at 6 percent per annum, from date of deliveries to the date of issuance of this order.

Before Commissioners: David S. Black, Acting Chairman; L. J. O'Connor, Jr. and Charles R. Ross.

WARREN PETROLEUM CORPORATION (OPERATOR), ET AL., G–20478, ET AL.; LONE STAR GAS COMPANY, RP60–4; CITIES SERVICE GAS COMPANY, RP65–21; NATURAL GAS PIPELINE COMPANY OF AMERICA, RP65–25

ORDER REQUIRING REPORT OF INTENDED DISPOSITION OF REFUNDS AND RELEASING REFUNDS IN PART

(Issued December 30, 1965)

The Commission, by order issued June 3, 1965, 33 FPC 1212, as amended by order of August 25, 1965, 34 FPC 587, in Docket No. G–20478, *et al.*, conditionally approved a rate settlement proposal filed by Warren Petroleum Corporation, Kerr-McGee Oil Industries, Inc., Texaco Inc., and Cities Service Oil Company (WKTC). That order, among other things, required WKTC to retain the amount of refunds, with interest, ordered therein until further Commission order directing its disposition. The purpose of that action was to assure that within the limits of our jurisdictional reach the amounts to be refunded would actually flow to those parties legally and equitably entitled thereto. That purpose, and the procedures to be followed to effectuate it, was set forth in our order issued July 8, 1964, in *Humble Oil & Refining Company*, Docket No. G–9287, *et al.*, 32 FPC 49.

It appears from the terms of the settlement between the parties and the reports filed by WKTC that certain amounts are refundable to Lone Star Gas Company (Lone Star) and Cities Service Gas Company (Gas Company). On December 15, 1965, Lone Star filed a report in Docket No. G–20478, *et al.*, stating that it has only one jurisdictional customer, *i.e.*, Natural Gas Pipeline Company of America (Natural), and that it will refund a proportionate share to Natural of the refunds, including interest, to be received pursuant to the settlement in that proceeding. However, a review of Lone Star's report reflects that Lone Star does not intend to flow-through the refunds received by it for the rates above the 16.8¢ per Mcf level set forth in its settlement agreement in Docket No. RP60–4, which was approved by the Commission on December 1, 1961, 26 FPC 790. For the reasons stated in our *Humble* order, *supra*, we shall require WKTC to retain the amounts collected in excess of the 16.8¢ rate pending further order and to release those amounts that Lone Star agrees to flow-through to Natural.

A review of Natural's flow-through obligations indicates that Natural is obligated to flow-through to its customers the jurisdictional portion of the refunds to be received by it from Lone Star. Natural, however, may disagree with our conclusions regarding its flow-through obligations. In that event we shall provide that the amounts received by it from Lone Star shall be held by Natural subject to our further order.

In furtherance of our stated policy and the procedure set forth in the *Humble* order, *supra*, we shall require Gas Company to file a report setting out its intended disposition of the amounts refundable to it under the settlement in Docket No. G–20478, *et al.*

The Commission orders:

(A) Gas Company shall submit, in Docket No. RP65–21, within ten days of the issuance of this order, a report of its intended disposition of the amounts refundable to it under the settlement in Docket No. G–20478, *et al.*,

and shall serve such report upon its customers and interested state commissions.

(B) In the event that Gas Company claims the right to retain any portion of the amount refundable to it from WKTC, it shall submit, in addition to the report, a detailed statement of the legal and equitable basis for such claim.

(C) WKTC is directed to release and pay over to Lone Star the amounts refundable to that company under Docket Nos. G–20478, G–20479, and G–20451 and to retain the amounts refundable to Lone Star under Docket Nos. RI63–486, RI63–460, and RI64–69.

(D) Lone Star is directed to flow-through to Natural the proportionate share of the amounts received pursuant to Paragraph (C) in accordance with its report filed herein on December 15, 1965.

(E) If Natural claims the right to retain any of the amounts received pursuant to Paragraph (D), Natural shall report to the Commission within ten days of the date of this order the legal and equitable basis of such claim and shall retain the total amounts received from Lone Star subject to our further order and in accordance with any of the methods set forth in Paragraph (J) of our order issued April 21, 1965, in *Humble Oil & Refining Company, et al.*, Docket No. G–9287, *et al.*, 33 FPC 830.

(F) Pending further order of the Commission, WKTC shall retain all amounts not hereby released in accordance with our order of June 3, 1965, as modified by our order of August 25, 1965, in Docket No. G–20478, *et al.*

APPLICATIONS OF PRODUCERS OF NATURAL GAS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY DISPOSED OF DURING THE PERIOD OF JULY 1, 1965 THROUGH DECEMBER 31, 1965; SERVICE BEGINNING SUBSEQUENT TO JUNE 7, 1954

PRODUCER,[2] DOCKET NO., AND PURCHASER[2]	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Abel & Bancroft:					
CI66-85 United Gas Pipe Line Co.	South Albrecht	Tex	Goliad	9 17 65	Iss.
A. L. Abercrombie, Operator, et al.:					
CI64-87 Panhandle Eastern Pipe Line Co.	Bryant #1	Okla	Cimarron	8 10 65	Iss.
Afroma Oil & Gas Co., Inc., Operator, et al.:					
CI65-1210 Banquete Gas Co., a Div. of Crestmont Oil Co.	Spartan*	Tex	San Patricio	7 19 65	Iss.
Claude E. Aikman, et al.:					
CI66-382 El Paso Natural Gas Co.	Basin Dakota	N. Mex	San Juan	12 30 65	Iss.
Robert E. Aikman, et al., d/b/a Aikman Brothers:					
CI65-724 Natural Gas Pipeline Co. of America.	N. W. Quinlan	Okla	Woodward	8 10 65	Iss.
CI65-1310 Panhandle Eastern Pipe Line Co.	Forgan North	Okla	Beaver	8 19 65	Iss.
Robert E. Aikman, et al., d/b/a Aikman 61, Ltd.:					
CI65-1311 Northern Natural Gas Co.	Six Mile	Okla	Beaver	8 9 65	Iss.
Estate of B. F. Allison, Operator, et al.:					
CI66-325 Kansas-Nebraska Natural Gas Co., Inc.	Arrow	Colo	Washington	12 2 65	Iss.
Alpine Oil & Royalty Co., Inc., Operator, et al.:					
CI66-149 Wunderlich Development Co.	Undesignated	Kans	Sumner	11 15 65	Iss.
CI66-152 Wunderlich Development Co.	Undesignated	Kans	Sumner	11 15 65	Iss.
Amax Petroleum Corp.:					
CI63-1458 Panhandle Eastern Pipe Line Co.	Undesignated	Okla	Beaver	9 14 65	Iss.
CI65-1319 Panhandle Eastern Pipe Line Co.	Undesignated	Okla	Beaver	8 9 65	Iss.
Ambassador Oil Co., Operator, et al.:					
CI64-766 Panhandle Eastern Pipe Line Co.	Undesignated	Okla	Cimarron	8 10 65	Iss.
CI65-1307 Panhandle Eastern Pipe Line Co.	Undesignated	Kans	Seward	8 9 65	Iss.

See footnotes at end of table, p. 1663.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO., AND PURCHASER#	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Amerada Petroleum Corp.:					
CI65-1258 Cities Service Gas Co.	North Hardtner	Kans.	Barber	7 19 65	Iss.
Americana Oil & Gas Properties of Tex., Inc.:					
CI66-57 Arkansas Louisiana Gas Co.	Monroe	La.	Morehouse	10 25 65	Iss.
American Petrofina Co. of Texas:					
CI60-134 South Texas Natural Gas Gathering Co.	Shepherd	Tex.	Hidalgo	9 30 65	Iss.
CI66-357 El Paso Natural Gas Co.	Undesignated	N. Mex.	San Juan	12 23 65	Iss.
C. B. Ames d/b/a Ames Oil & Gas:					
CI66-318 Texas Gas Transmission Corp.	Mortons Gap	Ky.	Hopkins	12 2 65	Iss.
Anadarko Production Co.:					
CI65-971 Natural Gas Pipeline Co. of America.	Quinlan N. W.	Okla.	Woodward	7 19 65	Iss.
CI65-1274 Natural Gas Pipeline Co. of America.	S. E. Boyd	Okla.	Beaver	7 23 65	Iss.
CI65-1276 Kansas-Nebraska Natural Gas Co., Inc.	Dombey	Okla.	Beaver	7 23 65	Iss.
CI66-146 Panhandle Eastern Pipe Line Co.	Mocane-Laverne	Okla.	Beaver	10 8 65	Iss.
CI66-192 Western Gas Service Co.	Houston	Okla.	Beaver	11 1 65	Iss.
CI66-292 Panhandle Eastern Pipe Line Co.	Red Cave	Kans.	Morton	12 2 65	Iss.
An-Son Corp.:					
CI66-175 Northern Natural Gas Co.	Mocane-Laverne	Okla.	Beaver	10 25 65	Iss.
An-Son Corp., Operator, et al.:					
CI65-1214 Cities Service Gas Co.	Lovedale	Okla.	Harper	7 14 65	Iss.
Robert G. Anderson:					
CI62-1442 Oklahoma Illinois Gas Pipeline Co.	Norris-Red Oak	Okla.	Latimer	9 9 65	Den.
CI65-1328 Cities Service Gas Co.	Bishop Area	Okla.	Ellis	8 19 65	Iss.
Anschutz Oil Co., Inc., Operator, et al.:					
CI65-1205 Cities Service Gas Co.	Northeast Forrest City.	Kans.	Barber	7 14 65	Iss.
Apache Corp., Operator, et al.:					
CI65-412 Natural Gas Pipeline Co. of America.	Woodward Area	Okla.	Woodward	8 10 65	Iss.
Apco Oil Corp.:					
CI66-198 El Paso Natural Gas Co.	Blanco Mesa Verde	N. Mex.	San Juan	12 2 65	Iss.

See footnotes at end of table, p. 1663.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,[#] DOCKET NO., AND PURCHASER[#]	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Appell Petroleum Corp., Operator, et al.:					
CI61-1591 Tennessee Gas Transmission Co.	El Puerto	Tex	Starr	9 30 65	Iss.
Sam D. Ares & Albert L. Ares, Operator, et al.:					
CI65-1313 El Paso Natural Gas Co.	Undesignated	N. Mex	Lea	7 29 65	Iss.
Arrowhead Petroleum, Inc.:					
CI66-222 Cities Service Gas Co.	Undesignated	Kans	Barber	11 15 65	Iss.
Ashland Oil & Refining Co.:					
CI63-178 Oklahoma Illinois Gas Pipeline Co.	Catesby	Okla	Ellis	9 9 65	Den.
CI66-151 Texas Gas Transmission Corp.	Midland Gas	Ky	Muhlenberg	10 25 65	Iss.
CI66-360 Texas Gas Transmission Corp.	Midland Gas	Ky	Muhlenberg	12 23 65	Iss.
Ashland Oil & Refining Co., Operator, et al.:					
CI64-644 Natural Gas Pipeline Co. of America.	Quinlan	Okla	Woodward	8 10 65	Iss.
Associated Oil & Gas Exploration, Inc., Operator, et al.:					
CI65-1256 Southern Natural Gas Co.	North Kings Ridge	La	Lafourche	7 19 65	Iss.
The Atlantic Refining Co.:					
CI64-837 South Texas Natural Gas Gathering Co.	Schmidt	Tex	Hidalgo	9 30 65	Iss.
CI66-126 Montana-Dakota Utilities Co.	Pavillion	Wyo	Fremont	10 8 65	Iss.
CI66-291 Montana-Dakota Utilities Co.	Indian Butte	Wyo	Fremont	12 1 65	Iss.
The Atlantic Refining Co., et al.:					
CI65-513 Natural Gas Pipeline Co. of America.	Indian Basin	N. Mex	Eddy	11 3 65	Iss.
Austral Oil Co. Incorporated:					
CI61-427 Natural Gas Pipeline Co. of America.	N. E. Thompsonville.	Tex	Webb*	9 30 65	Iss.
CI66-5 El Paso Natural Gas Co.	San Juan Basin	N. Mex	San Juan*	11 15 65	Iss.
Austral Oil Co. Incorporated, Operator, et al.:					
CI66-8 Arkansas Louisiana Gas Co.	Northwest Colquitt	La	Claiborne	8 23 65	Iss.
Aylward Drilling Co., Operator, et al.:					
CI66-303 Cities Service Gas Co.	Deerhead North	Kans	Barber	12 2 65	Iss.
J. S. Bailey, Jr., et al.:					
CI66-100 Consolidated Gas Supply Corp.	Lee District	W. Va	Calhoun	9 17 65	Iss.
Perry R. Bass, Operator, et al.:					
CI65-1244 El Paso Natural Gas Co.	Brown-Bassett	Tex	Terrell	7 19 65	Iss.

See footnotes at end of table, p. 1663.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO., AND PURCHASER#	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Allen Beard, et al., d/b/a/ J & B Drilling Co., et al.:					
CI66-249 Consolidated Gas Supply Corp.	Spencer District	W. Va.	Roane	11 16 65	Iss.
Belco Petroleum Corp.:					
CI66-141 El Paso Natural Gas Co.	Hogsback	Wyo.	Sublette*	10 25 65	Iss.
Thomas E. Berry, et al.:					
CI65-1278 Arkansas Louisiana Gas Co.	Milton	Okla.	Haskell	7 23 65	Iss.
CI65-1284 Arkansas Louisiana Gas Co.	Arkoma	Okla.	Le Flore	7 23 65	Iss.
Thomas N. Berry & Co.:					
CI62-1465 Oklahoma Illinois Gas Pipeline Co.	Undesignated	Okla.	Ellis	9 9 65	Den.
Thomas N. Berry & Co., et al.:					
CI65-992 Panhandle Eastern Pipe Line Co.	South Teagarden	Okla.	Woods	11 9 65	Iss.
Blanco Oil Co., Operator, et al.:					
CI61-618 Natural Gas Pipeline Co. of America.	N. E. Thompsonville.	Tex.	Webb	9 30 65	Iss.
Richard L. Bohnsack:					
CI66-242 Arkansas Louisiana Gas Co.	West Dilworth Area.	Okla.	Kay	11 16 65	Iss.
Bowers Drilling Co., Inc.:					
CI66-133 Cities Service Gas Co.	Rhodes	Kans.	Barber	10 8 65	Iss.
CI66-267 Cities Service Gas Co.	I.L.S.	Kans.	Barber	11 22 65	Iss.
Theda E. Boyd, et al.:					
CI66-91 United Natural Gas Co.	Rose Township	Pa.	Jefferson	9 17 65	Iss.
R. J. Braden, et al., Long Run Development Co.:					
CI66-83 Consolidated Gas Supply Corp.	Murphy District	W. Va.	Ritchie	9 17 65	Iss.
Edwin G. Bradley:					
CI65-1235 Panhandle Eastern Pipe Line Co.	Lerado	Kans.	Reno	7 14 65	Iss.
CI65-1270 Panhandle Eastern Pipe Line Co.	Lerado	Kans.	Reno	7 23 65	Iss.
Edwin G. Bradley, Operator, et al.:					
CI66-353 Panhandle Eastern Pipe Line Co.	Undesignated	Kans.	Meade	12 23 65	Iss.
S. F. Bradley:					
CI66-374 United Fuel Gas Co.	Rockhouse Fork of Rockcastle Creek.	Ky.	Martin	12 30 65	Iss.
Austin Brady:					
CI66-200 Cities Service Gas Co.	Hugoton	Kans.	Finney	11 1 65	Iss.
Breuer & Curran Oil Co.:					
CI60-581 Florida Gas Transmission Co.	South Boyle	Tex.	Starr	9 30 65	Iss.
Bright & Schiff:					
CI61-1541 South Texas Natural Gas Gathering Co.	N. E. Thompsonville.	Tex.	Jim Hogg	9 30 65	Iss.

See footnotes at end of table; p. 1663.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,[2] DOCKET NO., AND PURCHASER [3]	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
The British-American Oil Producing Co.:					
CI65-1224 Montana-Dakota Utilities Co.	Poison Creek Unit Wind River Basin.	Wyo.	Fremont	12 30 65	Iss.
C. Arnold Brown, Operator, et al.:					
CI65-1269 Cities Service Gas Co.	North Hardtner	Kans.	Barber	7 23 65	Iss.
George R. Brown:					
CI61-1688 Florida Gas Transmission Co.	Pheasant	Tex.	Matagorda	9 22 65	Iss.
George R. Brown, Operator, et al.:					
CI63-5 Lone Star Gathering Co.	Belitz	Tex.	De Witt	9 22 65	Iss.
Herman Brown Estate, et al.:					
G-18479 Florida Gas Transmission Co.	N. Monte Christo	Tex.	Hidalgo	9 30 65	Iss.
Robert T. Brown, Operator, et al.:					
CI61-733 El Paso Natural Gas Co.	Howard Draw	Tex.	Crockett	8 5 65	Iss.
S. E. Brown, Trustee:					
CI65-1019 J. A. Heard, d/b/a Heard Oil & Gas.	Quinto Creek	Tex.	Jim Wells	10 1 65	Iss.
H. D. Bruns, et al.:					
CI63-820 Lone Star Gathering Co.	Speary	Tex.	Karnes	9 22 65	Iss.
W. H. Bryant, Operator, et al.:					
CI64-923 Lone Star Gas Co.	Penn-Griffith	Tex.	Rusk	8 27 65	Iss.
L. W. Burdette:					
CI66-109 Gas Transport, Inc.	Grant District	W. Va.	Jackson	10 1 65	Iss.
Burk Gas Corp.:					
CI64-285 Natural Gas Pipeline Co. of America.	Boonsville Bend Conglomerate.	Tex.	Wise	8 10 65	Iss.
Burnham & Eberly Gas Co.:					
CI65-1372 United Natural Gas Co.	Elberly Farm*	Pa.	Elk	8 19 65	Iss.
L. T. Burns Estate, Operator, et al.:					
CI65-1170 Natural Gas Pipeline Co. of America.	Boonsville Bend Conglomerate.	Tex.	Wise	8 10 65	Iss.
Bush & Williams:					
CI66-89 Consolidated Gas Supply Corp.	Troy District	W. Va.	Gilmer	9 17 65	Iss.
Bush & Williams, et al.:					
CI66-265 Consolidated Gas Supply Corp.	Murphy District	W. Va.	Ritchie	11 22 65	Iss.
Cabot Corp.:					
CI66-295 United Gas Pipe Line Co.	Fostoria	Tex.	Montgomery	12 28 65	Iss.
CI66-317 United Gas Pipe Line Co.	Fostoria	Tex.	Montgomery	12 2 65	Iss.
Cabot Corp., Operator, et al.:					
CI66-275 Southern Natural Gas Co.	Bayou Henry	La.	Iberville	11 22 65	Iss.

See footnotes at end of table, p. 1663.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO., AND PURCHASER#	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Francis E. Cain, Agent:					
CI65-1317 Consolidated Gas Supply Corp.	Murphy District	W. Va.	Ritchie	7 29 65	Iss.
CI66-82 Consolidated Gas Supply Corp.	Sheridan District	W. Va.	Calhoun	9 17 65	Iss.
Callery Properties, Inc.:					
G-18857 Florida Gas Transmission Co.	Palacios	Tex.	Matagorda	9 22 65	Iss.
Calvert Exploration Co., Operator, et al.:					
CI65-1004 Colorado Interstate Gas Co.	Mocane	Okla.	Beaver	10 1 65	Iss.
Capitan Petroleums, Inc.:					
CI65-561 Natural Gas Pipeline Co. of America.	Bluitt	N. Mex.	Roosevelt	11 3 65	Iss.
M. D. Carey, d/b/a Carey Oil Co., et al.:					
CI66-84 Consolidated Gas Supply Corp.	Grant District	W. Va.	Doddridge	9 17 65	Iss.
Carlon oil Co.:					
CI66-326 United Gas Pipe Line Co.	Red Branch	Tex.	Trinity	12 13 65	Iss.
Carri oil, et al.:					
CI60-403 Tennessee Gas Transmission Co.	Undesignated	Tex.	Jackson	9 22 65	Iss.
CI60-592 Tennessee Gas Transmission Co.	Undesignated	Tex.	Jackson	9 22 65	Iss.
Caruthers Operating Co., Inc., Operator, et al.:					
CI66-62 Southwest Gas Producing Co., Inc.	Lisbon	La.	Claiborne	12 2 65	Iss.
Central Gas Co.:					
CI66-363 Consolidated Gas Supply Corp.	Troy District	W. Va.	Gilmer	12 23 65	Iss.
Central Gas Co., et al.:					
CI65-1335 Consolidated Gas Supply Corp.	Center District	W. Va.	Calhoun	8 9 65	Iss.
Chambers & Kennedy, Operator, et al.:					
CI65-1188 Almos Gas Gathering Co.	Linke	Tex.	Bee	7 23 65	Iss.
Champlin Petroleum Co.:					
CI62-1455 Oklahoma Illinois Gas Pipeline Co.	Undesignated	Okla.	Woodward	9 9 65	Den.
CI62-1456 Oklahoma Illinois Gas Pipeline Co.	Undesignated	Okla.	Ellis	9 9 65	Den.
Chester Oil Co.:					
CI66-302 Panhandle Eastern Pipe Line Co.	Mocane-Laverne	Okla.	Beaver	12 1 65	Iss.
A. F. Childers, Jr., Operator, et al.:					
CI62-1152 Florida Gas Transmission Co.	James Creek	Tex.	Wharton	9 22 65	Iss.
Cities Service Co.:					
CI62-959 Lone Star Gathering Co.	Yorktown	Tex.	De Witt	9 22 65	Iss.

See footnotes at end of table, p. 1663.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO., AND PURCHASER#	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Cities Service Oil Co.:					
CI65-837 Panhandle Eastern Pipe Line Co.	Northeast Sampsel	Okla.	Cimarron	8 10 65	Iss.
Cities Service Oil Co., Operator, et al.:					
CI64-211 South Texas Natural Gas Gathering Co.	W. Yeary	Tex.	Kleberg	9 30 65	Iss.
Cities Service Petroleum Co.:					
CI62-1556 Oklahoma Illinois Gas Pipeline Co.	Undesignated	Okla.	Ellis	9 9 65	Den.
Clark Fuel Producing Co., Operator:					
CI63-1495 South Texas Natural Gas Gathering Co.	Sam Fordyce	Tex.	Hidalgo	9 30 65	Iss.
Clark Oil & Refining Corp.:					
CI66-326 Kansas-Nebraska Natural Gas Co., Inc.	Undesignated	Colo.	Washington	12 13 65	Iss.
Cleary Petroleum, Inc.:					
CI65-1163 Northern Natural Gas Co.	Como	Okla.	Beaver	7 19 65	Iss.
Cleary Petroleum, Inc., Operator, et al.:					
CI65-1220 Almos Gas Gathering Co.	Cranz	Tex.	Bee	7 23 65	Iss.
Cleroy Inc., et al.:					
CI62-1424 Oklahoma Illinois Gas Pipeline Co.	Red Oak	Okla.	Latimer	9 9 65	Den.
G. M. Close Co., Ltd., Operator, et al.:					
CI65-1348 Panhandle Eastern Pipe Line Co.	Oakdale Pool	Okla.	Woods	8 9 65	Iss.
Coastal States Gas Producing Co., Operator, et al.:					
CI65-1203 Texas Eastern Transmission Corp.	Dallas Husky	Tex.	Goliad	7 14 65	Iss.
George H. Coates:					
CI60-591 South Texas Natural Gas Gathering Co.	Shepherd	Tex.	Hidalgo	9 30 65	Iss.
C. W. Coffey and North Central Oil Corp.:					
CI60-496 Tennessee Gas Transmission Co.	Blessing	Tex.	Matagorda	9 22 65	Iss.
H. H. Coffield:					
CI62-1482 Oklahoma Illinois Gas Pipeline Co.	Red Oak	Okla.	Haskell*	9 9 65	Den.
Colorado Oil & Gas Corp.:					
CI65-927 Panhandle Eastern Pipe Line Co.	Sampsel	Okla.	Cimarron	8 10 65	Iss.

See footnotes at end of table, p. 1663.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO., AND PURCHASER#	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Continental Oil Co.:					
CI61-375 Transwestern Pipeline Co.	Van Doren Gas Unit.	Okla.	Ellis	8 31 65	Iss.
CI62-961 Lone Star Gathering Co.	Griswell	Tex.	De Witt	9 22 65	Iss.
CI64-1307 South Texas Natural Gas Gathering Co.	Shepherd	Tex.	Hidalgo	9 30 65	Iss.
CI64-1310 Tennessee Gas Transmission Co.	Lopeno	Tex.	Zapata	9 30 65	Iss.
CI64-1311 South Texas Natural Gas Gathering Co.	San Ramon	Tex.	Hidalgo	9 30 65	Iss.
CI65-1185 Florida Gas Transmission Co.	McGill Ranch	Tex.	Kenedy	11 1 65	Iss.
CI65-1190 Michigan Wisconsin Pipe Line Co.	Woodward Area	Okla.	Woodward	7 14 65	Iss.
CI65-1199 Montana-Dakota Utilities Co.	Alkali Creek	Wyo.	Fremont	7 14 65	Iss.
CI65-1309 Arkansas Louisiana Gas Co.	S. E. Lahoma	Okla.	Garfield	7 29 65	Iss.
CI66-336 Arkansas Louisiana Gas Co.	Red Oak	Okla.	Latimer*	12 13 65	Iss.
C. C. Cottrille, Agent for Neds Run Oil & Gas Co.:					
CI66-261 Consolidated Gas Supply Corp.	McClellan District	W. Va.	Doddridge	11 22 65	Iss.
Couba Oil Co.:					
CI66-95 Transcontinental Gas Pipe Line Corp.	Bayou Couba	La.	St. Charles	9 17 65	Iss.
Edwin L. Cox:					
CI63-1430 Panhandle Eastern Pipe Line Co.	Undesignated	Okla.	Beaver	9 14 65	Iss.
CI65-1273 Natural Gas Pipeline Co. of America.	Bergen Unit	Okla.	Beaver	7 23 65	Iss.
Edwin L. Cox, et al.:					
CI60-620 Tennessee Gas Transmission Co.	North Texana	Tex.	Jackson	9 22 65	Iss.
CI65-1259 Transcontinental Gas Pipe Line Corp.	Live Oak	La.	Vermilion	7 14 65	Iss.
C. L. Craig:					
CI66-380 Colorado Interstate Gas Co.	Keyes	Okla.	Cimarron	12 30 65	Iss.
Cree Drilling Co., Inc.:					
CI61-193 Transwestern Pipeline Co.	Cree Flowers Area	Tex.	Roberts	8 31 65	Iss.
Criner Processing, Operator:					
CI66-20 Lone Star Gas Co.	Southwest Ardmore	Okla.	Carter	8 27 65	Iss.
M. W. Crockett, et al.:					
G-18522 Florida Gas Transmission Co.	Yzaguirre	Tex.	Starr	9 30 65	Iss.
David Crow, Operator, et al.:					
CI66-219 United Gas Pipe Line Co.	Washington	La.	St. Landry	11 16 65	Iss.

See footnotes at end of table, p. 1663.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,[#] DOCKET NO., AND PURCHASER[#]	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Crump Oil Co.:					
CI65-1251 Consolidated Gas Supply Corp.	Grant District	W. Va.	Ritchie	7 19 65	Iss.
Crystal Oil & Land Co.:					
CI66-268 Texas Eastern Transmission Corp.	Northeast Lisbon Area.	La.	Claiborne Parish.	11 22 65	Iss.
Crystal Oil & Land Co., Operator, et al.:					
CI65-1257 Texas Gas Transmission Corp.	West Arcadia	La.	Bienville	7 19 65	Iss.
CI66-231 Landa Oil Co.	Orange Grove	Tex.	Jim Wells	11 22 65	Iss.
A. J. Curtis, Operator, et al.:					
CI65-1285 Kansas-Nebraska Natural Gas Co., Inc.	Dombey	Okla.	Texas	7 23 65	Iss.
Joseph H. Cutlip, Agent:					
CI66-250 Consolidated Gas Supply Corp.	Central District	W. Va.	Doddridge	11 16 65	Iss.
J. B. Dale, et al., d/b/a Dale Drilling Co., et al.:					
CI66-264 Consolidated Gas Supply Corp.	Washington District	W. Va.	Calhoun	11 22 65	Iss.
Damac Corp. & W. R. Anderson, Trustee:					
CI66-221 Landa Oil Co.	Quinto Creek	Tex.	Jim Wells[6]	11 16 65	Iss.
Davis Drilling, Inc.:					
CI66-105 Baca Gas Gathering System, Inc.	Flank	Colo.	Baca	10 1 65	Iss.
Davon Drilling Co., et al.:					
CI65-37 Panhandle Eastern Pipe Line Co.	Oakdale	Okla.	Woods	9 14 65	Iss.
Rodney Delange, et al.:					
CI62-962 Lone Star Gathering Co.	Yorktown	Tex.	De Witt	9 22 65	Iss.
Delta Corp.:					
CI66-2 Northern Natural Gas Co.	Southeast Logan	Okla.	Beaver	8 23 65	Iss.
George J. Despot:					
CI65-1225 Bluebonnet Gas Corp.	North Government Wells.	Tex.	Duval	9 14 65	Iss.
Diversa, Inc., et al.:					
G-20458 Florida Gas Transmission Co.	Half Moon Reef	Tex.	Aransas	9 30 65	Iss.
Philip C. Dixon:					
CI63-585 Oklahoma Illinois Gas Pipeline Co.	Red Oak	Okla.	Latimer	9 9 65	Den.
Patrick A. Doheny, et al.:					
CI65-1207 Montana-Dakota Utilities Co.	Poison Creek Unit	Wyo.	Fremont	7 6 65	Rej.
CI66-134 Montana-Dakota Utilities Co.	Poison Creek Unit	Wyo.	Fremont	10 8 65	Iss.
Mrs. James R. Dougherty, et al.:					
CI61-619 Natural Gas Pipeline Co. of America.	Normanna	Tex.	Bee	9 22 65	Iss.
Dunn-Mar Oil & Gas Co.:					
CI66-349 Pennzoil Co.	Huey Lease	W. Va.	Marion	12 23 65	Iss.

See footnotes at end of table, p. 1663.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO., AND PURCHASER#	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Orville Eberly, et al.:					
CI65-47 Consolidated Gas Supply Corp.	Union	W. Va.	Barbour	9 14 65	Iss.
E. K. Edmiston, Operator, et al.:					
CI66-110 Cities Service Gas Co.	Northwest Sharon	Kans.	Barber	10 1 65	Iss.
El Paso Natural Gas Products Co.:					
CI63-89 Oklahoma Illinois Gas Pipeline Co.	Undesignated	Okla.	Ellis	9 9 65	Den.
C. L. Eleson, et al.:					
CI65-1320 Consolidated Gas Supply Corp.	Freemans Creek District.	W. Va.	Lewis	7 29 65	Iss.
Robert N. Enfield, et al.:					
CI65-577 Natural Gas Pipeline Co. of America.	Indian Basin	N. Mex.	Eddy	11 3 65	Iss.
Nelson B. Escue:					
CI66-51 Panhandle Eastern Pipe Line Co.	Adams Ranch	Kans.	Meade	9 15 65	Iss.
Nelson B. Escue, Operator, et al.:					
CI65-610 Panhandle Eastern Pipe Line Co.	Undesignated	Okla.	Beaver	8 10 65	Iss.
Ralph E. Fair, Inc.:					
CI62-780 Lone Star Gathering Co.	Undesignated	Tex.	Undesignated	9 22 65	Iss.
CI63-56 Lone Star Gathering Co.	Marshall	Tex.	Goliad	9 22 65	Iss.
Falcon Seaboard Drilling Co., Operator, et al.:					
CI64-1109 Michigan Wisconsin Pipe Line Co.	South May	Okla.	Ellis	11 1 65	Iss.
W. J. Fellers, Operator, et al.:					
CI66-116 Northern Natural Gas Co.	North Lemon*	Kans.	Haskell	10 1 65	Iss.
Fez Gas Co.:					
CI65-1223 United Fuel Gas Co.	Union District	W. Va.	Lincoln	7 14 65	Iss.
Richard M. Finder, d/b/a Texkan Oil Co., et al.:					
CI61-352 United Gas Pipe Line Co.	Ganado	Tex.	Jackson	9 22 65	Iss.
William I. Forbes, et al.:					
CI65-1281 Consolidated Gas Supply Corp.	De Kalb District	W. Va.	Gilmer	7 23 65	Iss.
Foster Petroleum Corp.:					
CI66-337 Oklahoma Natural Gas Gathering Co.	Ringwood	Okla.	Major	12 13 65	Iss.
Frankel Oil & Gas Co., Operator, et al.:					
CI66-86 Valley Gas Transmission, Inc.	Gum Cove	La.	Cameron	9 17 65	Iss.

See footnotes at end of table, p. 1663.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,[2] DOCKET NO., AND PURCHASER[3]	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Franks Petroleum, Operator, et al.:					
CI65-1221 Texas Gas Transmission Corp.	Sugar Creek	La	Claiborne	7 14 65	Iss.
CI66-290 United Gas Pipe Line Co.	South Downsville	La	Lincoln	12 1 65	Iss.
Francis Friestad, et al.:					
CI65-1304 Consolidated Gas Supply Corp.	Glenville District	W. Va	Gilmer	7 29 65	Iss.
CI65-1337 Kentucky West Virginia Gas Co.	Appalachian	Ky	Lawrence*	8 9 65	Iss.
CI66-228 Consolidated Gas Supply Corp.	Glenville District	W. Va	Gilmer	11 16 65	Iss.
Frio Production Co., Operator, et al.:					
CI65-1186 Almos Gas Gathering Co.	East Tynan	Tex	Bee	7 23 65	Iss.
Roy Furr, Operator, et al.:					
CI65-1229 Panhandle Eastern Pipe Line Co.	Undesignated	Tex	Hansford	7 27 65	Iss.
CI65-1340 Panhandle Eastern Pipe Line Co.	Undesignated	Tex	Hutchinson*	8 9 65	Iss.
GMC Oil & Gas Corp.:					
CI66-304 Panhandle Eastern Pipe Line Co.	Richmond Pool	Okla	Woodward	12 13 65	Iss.
Coke L. Gage, Operator, et al.:					
CI65-146 Natural Gas Pipeline Co. of America.	Boonsville	Tex	Wise	8 10 65	Iss.
Charles P. Gallagher, et al.:					
CI63-715 Oklahoma Illinois Gas Pipeline Co.	Undesignated	Okla	Ellis	9 9 65	Den.
Gregory J. Gallagher:					
G-19308 Florida Gas Transmission Co.	Palacios	Tex	Matagorda	9 22 65	Iss.
G-20385 Florida Gas Transmission Co.	Palacios	Tex	Matagorda	9 22 65	Iss.
John P. Gallagher, et al.:					
CI62-1471 Oklahoma Illinois Gas Pipeline Co.	Undesignated	Okla	Undesignated	9 9 65	Den.
William Gallagher, et al.:					
CI63-702 Oklahoma Illinois Gas Pipeline Co.	Undesignated	Okla	Ellis	9 9 65	Den.
Ezra R. Gawthrop, et al.:					
CI66-306 Pennzoil Co.	McClellan	W. Va	Doddridge	12 2 65	Iss.
General American Oil Co. of Texas:					
CI66-35 Transcontinental Gas Pipe Line Corp.	West Cameron Area, Block 45.	La	Cameron Parish.	10 8 65	Iss.
Geochemical Surveys, et al.:					
CI65-1211 Arkansas Louisiana Gas Co.	Bistineau	La	Bienville*	7 14 65	Iss.
Geological Exploration Co., Operator, et al.:					
CI64-680 Lone Star Gas Co.	Undesignated	Tex	Rusk	11 22 65	Iss.

See footnotes at end of table, p. 1663.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO., AND PURCHASER#	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
C. W. Gerwig, et al., d/b/a Trace Gas Co.:					
CI66-65 Equitable Gas Co.	Otter District	W. Va.	Braxton	9 15 65	Iss.
Getty Oil Co., Operator, et al.:					
G-18378 Florida Gas Transmission Co.	Half Moon Reef	Tex.	Aransas	9 30 65	Iss.
Arch B. Gilbert, et al.:					
CI66-28 Arkansas Louisiana Gas Co.	Bonanza	Ark.	Sebastian	11 15 65	Iss.
Ginther, Warren & Co.:					
CI64-916 Natural Gas Pipeline Co. of America.	Ann-Mag	Tex.	Brooks	9 30 65	Iss.
J. Glenn, et al.:					
CI63-149 Jernigan & Morgan Transmission Co.	E. Victor	Okla.	Lincoln	7 14 65	Iss.
Global Oils, Inc.:					
CI66-184 Panhandle Eastern Pipe Line Co.	West Valley Center	Okla.	Dewey	11 1 65	Iss.
Glover & Hefner Petroleum Management Corp.:					
CI66-387 El Paso Natural Gas Co.	Panhandle East	Tex.	Collingsworth	12 30 65	Iss.
W. J. Goldston, et al.:					
CI66-130 Kansas-Nebraska Natural Gas Co., Inc.	North Shawnee-Flat Top.	Wyo.	Converse	10 8 65	Iss.
Graham-Michaelis Drilling Co., Operator, et al.:					
CI66-180 Northern Natural Gas Co.	Southwest Hooker	Okla.	Texas	11 1 65	Iss.
Roger K. Gray, et al.:					
CI66-40 Cities Service Gas Co.	South Bishop	Ellis	Okla.	9 14 65	Iss.
Caroline Gruss, et al.:					
CI66-270 Mountain Fuel Supply Co.	South Baggs Unit	Wyo.	Carbon	11 22 65	Iss.
Gulf Oil Corp.:					
CI64-883 Natural Gas Pipeline Co. of America.	Ann-Mag	Tex.	Brooks	9 30 65	Iss.
CI64-1224 Michigan Wisconsin Pipe Line Co.	Lovedale	Okla.	Harper	12 13 65	Iss.
CI65-719 Frank J. Spiva, Jr. & A. K. Doss, Jr.	West Norton Palo Pinto.	Tex.	Runnels	7 1 65	Wtd.
CI66-173 Cities Service Gas Co.	South Bishop	Okla.	Ellis	10 25 65	Iss.
CI66-294 Panhandle Eastern Pipe Line Co.	West Perryton	Tex.	Ochiltree	12 2 65	Iss.
CI66-307 Cities Service Gas Co.	Boggs	Kans.	Barber	12 2 65	Iss.
Gulf Sands Oil Co., Operator, et al.:					
CI65-1262 Texas Eastern Transmission Corp.	Seven Sisters	Tex.	Duval	7 19 65	Iss.

See footnotes at end of table, p. 1663.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,[2] DOCKET NO., AND PURCHASER[2]	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Carl E. Gungoll, et al.:					
CI65-1279 Panhandle Eastern Pipe Line Co.	South Teagarden	Okla.	Woods	7 29 65	Iss.
CI66-220 Panhandle Eastern Pipe Line Co.	Northwest Oakdale	Okla.	Woods	11 16 65	Iss.
H & Y Oil Co.:					
CI61-1774 Transwestern Pipeline Co.	Brillhart-Cherokee	Tex.	Hansford	8 31 65	Iss.
Jake L. Hamon, Operator, et al.:					
CI66-76 Arkansas Louisiana Gas Co.	Red Oak	Okla.	Latimer	11 15 65	Iss.
CI66-386 El Paso Natural Gas Co.	Spraberry Trend Area.	Tex.	Reagan	12 28 65	Iss.
Hanagan Petroleum Corp., et al.:					
CI65-586 Natural Gas Pipeline Co. of America.	Indian Basin	N. Mex.	Eddy	11 3 65	Iss.
Hanlon Oil Co.:					
CI65-1300 Consolidated Gas Supply Corp.	McKim District 4	W. Va.	Ritchie	7 29 65	Iss.
Charles O. Hardey, Operator et al.:					
CI66-54 United Gas Pipe Line Co.	Sibley	La.	Webster Parish	9 15 65	Iss.
CI66-125 Arkansas Louisiana Gas Co.	Greenwood-Waskom.	La.	Caddo	10 25 65	Iss.
Don W. Hardman, et al., d/b/a Drilco Oil Production:					
CI66-251 Consolidated Gas Supply Corp.	Troy District	W. Va.	Gilmer	11 16 65	Iss.
Har-Ken Oil Co., et al.:					
CI65-933 Texas Gas Transmission Corp.	Midland	Ky.	Muhlenberg	9 14 65	Iss.
Har-Ken Oil Co., Operator, et al.:					
CI66-90 Texas Gas Transmission Corp.	St. Charles	Ky.	Hopkins	10 1 65	Iss.
Harper Oil Co.:					
CI63-598 Oklahoma Illinois Gas Pipeline Co.	Undesignated	Okla.	Latimer	9 9 65	Den.
Harper Oil Co., Operator, et al.:					
CI65-701 Michigan Wisconsin Pipe Line Co.	Laverne	Okla.	Harper	11 16 56	Iss.
Harper-Smith & Associates, Inc., Operator et al.:					
CI66-213 United Gas Pipe Line Co.	Yanta	Tex.	Goliad	11 16 65	Iss.
W. W. Harvey & W. C. Sojourner:					
CI66-282 Arkansas Louisiana Gas Co.	Red Oak	Okla.	Latimer*	11 22 65	Iss.
H. L. Hawkins & H. L. Hawkins, Jr., Operator, et al.:					
G-18077 Florida Gas Transmission Co.	Lockridge	Tex.	Brazoria	9 22 65	Dis.

See footnotes at end of table, p. 1653.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,[2] DOCKET NO., AND PURCHASER[2]	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Hays & Co., Agent:					
CI65-1301 Consolidated Gas Supply Corp.	Glenville District	W. Va.	Gilmer	7 29 65	Iss.
CI65-1316 Consolidated Gas Supply Corp.	Glenville District	W. Va.	Gilmer	7 29 65	Iss.
CI65-1322 Consolidated Gas Supply Corp.	Union District	W. Va.	Ritchie	7 29 65	Iss.
CI65-1333 Consolidated Gas Supply Corp.	Glenville District	W. Va.	Gilmer	8 9 65	Iss.
CI66-99 Consolidated Gas Supply Corp.	Sheridan District	W. Va.	Calhoun	9 17 65	Iss.
CI66-244 Consolidated Gas Supply Corp.	Glenville District	W. Va.	Gilmer	11 16 65	Iss.
Hays & Co., Agent for Norman C. Slaughter, et al.:					
CI66-74 Consolidated Gas Supply Corp.	Collins Settlement District.	W. Va.	Lewis	9 17 65	Iss.
The Hefner Production Co.:					
CI63-595 Oklahoma Illinois Gas Pipeline Co.	Red Oak	Okla.	Latimer	9 9 65	Den.
James D. Heidt:					
CI65-1234 Arkansas Louisiana Gas Co.	Ivan	La.	Webster	7 19 65	Iss.
Heller Gas Co., et al.:					
CI66-197 Consolidated Gas Supply Corp.	Home Camp	Pa.	Clearfield	11 15 65	Iss.
Heritage Petroleum Corp.:					
CI61-1567 Florida Gas Transmission Co.	North Appling	Tex.	Calhoun	9 22 65	Iss.
Herndon Drilling Co.:					
CI66-179 Northern Natural Gas Co.	Embry	Kans.	Edwards	11 15 65	Iss.
Maxwell Herring Drilling Corp., Operator, et al.:					
CI65-1252 United Gas Pipe Line Co.	Mount Selman	Tex.	Cherokee	7 19 65	Iss.
Highland Oil Co.:					
CI64-346 Lone Star Gathering Co.	North Koenig	Tex.	De Witt	9 22 65	Iss.
A. G. Hill:					
CI61-497 Transwestern Pipeline Co.	Cree Flowers	Tex.	Roberts	8 31 65	Iss.
George P. & Houston Hill, d/b/a Hill & Hill:					
CI66-183 Panhandle Eastern Pipe Line Co.	Mocane-Laverne	Okla.	Beaver	11 1 65	Iss.
John H. Hill, et al.:					
CI66-338 Cities Service Gas Co.	Bishop Area	Okla.	Roger Mills	12 13 65	Iss.
T. F. Hodge:					
CI63-81 Oklahoma Illinois Gas Pipeline Co.	Undesignated	Okla.	Latimer	9 9 65	Den.
Slats Honeymon Drilling Co.:					
CI62-1463 Oklahoma Illinois Gas Pipeline Co.	Undesignated	Okla.	Ellis	9 9 65	Den.

See footnotes at end of table, p. 1663.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO., AND PURCHASER#	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
L. B. Horn, Operator, et al.:					
CI64-908 Tennessee Gas Transmission Co.	Seven Sisters	Tex.	Duval	9 30 65	Iss.
Edward B. Hostoffer, et al.:					
CI66-144 Equitable Gas Co.	Salt Lick	W. Va.	Braxton	10 25 65	Iss.
Houston Royalty Co., Operator, et al.:					
CI65-1368 United Gas Pipe Line Co.	Sardis Church	La.	Caldwell	8 19 65	Iss.
H. H. Howell, Operator, et al.:					
G-20595 United Gas Pipe Line Co.	Stewart	Tex.	Jackson	9 22 65	Iss.
CI60-402 Tennessee Gas Transmission Co.	Carmichael	Tex.	Jackson	9 22 65	Iss.
CI60-640 United Gas Pipe Line Co.	Sterling	Tex.	Jackson	9 22 65	Iss.
J. M. Huber Corp.:					
CI64-533 Northern Natural Gas Co.	Laverne	Okla.	Harper	8 10 65	Iss.
CI66-185 Cities Service Gas Co.	N. W. Boggs	Kans.	Barber	11 1 65	Iss.
W. H. Hudson, Operator, et al.:					
CI62-1074 Tennessee Gas Transmission Co.	Wilcox	Tex.	Zapata	9 30 65	Iss.
Humble Oil & Refining Co.:					
CI63-1057 Trunkline Gas Co.	Quicksand Creek	Tex.	Newton	9 22 65	Iss.
CI64-297 Natural Gas Pipeline Co. of America.	Willamar*	Tex.	Willacy	9 30 65	Iss.
CI64-298 Tennessee Gas Transmission Co.	N. E. Kohle*	Tex.	Duval	9 30 65	Iss.
CI64-299 Natural Gas Pipeline Co. of America.	Sal Del Rey	Tex.	Hidalgo	9 30 65	Iss.
CI64-677 Natural Gas Pipeline Co. of America.	Pledger Miocene	Tex.	Brazoria	9 22 65	Iss.
CI64-1244 Natural Gas Pipeline Co. of America.	Undesignated	Tex.	Kenedy	9 30 65	Iss.
CI65-1261 Kansas-Nebraska Natural Gas Co., Inc.	Syracuse	Kans.	Hamilton	7 19 65	Iss.
CI66-4 Natural Gas Pipeline Co. of America.	Putnam	Okla.	Dewey	9 15 65	Iss.
Caroline Hunt Trust Estate:					
CI61-1344 Natural Gas Pipeline Co. of America.	Chenango	Tex.	Brazoria	9 22 65	Iss.
H. L. Hunt:					
CI61-1282 Natural Gas Pipeline Co. of America.	Alta Loma	Tex.	Galveston	9 22 65	Iss.
H. L. Hunt, Operator, et al.:					
CI61-1221 Natural Gas Pipeline Co. of America.	City of Alvin	Tex.	Brazoria	9 22 65	Iss.

See footnotes at end of table, p. 1663.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO., AND PURCHASER#	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION 1
Hassie Hunt Trust, Operator, et al.:					
CI61-1283 Natural Gas Pipeline Co. of America.	Alta Loma	Tex	Galveston	9 22 65	Iss.
Lamar Hunt, et al.:					
CI61-1736 Natural Gas Pipeline Co. of America.	Undesignated	Tex	Aransas	9 22 65	Iss.
Lamar Hunt Trust Estate:					
CI61-1345 Natural Gas Pipeline Co. of America.	Chenango	Tex	Brazoria	9 22 65	Iss.
Nelson Bunker Hunt:					
CI61-1346 Natural Gas Pipeline Co. of America.	Chenango	Tex	Brazoria	9 22 65	Iss.
Hunt Oil Co.:					
CI65-1241 Panhandle Eastern Pipe Line Co.	Undesignated	Okla	Woodward*	11 22 65	Iss.
CI65-1347 El Paso Natural Gas Co.	Brown-Bassett	Tex	Crockett	8 9 65	Iss.
CI66-157 American Louisiana Pipe Line Co.	Calcasieu Lake	La	Cameron	12 23 65	Iss.
Husky Oil Co.:					
CI65-1249 Cody Gas Co.	Tailgate of Ralston plant.	Wyo	Park	7 23 65	Iss.
Curtis R. Inman, et al.:					
CI65-658 Natural Gas Pipeline Co. of America.	Indian Basin	N. Mex.	Eddy	11 3 65	Iss.
International Oil & Gas Corp.:					
CI65-679 Natural Gas Pipeline Co. of America.	Indian Basin	N. Mex.	Eddy	11 3 65	Iss.
Investors Syndicate of the Southwest, Inc.:					
G-18590 Florida Gas Transmission Co.	N. Monte Christo	Tex	Hidalgo	9 30 65	Iss.
A. R. Jackson, Agent:					
CI66-98 Consolidated Gas Supply Corp.	Center District	W. Va.	Calhoun	9 17 65	Iss.
George Jackson:					
CI65-1334 Consolidated Gas Supply Corp.	Grant District	W. Va.	Doddridge	8 9 65	Iss.
E. Lyle Johnson, Operator, et al.:					
CI66-211 Kansas-Nebraska Natural Gas Co., Inc.	Bradshaw	Kans.	Hamilton	11 16 65	Iss.
Edwin M. Jones Oil Co.:					
CI61-1202 Natural Gas Pipeline Co. of America.	Undesignated	Tex	Undesignated	9 22 65	Iss.
Jones & Pellow Oil Co., Operator, et al.:					
CI66-186 Michigan Wisconsin Pipe Line Co.	Valley Center West.	Okla.	Dewey	12 1 65	Iss.

See footnotes at end of table, p. 1663.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO., AND PURCHASER#	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Jonnell Gas, Inc., Operator, et al.:					
CI60-323 Tennessee Gas Transmission Co.	Lopeno	Tex.	Zapata	9 30 65	Iss.
CI63-925 Tennessee Gas Transmission Co.	South Escobas	Tex.	Zapata	9 30 65	Iss.
Jumbo Oil & Gas, Inc., et al.:					
CI65-1323 Consolidated Gas Supply Corp.	Union District	W. Va.	Upshur	7 29 65	Iss.
The Jupiter Corp., et al.:					
CI62-698 Lone Star Gathering Co.	Yorktown	Tex.	De Witt	9 22 65	Iss.
Keener Oil Co.:					
CI62-1480 Oklahoma Illinois Gas Pipeline Co.	North Catesby	Okla.	Ellis	9 9 65	Den.
Kerr-McGee Oil Industries, Inc.:					
CI65-1231 Panhandle Eastern Pipe Line Co.	Northeast Sampsel	Okla.	Cimarron	8 9 65	Iss.
CI66-78 Northern Natural Gas Co.	Northeast Ivanhoe	Okla.	Beaver	10 1 65	Iss.
CI66-143 American Louisiana Pipe Line Co.	Hog Bayou	La.	Cameron	10 25 65	Iss.
Killiam & Hurd:					
CI61-626 Natural Gas Pipeline Co. of America.	N. E. Thompsonville.	Tex.	Webb*	9 30 65	Iss.
Kilroy Properties Incorporated, et al.:					
CI60-478 Trunkline Gas Co.	Arcadia	Tex.	Galveston	9 22 65	Dis.
CI66-287 Transcontinental Gas Pipe Line Corp.	North Live Oak	La.	Vermilion	11 22 65	Iss.
W. S. Kilroy, Operator, et al.:					
G-18175 Florida Gas Transmission Co.	Palacios	Tex.	Matagorda	9 22 65	Iss.
Kingwood Oil Co.:					
CI62-1514 Oklahoma Illinois Gas Pipeline Co.	Undesignated	Okla.	Ellis	9 9 65	Den.
CI63-3 Oklahoma Illinois Gas Pipeline Co.	Undesignated	Okla.	Ellis	9 9 65	Den.
Kirby Petroleum Co., Operator:					
CI60-610 Florida Gas Transmission Co.	Palacios	Tex.	Matagorda	9 22 65	Iss.
Kirby Production Co.:					
CI63-85 Oklahoma Illinois Gas Pipeline Co.	Red Oak	Okla.	Latimer	9 9 65	Den.
L. W. Cunningham Gas Co., et al.:					
CI65-1103 Cabot Corp.	Undesignated	W. Va.	Ritchie	8 10 65	Iss.
L & H Drilling Co., Inc., Operator, et al.:					
CI66-320 Texas Gas Transmission Corp.	Sugar Creek	Ky.	Hopkins	12 2 65	Iss.
La Gloria Oil & Gas Co.:					
CI66-53 Northern Natural Gas Co.	East Clark Area	Okla.	Harper	10 1 65	Iss.

See footnotes at end of table, p. 1663.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,[2] DOCKET NO., AND PURCHASER[3]	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Roy A. Lamb & A. G. Galt, d/b/a Pan American Eng., Co.:					
CI62-21 Florida Gas Transmission Co.	South Driscoll	Tex.	Nueces	9 30 65	Iss.
Laurel Fork Oil & Gas Co. Smith No. 1.:					
CI65-1250 Consolidated Gas Supply Corp.	Murphy District	W. Va.	Ritchie	7 19 65	Iss.
Robert A. Lee, Operator, et al.:					
CI66-18 United Gas Pipe Line Co.	Baxterville	Miss.	Lamar	8 27 65	Iss.
Quintin Little:					
CI66-206 Lone Star Gas Co.	East Doyle	Okla.	Stephens	11 1 65	Iss.
Little Swiss Oil & Gas Co.:					
CI66-73 Consolidated Gas Supply Corp.	Collins Settlement District.	W. Va.	Braxton	9 17 65	Iss.
Livingston Oil Co.:					
CI60-508 Tennessee Gas Transmission Co.	N. E. Lopeno	Tex.	Zapata	9 30 65	Iss.
Lone Star Producing Co.:					
CI61-918 United Gas Pipe Line Co.	Normanna	Tex.	Bee	9 22 65	Iss.
CI65-760 Panhandle Eastern Pipe Line Co.	North Forgan	Okla.	Beaver	8 10 65	Iss.
Ralph Lowe, et al.:					
CI65-649 Natural Gas Pipeline Co. of America.	Indian Basin	N. Mex.	Eddy	11 3 65	Iss.
Lundells, Inc., Operator, et al.:					
CI64-810 Natural Gas Pipeline Co. of America.	Lundell	Tex.	Duval	9 30 65	Iss.
Lloyd A. Lynd, Jr.:					
CI66-315 Cities Service Gas Co.	Undesignated	Kans.	Cowley	12 2 65	Iss.
C. H. Lyons, Sr., et al.:					
CI66-119 Texas Eastern Transmission Corp.	Naka[4]	La.	St. Landry	10 1 65	Iss.
C. H. Lyons, Sr., Operator, et al.:					
CI65-867 United Gas Pipe Line Co.	Rodessa	Tex.	Cass	8 19 65	Iss.
MPS Production Co., Operator, et al.:					
CI62-314 Natural Gas Pipeline Co. of America.	Elm	Tex.	Live Oak	9 22 65	Iss.
MJW Producing Co.:					
CI65-1306 El Paso Natural Gas Co.	Undesignated	Tex.	Reagan	7 29 65	Iss.
MacDonald Oil Corp.:					
CI65-1208 Northern Natural Gas Co.	Undesignated	Tex.	Crockett	7 14 65	Iss.
Chas. T. McCord, Jr. d/b/a McCord Oil Co.:					
CI66-289 Lone Star Gas Co.	Carthage	Tex.	Panola	12 1 65	Iss.
McCurdy & McCurdy:					
G-18434 Florida Gas Transmission Co.	Luby	Tex.	Nueces	9 30 65	Iss.

See footnotes at end of table, p. 1663.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO., AND PURCHASER#	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
McGoldrich & Watson Drilling Co., Operator, et al.:					
CI66-199 United Gas Pipe Line Co.	Bethany	Tex	Panola	11 16 65	Iss.
McWood Corp.:					
CI63-751 Tennessee Gas Transmission Co.	Potrero Lopena	Tex	Kenedy	9 30 65	Iss.
McWood Corp., Operator:					
CI66-66 Tennessee Gas Transmission Co.	Fort Jesup	La	Sabine	10 8 65	Iss.
M & M Producing Co.:					
CI66-205 Arkansas Louisiana Gas Co.	Colquitt	La	Claiborne	11 15 65	Iss.
Russell Maguire, et al.:					
CI64-933 Natural Gas Pipeline Co. of America.	Ann-Mag	Tex	Brooks	9 30 65	Iss.
Mapco Production Co.:					
CI65-1192 Mississippi River Transmission Corp.	Woodlawn	Tex	Harrison	7 14 65	Iss.
Marathon Oil Co.:					
CI60-497 Florida Gas Transmission Co.	Palacios	Tex	Matagorda	9 22 65	Iss.
CI61-169 Transwestern Pipeline Co.	Perryton Area	Tex	Ochiltree	8 31 65	Iss.
CI63-313 Oklahoma Illinois Gas Pipeline Co.	Northwestern Oklahoma Area.	Okla	Ellis*	9 9 65	Den.
CI63-314 Oklahoma Illinois Gas Pipeline Co.	Red Oak Norris Area.	Okla	Latimer*	9 9 65	Den.
CI63-315 Oklahoma Illinois Gas Pipeline Co.	Catesby Area	Okla	Ellis	9 9 65	Den.
Marathon Oil Co., Operator, et al.:					
CI65-603 Natural Gas Pipeline Co. of America.	Indian Basin	N. Mex	Eddy	11 3 65	Iss.
Mayfair Minerals, Inc.:					
CI61-1661 South Texas Natural Gas Gathering Co.	Shepherd	Tex	Hidalgo	9 30 65	Iss.
Maynard Oil Co., Operator et al.:					
CI65-1272 Natural Gas Pipeline Co. of America.	Undesignated	Tex	Wise	10 25 65	Iss.
James A. Mays:					
CI66-117 United Natural Gas Co.	Heath*	Pa	Jefferson	10 1 65	Iss.
Mesa Petroleum Co.:					
CI66-26 Colorado Interstate Gas Co.	Greenwood	Kans	Morton	8 27 65	Iss.
Mesa Petroleum Co., Operator, et al.:					
CI66-59 Phillips Petroleum Co.	West Panhandle	Tex	Moore	9 15 65	Iss.
Calvin Michelson:					
CI65-1178 Almos Gas Gathering Co.	Sliva South West	Tex	Bee	7 23 65	Iss.
CI65-1179 Almos Gas Gathering Co.	Sliva South West	Tex	Live Oak	7 23 65	Iss.

See footnotes at end of table, p. 1663.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO., AND PURCHASER#	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Midwest Oil Corp.:					
CI62-1350 Oklahoma Illinois Gas Pipeline Co.	Red Oak	Okla.	Haskett*	9 9 65	Den.
Miles Kimball Co.:					
CI65-1206 United Gas Pipe Line Co.	Monroe Gas	La.	Ouchita	7 14 65	Iss.
George W. Miller, et al.:					
CI65-1302 Consolidated Gas Supply Corp.	Dekalb District	W. Va.	Gilmer	7 29 65	Iss.
Monroe Gas System, Inc.:					
CI66-56 Arkansas Louisiana Gas Co.	Monroe	La.	Morehouse	10 25 65	Iss.
Monsanto Co.:					
CI63-58 Lone Star Gathering Co.	Belitz	Tex.	De Witt	9 22 65	Iss.
CI64-1275 Panhandle Eastern Pipe Line Co.	Undesignated	Okla.	Cimarron	8 10 65	Iss.
CI65-525 Natural Gas Pipeline Co. of America.	Indian Basin	N. Mex.	Eddy	11 3 65	Iss.
CI65-531 Natural Gas Pipeline Co. of America.	Dagger Draw	N. Mex.	Eddy	11 3 65	Iss.
Monsanto Co., et al.:					
CI62-824 Lone Star Gathering Co.	Criswell	Tex.	De Witt	9 22 65	Iss.
CI62-889 Lone Star Gathering Co.	Belitz	Tex.	De Witt	9 22 65	Iss.
Montego Oil Co., et al.:					
CI63-790 Lone Star Gathering Co.	Smith Creek	Tex.	De Witt	9 22 65	Iss.
Robert Mosbacher, Operator, et al.:					
CI60-343 Tennessee Gas Transmission Co.	Englehart	Tex.	Colorado	9 22 65	Iss.
George Moses:					
CI65-1303 Consolidated Gas Supply Corp.	Lee District	W. Va.	Calhoun	7 29 65	Iss.
CI66-361 Consolidated Gas Supply Corp.	Washington District.	W. Va.	Calhoun	12 23 65	Iss.
H. J. Mosser:					
CI61-694 Tennessee Gas Transmission Co.	Mosser	Tex.	Starr	9 30 65	Iss.
M. R. Mottern, t/a Little Sandy Gas Co.:					
CI66-61 United Natural Gas Co.	Undesignated	Pa.	Jefferson	9 15 65	Iss.
Fred C. Mueller:					
CI62-1531 Oklahoma Illinois Gas Pipeline Co.	Norris-Red Oak Area.	Okla.	Latimer	9 9 65	Den.
Thomas C. Mueller:					
CI62-1467 Oklahoma Illinois Gas Pipeline Co.	Norris-Red Oak	Okla.	Latimer	9 9 65	Den.
J. A. Mull, Jr., Operator, et al.:					
CI66-247 Cities Service Gas Co.	Palmer Lansing-Kansas City.	Kans.	Barber	11 16 65	Iss.

See footnotes at end of table, p. 1663.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO., AND PURCHASER#	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Grant Mullenax, Operator, et al.:					
CI65-1226 Texas Gas Transmission Corp.	Sugar Creek	Ky.	Hopkins	7 14 65	Iss.
National Cooperative Refinery Assn.:					
CI65-41 Kansas-Nebraska Natural Gas Co., Inc.	Wallace Creek	Wyo.	Natrona	9 14 65	Iss.
Nemours Corp.:					
CI65-1296 Ashland Oil & Refining Co.	Monroe	La.	Union Parish	9 15 65	Iss.
V. F. Neuhaus:					
G-18861 Florida Gas Transmission Co.	Cortez	Tex.	Starr	9 30 65	Iss.
John A. Newman, Operator, et al.:					
G-18481 Florida Gas Transmission Co.	Lockridge	Tex.	Brazoria	9 22 65	Iss.
Carl H. Noel:					
CI65-1033 El Paso Natural Gas Co.	Aztec-Pictured Cliffs.	N. Mex.	San Juan	7 19 65	Iss.
North Central Oil Corp., Operator:					
CI60-434 Tennessee Gas Transmission Co.	N. Blessing	Tex.	Matagorda	9 22 65	Iss.
North Central Oil Corp., Operator, et al.:					
CI60-435 El Paso Natural Gas Co.	Hokit Area	Tex.	Pecos	8 5 65	Iss.
Northwest Production Corp.:					
CI66-3 El Paso Natural Gas Co.	South Blanco	N. Mex.	Rio Arriba	8 23 65	Iss.
John W. O'Boyle:					
CI65-1233 Arkansas Louisiana Gas Co.	Ivan	La.	Webster	7 19 65	Iss.
E. A. Obering:					
CI63-139 Oklahoma Illinois Gas Pipeline Co.	Undesignated	Okla.	Woodward	9 9 65	Den.
Occidental Petroleum Corp., et. al.:					
CI66-39 Southern Natural Gas Co.	Mystic Bayou	La.	St. Martin	9 14 65	Iss.
Oil Reserves Corp., Operator:					
CI61-468 Trunkline Gas Co.	Quicksand Creek	Tex.	Newton	9 22 65	Iss.
Alma Oringderff:					
CI64-1399 Michigan Wisconsin Pipe Line Co.	Lovedale	Okla.	Harper	11 9 65	Iss.
J. P. Owen:					
CI66-32 Transcontinental Gas Pipe Line Corp.	Southeast Gueydan	La.	Vermilion	8 27 65	Iss.
K. D. Owen, et al., d/b/a Owen & Moss:					
CI61-1579 Tennessee Gas Transmission Co.	El Puerto	Tex.	Starr	9 30 65	Iss.

See footnotes at end of table, p. 1663.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO., AND PURCHASER#	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Ozark Gas Corp.:					
CI66-248 Texas Eastern Transmission Corp.	Aberdeen Gas	Miss.	Monroe	11 16 65	Iss.
Pan American Petroleum Corp.:					
CI61-438 Transwestern Pipeline Co.	John Creek Area	Tex.	Roberts*	8 31 65	Iss.
CI62-1347 Oklahoma Illinois Gas Pipeline Co.	Undesignated	Okla.	Ellis*	9 9 65	Den.
CI62-1348 Oklahoma Illinois Gas Pipeline Co.	Red Oak	Okla.	Latimer*	9 9 65	Den.
CI62-1349 Oklahoma Illinois Gas Pipeline Co.	Undesignated	Okla.	Ellis	9 9 65	Den.
CI63-1263 Valley Gas Transmission, Inc.	Luby*	Tex.	Nueces	9 30 65	Iss.
CI63-1445 Florida Gas Transmission Co.	Palacios	Tex.	Matagorda	9 22 65	Iss.
CI64-377 Natural Gas Pipe-Line Co. of America.	Willamar	Tex.	Willacy	9 30 65	Iss.
CI65-910 Transwestern Pipeline Co.	South Tangier	Okla.	Woodward	8 19 65	Iss.
CI65-1145 Arkansas Louisiana Gas Co.	Wilburton	Okla.	Latimer*	10 1 65	Iss.
CI65-1212 Panhandle Eastern Pipe Line Co.	N. W. Mendota*	Tex.	Hemphill*	12 2 65	Iss.
CI65-1314 Northern Natural Gas Co.	Southwest Ozona Canyon.	Tex.	Crockett	7 29 65	Iss.
CI66-64 Natural Gas Pipeline Co. of America.	Old Ocean	Tex.	Matagorda	9 15 65	Iss.
CI66-96 United Gas Pipe Line Co.	Mount Olive	Miss.	Smith	9 17 65	Iss.
CI66-107 Natural Gas Pipeline Co. of America.	Camrick	Okla.	Beaver	10 1 65	Iss.
George Parker:					
G-19718 Florida Gas Transmission Co.	West Helen Gohlke	Tex.	Victoria	9 22 65	Iss.
Edison J. Parsons, et al.:					
CI66-260 Consolidated Gas Supply Corp.	Ripley District*	W. Va.	Jackson	11 22 65	Iss.
Pauley Petroleum Inc., Operator, et al.:					
CI66-273 United Gas Pipe Line Co.	Glendale Dome Area.	Tex.	Trinity	11 22 65	Iss.
Penroc Oil Corp.:					
CI65-595 Natural Gas Pipeline Co. of America.	Indian Basin	N. Mex.	Eddy	11 3 65	Iss.
Carl Perkins, d/b/a Flanagan Lease:					
CI65-1266 Equitable Gas Co.	Clay District	W. Va.	Ritchie	7 23 65	Iss.

See footnotes at end of table, p. 1663.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,[2] DOCKET NO., AND PURCHASER[3]	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Petro-Associates, Inc., Operator, et al.:					
CI61-936 Transwestern Pipeline Co.	Hansford-Morrow	Tex.	Hansford	8 31 65	Iss.
Petroleum Inc.:					
CI66-140 Panhandle Eastern Pipe Line Co.	Laverne-Mocane	Okla.	Beaver	10 8 65	Iss.
Petroleum, Inc., Operator, et al.:					
CI66-137 Panhandle Eastern Pipe Line Co.	Mocane	Okla.	Beaver	10 8 65	Iss.
Petroleum International, Inc., Operator et al.:					
CI65-1308 Texas Eastern Transmission Corp	Doehrmann	Tex.	De Witt	7 29 65	Iss.
Petroleum Promotions, Inc.:					
CI65-1359 Consolidated Gas Supply Corp.	Collins Settlement District	W. Va.	Lewis	8 9 65	Iss.
CI66-271 Consolidated Gas Supply Corp.	Glenville District	W. Va.	Gilmer	11 22 65	Iss.
Petroleum Promotions, Inc., et al.:					
CI65-1315 Consolidated Gas Supply Corp	Court House District	W. Va.	Lewis	7 29 65	Iss.
CI65-1343 Consolidated Gas Supply Corp.	Court House District.	W. Va.	Lewis	8 9 65	Iss.
Petroleum Resources, Inc.:					
CI66-272 Consolidated Gas Supply Corp.	Collins Settlement District.	W. Va.	Lewis	11 22 65	Iss.
Petroleum Resources, Inc., et al.:					
CI65-1356 Consolidated Gas Supply Corp.	Collins Settlement District.	W. Va.	Lewis	8 9 65	Iss.
Jack L. Phillips:					
CI66-286 United Gas Pipe Line Co.	Mt. Selman	Tex.	Cherokee	11 22 65	Iss.
Phillips Petroleum Co.:					
G-18201 Transwestern Pipeline Co.	Cree Shell Flowers Lease[4]	Tex.	Roberts	8 31 65	Iss.
G-19498 Florida Gas Transmission Co.	E. Corpus Christi Ray.	Tex.	Nueces	9 30 65	Iss.
CI62-1453 Oklahoma Illinois Gas Pipeline Co.	Anadarko Basin Area.	Okla.	Ellis	9 9 65	Den.
CI62-1454 Oklahoma Illinois Gas Pipeline Co.	Anadarko Basin Area.	Okla.	Ellis	9 9 65	Den.
CI64-1148 Panhandle Eastern Pipe Line Co.	Undesignated	Okla.	Beaver	8 10 65	Iss.
CI65-1253 Panhandle Eastern Pipe Line Co.	Carthage Area	Okla.	Tex.	10 1 65	Iss.
CI66-46 Panhandle Eastern Pipe Line Co.	Seiling	Okla.	Woods	8 10 65	Rej.
Phillips Petroleum Co., Operator, et al.:					
CI66-34 American Louisiana Pipe Line Co.	Hog Bayou	La.	Cameron	9 24 65	Iss.

See footnotes at end of table, p. 1663.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO., AND PURCHASER#	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Pioneer Production Corp., Operator, et al.:					
CI66-279 Panhandle Eastern Pipe Line Co.	Undesignated	Kans.	Morton	11 22 65	Iss.
George W. Pirtle:					
CI62-1481 Oklahoma Illinois Gas Pipeline Co.	Red Oak	Okla.	Haskell	9 9 65	Den.
Placid Oil Co., Operator, et al.:					
CI61-1682 Natural Gas Pipeline Co. of America.	Alta Loma	Tex.	Galveston	9 22 65	Iss.
Potash Co. of America, et al.:					
CI65-628 Natural Gas Pipeline Co. of America.	Indian Basin	N. Mex.	Eddy	11 3 65	Iss.
Clarence Powell, et al., d/b/a Krenn Oil & Gas Co.:					
CI66-241 Consolidated Gas Supply Corp.	New Milton District	W. Va.	Doddridge	11 16 65	Iss.
J. N. Pratt, et al.:					
CI62-1373 Natural Gas Pipeline Co. of America.	Kai Creek	Tex.	Victoria	9 22 65	Iss.
The Preston Oil Co.:					
CI65-1245 United Fuel Gas Co.	Ellis	La.	Acadia	7 19 65	Iss.
The Preston Oil Co., Operator, et al.:					
CI66-156 Texas Gas Transmission Corp.	Ellis	La.	Acadia	11 22 65	Iss.
Producing Properties, Inc.:					
CI61-1236 Natural Gas Pipeline Co. of America.	Undesignated	Tex.	Undesignated	9 22 65	Iss.
Producing Properties, Inc., et al.:					
CI63-814 Lone Star Gathering Co.	Anna Barre	Tex.	De Witt	9 22 65	Iss.
Pubco Petroleum Corp.:					
CI65-1280 El Paso Natural Gas Co.	Aztec Pictured-Cliffs.	N. Mex.	San Juan	7 23 65	Iss.
The Pure Oil Co.:					
CI65-1264 Arkansas-Louisiana Gas Co.	Southeast Ames	Okla.	Major	7 23 65	Iss.
The Pure Oil Co., Operator, et al.:					
CI66-29 Michigan-Wisconsin Pipe Line Co.	S. E. Stockholm	Okla.	Harper	8 27 65	Iss.
Quaker State Oil Refining Corp.:					
CI65-1354 Equitable Gas Co.	Glenville	W. Va.	Gilmer	8 9 65	Iss.
CI66-188 United Fuel Gas Co.	Stonewall District.	W. Va.	Wayne	11 16 65	Iss.
CI66-229 Consolidated Gas Supply Corp.	Glenville District	W. Va.	Gilmer	11 16 65	Iss.
CI66-316 United Fuel Gas Co.	Harts Creek District.	W. Va.	Lincoln	12 2 65	Iss.

See footnotes at end of table, p. 1663.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO., AND PURCHASER#	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Homer Queen, d/b/a Queen Gas Co.:					
CI65-1318 Consolidated Gas Supply Corp.	Elk	W. Va.	Harrison	7 29 65	Iss.
Ramada Oil & Gas Co.:					
CI63-304 Tennessee Gas Transmission Co.	N. E. Loma Novia	Tex.	Duval	9 30 65	Iss.
C. F. Raymond:					
CI66-276 El Paso Natural Gas Co.	Undesignated	Colo.	La Plata	11 22 65	Iss.
J. Cecil Rhodes:					
CI65-1331 El Paso Natural Gas Co.	Justis*	N. Mex.	Lea	8 9 65	Iss.
Rincon Oil & Gas Corp.:					
CI65-1286 El Paso Natural Gas Co.	Dakota	N. Mex.	Rio Arriba	7 23 65	Iss.
Roberts & Jenkins Nats Creek Co., et al.:					
CI66-159 Kentucky West Virginia Gas Co.	Nats Creek	Ky.	Lawrence	10 25 65	Iss.
L. W. Roche:					
CI66-240 Consolidated Gas Supply Corp.	Dekalb District	W. Va.	Gilmer	11 16 56	Iss.
The Rouzer Oil Co.:					
CI65-888 United Fuel Gas Co.	Union District	W. Va.	Clay	7 19 65	Iss.
Neal Rudder, d/b/a Rudder Oil & Gas Co.:					
CI66-102 United Fuel Gas Co.	Center District	W. Va.	Gilmer	9 17 65	Iss.
Russak Oil Co., Operator, et al.:					
CI65-1187 Almos Gas Gathering Co.	Cornelius	Tex.	Live Oak	7 23 65	Iss.
Samedan Oil Corp., Operator, et al.:					
CI65-556 Natural Gas Pipeline Co. of America.	N. W. Quinlan	Okla.	Woodward	8 10 65	Iss.
Caroline Hunt Sands:					
CI61-1343 Natural Gas Pipeline Co. of America.	Chenango	Tex.	Brazoria	9 22 65	Iss.
Ben H. Schnapp, Operator, et al.:					
CI60-642 Tennessee Gas Transmission Co.	Petkas	Tex.	Chambers	10 7 65	Dis.
Charles W. Scott, Operator, et al.:					
CI65-763 Michigan Wisconsin Pipe Line Co.	Laverne	Okla.	Beaver	10 25 65	Iss.
James F. Scott, et al., d/b/a M. Justice Well #1:					
CI66-266 Consolidated Gas Supply Corp.	McClellan District	W. Va.	Doddridge	11 22 65	Iss.
Joseph E. Seagram & Sons, Inc.:					
CI60-506 Tennessee Gas Transmission Co.	N. E. Lopeno	Tex.	Zapata	9 30 65	Iss.

See footnotes at end of table, p. 1663.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO., AND PURCHASER#	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Joseph E. Seagram & Sons, Inc., d/b/a Texas Pacific Oil Co.:					
CI65-558 Natural Gas Pipeline Co. of America.	Indian Basin	N. Mex.	Eddy	11 3 65	Iss.
CI65-1196 Michigan Wisconsin Pipe Line Co.	S. E. Dacoma*	Okla.	Woods	7 19 65	Iss.
CI66-129 El Paso Natural Gas Co.	Basin Dakota	N. Mex.	San Juan	10 8 65	Iss.
Sentinel Petroleum Corp.:					
CI66-112 El Paso Natural Gas Co.	San Juan	N. Mex.	Rio Arriba	12 1 65	Iss.
Sentry Royalty Co.:					
CI66-122 Texas Gas Transmission Corp.	Midland	Ky.	Muhlenberg	10 1 65	Iss.
Sesco Production Co., Operator, et al.:					
CI66-327 Lone Star Gas Co.	Henderson	Tex.	Rusk	12 23 65	Iss.
The Shamrock Oil and Gas Corp.:					
CI65-1246 Western Gas Service Co.	Undesignated	Tex.	Ochiltree	7 29 65	Iss.
Howard W. Sharpley, et al.:					
CI66-365 Consolidated Gas Supply Corp.	Glenville District	W. Va.	Gilmer	12 23 65	Iss.
Shell Oil Co.:					
G-18439 Florida Gas Transmission Co.	E. Mustang Island	Tex.	Nueces	9 30 65	Iss.
G-18805 Florida Gas Transmission Co.	E. Bay	Tex.	Galveston	9 22 65	Iss.
CI62-653 Florida Gas Transmission Co.	Gohlke	Tex.	Victoria	9 22 65	Iss.
CI62-1401 Oklahoma Illinois Gas Pipeline Co.	North Western Oklahoma Area.	Okla.	Ellis*	9 9 65	Den.
CI62-1402 Oklahoma Illinois Gas Pipeline Co.	Catesby Area	Okla.	Ellis	9 9 65	Den.
CI62-1403 Oklahoma Illinois Gas Pipeline Co.	Red Oak Area	Okla.	Latimer*	9 9 65	Den.
CI63-1509 South Texas Natural Gas Gathering Co.	McAllen Ranch*	Tex.	Hidalgo	9 30 65	Iss.
CI64-310 South Texas Natural Gas Gathering Co.	Monte Christo	Tex.	Hidalgo	9 30 65	Iss.
CI64-655 South Texas Natural Gas Gathering Co.	Schmidt	Tex.	Hidalgo	9 30 65	Iss.
CI64-703 Natural Gas Pipeline Co. of America.	Willamar	Tex.	Willacy	9 30 65	Iss.
CI65-1164 Natural Gas Pipeline Co. of America.	Indian Basin	N. Mex.	Eddy	11 3 65	Iss.
CI65-1346 El Paso Natural Gas Co.	Brown-Bassett	Tex.	Crockett	8 9 65	Iss.
CI66-67 Baca Gas Gathering System, Inc.	Flank	Colo.	Baca	10 1 65	Iss.

See footnotes at end of table, p. 1663.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO., AND PURCHASER#	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION[1]
Shell Oil Co.—Continued					
CI66-136 Cities Service Gas Co.	N. W. Lovedale	Okla.	Harper	10 8 65	Iss.
CI66-237 Natural Gas Pipeline Co. of America.	Camrick	Okla.	Beaver	11 16 65	Iss.
Shell Oil Co., Operator, et al.:					
CI61-783 Florida Gas Transmisson Co.	Yzaguirre	Tex.	Starr	9 30 65	Iss.
R. H. Siegfried, Inc., et al.:					
CI63-1514 Natural Gas Pipeline Co. of America.	South Cundiff	Tex.	Jack	9 14 65	Iss.
V. H. Simmons, Jr., et al.:					
CI66-174 Lake Shore Pipe Line Co.	Bushnell	Pa.	Erie	10 25 65	Iss.
Sinclair Oil & Gas Co.:					
CI63-766 Oklahoma Illinois Gas Pipeline Co.	Undesignated	Okla.	Ellis	9 9 65	Den.
CI65-1275 Cities Service Gas Co.	Bishop	Okla.	Ellis	7 23 65	Iss.
Sinclair Oil & Gas Co., et al.:					
G-16760 United Gas Pipe Line Co.	Normanna	Tex.	Bee	9 22 65	Iss.
Skelly Oil Co.:					
G-20155 Florida Gas Transmission Co.	Pheasant	Tex.	Matagorda	9 22 65	Dis.
CI63-672 Natural Gas Pipeline Co. of America.	E. Bay City	Tex.	Matagorda	9 22 65	Iss.
CI64-2 Michigan-Wisconsin Pipe Line Co.	Laverne	Okla.	Harper	11 22 65	Iss.
CI65-1254 Panhandle Eastern Pipe Line Co.	Undesignated	Okla.	Cimarron	7 27 65	Iss.
CI66-69 Natural Gas Pipeline Co. of America.	Camrick	Okla.	Beaver	9 15 65	Iss.
CI66-79 Cities Service Gas Co.	Undesignated	Kans.	Barber	9 17 65	Iss.
CI66-278 El Paso Natural Gas Co.	Undesignated	Colo.	La Plata	12 1 65	Iss.
Skelly Oil Co., Operator, et al.:					
CI66-176 Arkansas Louisiana Gas Co.	Arkoma Basin	Ark*	Various	11 15 65	Iss.
Carl E. Smith, Inc.:					
CI65-1342 Consolidated Gas Supply Corp.	Grant District	W. Va.	Doddridge	8 9 65	Iss.
Jas. F. Smith:					
CI65-1219 Panhandle Eastern Pipe Line Co.	Undesignated	Okla.	Beaver	7 27 65	Iss.
CI65-1326 Cities Service Gas Co.	Yellowstone	Okla.	Woods	7 29 65	Iss.
Jas. F. Smith, et al.:					
CI66-123 Northern Natural Gas Co.	Undesignated	Okla.	Beaver	10 1 65	Iss.
Jas. F. Smith, Operator:					
CI66-132 Panhandle Eastern Pipe Line Co.	Undesignated	Okla.	Beaver	10 8 65	Iss.

See footnotes at end of table, p. 1663.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO., AND PURCHASER#	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Louis J. Smith:					
CI65-49 Equitable Gas Co.	Center	W. Va.	Gilmer	9 14 65	Iss.
Walter E. Smith, et al., d/b/a Walter & Edward Smith:					
CI66-263 Consolidated Gas Supply Corp.	Sheridan District	W. Va.	Calhoun	11 22 65	Iss.
Socony Mobil Oil Co., Inc.:					
CI61-34 El Paso Natural Gas Co.	Spraberry	Tex.	Midland	8 5 65	Iss.
CI65-438 Natural Gas Pipeline Co. of America.	N. W. Quinlan	Okla.	Woodward	8 10 65	Iss.
CI65-1227 Tennessee Gas Transmission Co.	Second Bayou	La.	Cameron	7 14 65	Iss.
CI66-158 Montana-Dakota Utilities Co.	Indian Butte	Wyo.	Fremont	10 8 65	Iss.
CI66-283 Kansas-Nebraska Natural Gas Co., Inc.	Southeast Liberal	Okla.	Beaver*	11 22 65	Iss.
Sohio Petroleum Co.:					
CI63-34 Oklahoma Illinois Gas Pipeline Co.	Catesby Pool	Okla.	Ellis	9 9 65	Den.
CI63-52 Oklahoma Illinois Gas Pipeline Co.	East Catesby	Okla.	Ellis*	9 9 65	Den.
CI63-712 Michigan Wisconsin Pipe Line Co.	Woodward Area	Okla.	Woodward	9 15 65	Iss.
CI63-1567 Panhandle Eastern Pipe Line Co.	N. W. Midwell	Okla.	Cimarron	8 10 65	Iss.
Sohio Petroleum Co., Operator:					
CI65-1050 Lone Star Gas Co.	East Washington	Okla.	McClain	7 14 65	Iss.
Sohio Petroleum Co., Operator, et al.:					
CI62-826 Tennessee Gas Transmission Co.	Lopeno	Tex.	Zapata	9 30 65	Iss.
W. C. Sojourner, et al.:					
CI62-1470 Oklahoma Illinois Gas Pipeline Co.	Red Oak	Okla.	Haskell	9 9 65	Den.
South Shore Oil & Development Co., et al.:					
CI66-322 United Gas Pipe Line Co.	Lirette	La.	Terrebonne	12 2 65	Iss.
Southeastern Gas Co.:					
CI66-147 Equitable Gas Co.	Henry*	W. Va.	Clay	12 13 65	Iss.
Southern Union Production Co.:					
CI63-54 Oklahoma Illinois Gas Pipeline Co.	Undesignated	Okla.	Ellis*	9 9 65	Den.
CI65-472 Michigan Wisconsin Pipe Line Co.	Laverne	Okla.	Beaver	12 30 65	Iss.
CI66-1 Arkansas Louisiana Gas Co.	Gilmer Area	Tex.	Upshur	7 29 65	Rej.
Southland Royalty Co., et al.:					
CI62-334 Natural Gas Pipeline Co. of America.	Undesignated	Tex.	Live Oak	9 22 65	Iss.
Southwest Gas Producing Co., Inc., et al.:					
CI66-230 United Gas Pipe Line Co.	Arnaudville	La.	St. Martin	11 16 65	Iss.

See footnotes at end of table, p. 1663.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,[#] DOCKET NO., AND PURCHASER[#]	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Southwest Oil Industries, Inc.:					
CI66-15 Panhandle Eastern Pipe Line Co.	Mocane-Laverne	Okla.	Beaver[e]	8 27 65	Iss.
The Sparta Oil Co.:					
G-19964 Florida Gas Transmission Co.	League City W.	Tex.	Galveston	9 22 65	Iss.
Marion E. Spitler:					
CI65-678 Natural Gas Pipeline Co. of America.	Indian Basin	N. Mex.	Eddy	11 3 65	Iss.
Sydney Spofforth:					
CI65-1358 Consolidated Gas Supply Corp.	Grant District	W. Va.	Ritchie	8 9 65	Iss.
Standard Oil Co., of Texas, a Div. of Chevron Oil Co.:					
CI65-564 Natural Gas Pipeline Co. of America.	Indian Basin	N. Mex.	Eddy	11 3 65	Iss.
CI65-1018 Natural Gas Pipeline Co. of America.	Dagger Draw	N. Mex.	Eddy	11 3 65	Iss.
Paul F. Starr, Agent:					
CI65-1222 Harry C. Boggs	Spencer District	W. Va.	Roane	7 14 65	Iss.
CI65-1357 Consolidated Gas Supply Corp.	Washington District.	W. Va.	Calhoun	8 9 65	Iss.
CI66-245 United Fuel Gas Co.	Henry District	W. Va.	Clay	11 16 65	Iss.
R. Stenzel:					
CI65-1247 Northern Natural Gas Co.	Gate Lake	Okla.	Harper	7 19 65	Iss.
CI65-1248 Northern Natural Gas Co.	Doby Springs	Okla.	Harper	7 19 65	Iss.
J. F. Stephenson, Operator, et al.:					
CI66-7 Lone Star Gas Co.	E. Hewitt Area	Okla.	Carter	8 23 65	Iss.
Hal M. Stierwalt, et al.:					
CI65-1156 El Paso Natural Gas Co.	Tapicito	N. Mex.	Rio Arriba	7 14 65	Iss.
W. A. Stockard, et al.:					
CI61-751 Natural Gas Pipeline Co. of America.	Normanna	Tex.	Bee	9 22 65	Iss.
John W. Stone, et al., d/b/a Massa Oil Co.:					
CI65-1239 United Fuel Gas Co.	Smithfield	W. Va.	Roane	7 19 65	Iss.
Stonestreet Lands Co., et al.:					
CI65-1305 Consolidated Gas Supply Corp.	Dekalb District	W. Va.	Gilmer	7 29 65	Iss.
Stonestreet Oil & Gas Co., et al.:					
CI66-111 Harry C. Boggs	Smithfield	W. Va.	Roane	10 1 65	Iss.
Hughart W. Stump, et al.:					
CI66-243 Consolidated Gas Supply Corp.	Sherman District	W. Va.	Calhoun	11 16 65	Iss.
Sun Oil Co.:					
CI60-348 Trunkline Gas Co.	Sarah White	Tex.	Galveston	9 22 65	Iss.
CI63-989 Tennessee Gas Transmission Co.	Fitzsimmons	Tex.	Duval	9 30 65	Iss.

See footnotes at end of table, p. 1663.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO., AND PURCHASER#	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Sun Oil Co.—Continued					
CI64-470 Natural Gas Pipeline Co. of America.	Willamar	Tex.	Willacy	9 30 65	Iss.
CI65-593 Natural Gas Pipeline Co. of America.	S. E. Woodward	Okla.	Woodward	9 30 65	Iss.
CI65-936 Natural Gas Pipeline Co. of America.	Quinlan	Okla.	Woodward	8 10 65	Iss.
CI65-1236 Cities Service Gas Co.	Bishop	Okla.	Ellis	7 19 65	Iss.
CI65-1312 Arkansas Louisiana Gas Co.	Cheniers	La.	Ouachita	7 29 65	Iss.
CI65-1373 Northern Natural Gas Co.	Hugoton	Kans.	Haskell	8 19 65	Iss.
CI66-97 Valley Gas Transmission, Inc.	Rachal	Tex.	Brooks	10 1 65	Iss.
CI66-178 Lone Star Gathering Co.	Speary	Tex.	Karnes	12 2 65	Iss.
CI66-201 Panhandle Eastern Pipe Line Co.	Eva N. W.	Okla.	Texas	11 15 65	Iss.
CI66-202 Northern Natural Gas Co.	N. Lindscott	Okla.	Ellis	11 15 65	Iss.
CI66-323 United Fuel Gas Co.	Funkhouser-Wise unit.	W. Va.	Hardy	12 2 65	Iss.
Sun Oil Co., Operator, et al.:					
CI65-1268 Lone Star Gas Co.	Shamburger Lake	Tex.	Smith	7 23 65	Iss.
Sunray DX Oil Co.:					
CI62-1383 Oklahoma Illinois Gas Pipeline Co.	Undesignated	Okla.	Ellis	9 9 65	Den.
CI62-1386 Oklahoma Illinois Gas Pipeline Co.	Undesignated	Okla.	Ellis*	9 9 65	Den.
CI62-1387 Oklahoma Illinois Gas Pipeline Co.	Red Oak Area	Okla.	Latimer*	9 9 65	Den.
CI65-1189 Arkansas Louisiana Gas Co.	Arpelar	Okla.	Pittsburg	7 14 65	Iss.
CI65-1228 American Louisiana Pipe Line Co.	Kings Bayou	La.	Cameron	7 14 65	Iss.
CI65-1243 El Paso Natural Gas Co.	Gallegos Canyon	N. Mex.	San Juan	7 19 65	Iss.
CI66-154 Northern Natural Gas Co.	Laverne	Okla.	Harper	10 8 65	Iss.
Suntex Oil & Gas Co.:					
CI66-300 Northern Natural Gas Co.	Tonkawa	Tex.	Lipscomb	12 13 65	Iss.
The Superior Oil Co.:					
G-20359 Florida Gas Transmission Co.	Pheasant	Tex.	Matagorda	9 22 65	Iss.
CI63-584 Florida Gas Transmission Co.	Oliver	Tex.	Brazoria	9 22 65	Iss.
CI64-273 Panhandle Eastern Pipe Line Co.	Midwell	Okla.	Cimarron	8 10 65	Iss.
CI65-1263 El Paso Natural Gas Co.	Custer Mountain Unit.	N. Mex.	Lea	7 19 65	Iss.

See footnotes at end of table, p. 1663.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,[2] DOCKET NO., AND PURCHASER[2]	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Susanoil, Inc.:					
G–18212 Florida Gas Transmission Co.	Sharyland	Tex.	Hidalgo	9 30 65	Iss.
T. E. L. Oil & Gas Corp., et al.:					
CI65–915 Southwestern Public Service Co.	Undesignated	Okla.	Texas	7 19 65	Iss.
CI65–942 Mapco Production Co.	Hugoton	Okla.	Texas	8 9 65	Iss.
CI65–943 Mapco Production Co.	Undesignated	Okla.	Texas	7 23 65	Iss.
George K. Taggart, Sr., Operator:					
G–18796 Florida Gas Transmission Co.	Webb	Tex.	San Patricio	9 30 65	Iss.
J. E. Taubert, et al.:					
CI66–194 Arkansas Louisiana Gas Co.	Undesignated	Okla.	Latimer	11 15 65	Iss.
Tenneco Oil Co.:					
G–18223 South Texas Natural Gas Gathering Co.	Shepherd	Tex.	Hidalgo	9 30 65	Iss.
CI60–325 Tennessee Gas Transmission Co.	Lopeno	Tex.	Zapata	9 30 65	Iss.
CI63–334 South Texas Natural Gas Gathering Co.	Yeary	Tex.	Kleberg	9 30 65	Iss.
CI63–1513 South Texas Natural Gas Gathering Co.	McAllen Ranch	Tex.	Hidalgo	9 30 65	Iss.
CI65–1168 Florida Gas Transmission Co.	McGill Ranch	Tex.	Kenedy	11 9 65	Iss.
Tenneco Oil Co., Operator, et al.:					
CI65–1283 Mississippi River Transmission Corp.	Woodlawn	Tex.	Harrison	7 23 65	Iss.
CI66–142 El Paso Natural Gas Co.	San Juan Basin	N. Mex.	San Juan	10 8 65	Iss.
Texaco Inc.:					
CI61–879 El Paso Natural Gas Co.	Spraberry	Tex.	Reagan	8 5 65	Iss.
CI64–71 Panhandle Eastern Pipe Line Co.	N. W. Midwell	Okla.	Cimarron	8 10 65	Iss.
CI64–375 Natural Gas Pipeline Co. of America.	Eubanks*	Tex.	Duval*	9 30 65	Iss.
CI65–589 Natural Gas Pipeline Co. of America.	Indian Basin	N. Mex.	Eddy	11 3 65	Iss.
CI65–999 Panhandle Eastern Pipe Line Co.	Sampsel	Okla.	Cimarron	8 10 65	Iss.
CI66–58 Cities Service Gas Co.	South Bishop	Okla.	Ellis	9 15 65	Iss.
CI66–93 Lone Star Gas Co.	Handy	Tex.	Cooke*	9 17 65	Iss.
CI66–148 Lone Star Gas Co.	Sho-Vel-Tum	Okla.	Carter	10 8 65	Iss.
CI66–169 Lone Star Gas Co.	Duncan	Okla.	Stephens	10 25 65	Iss.
CI66–277 Grand Valley Transmission Co.	Fence Canyon Unit	Utah	Grand*	11 22 65	Iss.

See footnotes at end of table, p. 1663.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,[3] DOCKET NO., AND PURCHASER[3]	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Texaco Inc., Operator, et al.:					
CI65-209 Natural Gas Pipeline Co. of America.	Northwest Quinlan	Okla	Woodward	8 10 65	Iss.
Texas Gas Exploration Corp.:					
CI65-1265 Texas Gas Transmission Corp.	Mocane	Ky	Muhlenberg	10 25 65	Iss.
Texas Gas Exploration Corp., Operator, et al.:					
CI65-1193 Texas Gas Transmission Corp.	Midland	Ky	Muhlenberg	7 14 65	Iss.
Texas Oil & Gas Corp.:					
CI65-1350 Kansas-Nebraska Natural Gas Co., Inc.	Northeast Camrick	Okla	Beaver	8 19 65	Iss.
CI66-314 Cities Service Gas Co.	Bishop Area	Okla	Roger Mills	12 13 65	Iss.
Tidewater Oil Co.:					
CI63-119 Oklahoma Illinois Gas Pipeline Co.	Chaney	Okla	Ellis	9 9 65	Den.
CI63-120 Oklahoma Illinois Gas Pipeline Co.	Anadarko Basin	Okla	Ellis	9 9 65	Den.
CI63-1134 Trunkline Gas Co.	Quicksand Creek	Tex	Newton	9 22 65	Iss.
CI65-611 Natural Gas Pipeline Co. of America.	S. E. Woodward	Okla	Woodward	8 10 65	Iss.
Tidewater Oil Co., Operator, et al.:					
CI66-124 Trunkline Gas Co.	South Thornwell	La	Jefferson Davis	10 1 65	Iss.
J. C. Trahan, Drilling Contractor, Inc.:					
CI62-123 Tennessee Gas Transmission Co.	Lopeno	Tex	Zapata	9 30 65	Iss.
J. C. Trahan, Drilling Contractor, Inc., Operator, et al.:					
CI66-75 Arkansas Louisiana Gas Co.	Hodge	La	Jackson	9 17 65	Iss.
Tri-Apco, Inc.:					
CI65-1299 Consolidated Gas Supply Corp.	Grant District	W. Va	Ritchie	7 29 65	Iss.
William Triant:					
CI65-1298 Consolidated Gas Supply Corp.	Sheridan	W. Va	Calhoun	7 29 65	Iss.
Trice Production Co., et al.:					
G-19340 Florida Gas Transmission Co.	West Helen Gohlke	Tex	De Witt	9 22 65	Iss.
Trigg Drilling Co., Operator, et al.:					
CI65-1240 Michigan Wisconsin Pipe Line Co.	Woodward Area	Okla	Major	9 15 65	Iss.
John H. Trigg, d/b/a John H. Trigg Co.					
CI65-625 Natural Gas Pipeline Co. of America.	Indian Basin	N. Mex	Eddy	11 3 65	Iss.
J. L. Trittipo, Inc.:					
CI66-321 Consolidated Gas Supply Corp.	White Oak Creek	W. Va	Boone[6]	12 2 65	Iss.

See footnotes at end of table, p. 1663.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,# DOCKET NO., AND PURCHASER#	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Trojan Coal & Petroleum Corp.:					
CI65-1344 Consolidated Gas Supply Corp.	Center District	W. Va.	Gilmer	8 9 65	Iss.
Turnbull & Zoch Drilling Co., Agent:					
CI65-1144 United Gas Pipe Line Co.	Fox	Tex.	Refugio	7 19 65	Iss.
Turnbull & Zoch Drilling Co., Operator, et al.:					
G-17960 Florida Gas Transmission Co.	Monte Christo	Tex.	Hidalgo	9 30 65	Iss.
Paul R. Turnbull, Operator, et al.:					
CI61-1 Tennessee Gas Transmission Co.	Cranell	Tex.	Refugio	9 22 65	Iss.
R. C. Turner, Operator, et al.:					
CI64-439 Natural Gas Pipeline Co. of America.	Escobas	Tex.	Zapata	9 30 65	Iss.
Tuscarora Oil & Gas Corp., et al.:					
CI65-1321 Consolidated Gas Supply Corp.	Grant District	W. Va.	Doddridge	7 29 65	Iss.
Paul H. Umbach, Operator, et al.:					
CI65-1353 Kansas-Nebraska Natural Gas Co., Inc.	Shoreline	Colo.	Logan	8 9 65	Iss.
Union Drilling, Inc.:					
CI66-343 Equitable Gas Co.	Court House District.	W. Va.	Lewis	12 13 65	Iss.
Union Oil Co. of California:					
G-18389 Florida Gas Transmission Co.	Kentucky Mott	Tex.	Union	9 22 65	Iss.
CI61-715 Transwestern Pipeline Co.	Red Deer	Tex.	Roberts	8 31 65	Iss.
CI65-1361 El Paso Natural Gas Co.	Brown-Bassett	Tex.	Crockett	8 9 65	Iss.
CI66-252 Trunkline Gas Co.	O'Brien Ranch	Tex.	Goliad	11 16 65	Iss.
CI66-255 Southern Union Gathering Co.	Basin Dakota Pool	N. Mex.	San Juan	11 22 65	Iss.
Union Texas Petroleum, a Div. of Allied Chemical Corp., Operator:					
CI66-27 Panhandle Eastern Pipe Line Co.	Undesignated	Okla.	Major	12 16 65	Iss.
Union Texas Petroleum, a Div. of Allied Chemical Corp.:					
CI66-80 Arkansas Louisiana Gas Co.	Star Lacy Area	Okla.	Kingfisher	9 17 65	Iss.
A. M. Van Flick, Agent for Pacific States Gas & Oil, Inc.:					
CI65-38 Equitable Gas Co.	Glenville	W. Va.	Gilmer	9 14 65	Iss.
CI65-1324 Equitable Gas Co.	Sand Fork	W. Va.	Gilmer	7 29 65	Iss.
CI66-38 Equitable Gas Co.	Glenville	W. Va.	Gilmer	9 14 65	Iss.
A. M. Van Flick, Agent:					
CI66-118 Equitable Gas Co.	Glenville	W. Va.	Gilmer	10 1 65	Iss.

See footnotes at end of table, p. 1663.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,[2] DOCKET NO., AND PURCHASER[2]	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Van-Grisso Oil Co.:					
CI65-1327 Michigan Wisconsin Pipe Line Co.	Laverne	Okla.	Harper	7 29 65	Iss.
G. H. Vaughn, Jr., et al.:					
G-18678 Florida Gas Transmission Co.	S. W. Luby	Tex.	Nueces	9 30 65	Iss.
Ventura Oil Co.:					
CI66-14 Equitable Gas Co.	Glenville District	W. Va.	Gilmer	8 27 65	Iss.
Viersen & Cochran:					
CI64-19 Michigan Wisconsin Pipe Line Co.	Laverne	Okla.	Harper	11 1 65	Iss.
Sam K. Vierson:					
CI63-521 Oklahoma Illinois Gas Pipeline Co.	Woodward Area	Okla.	Woodward	9 9 65	Den.
W. W. F. Oil Corp., Operator, et al.:					
CI66-309 Trunkline Gas Co.	Roanoke	La.	Jefferson Davis	12 2 65	Iss.
Herman C. Warner, et. al.:					
CI66-362 Consolidated Gas Supply Corp.	Troy District	W. Va.	Gilmer	12 23 65	Iss.
The Waverly Oil Works Co.:					
CI65-1336 Equitable Gas Co.	Otter District	W. Va.	Braxton	8 9 65	Iss.
Johnie L. West:					
CI65-1198 Almos Gas Gathering Co.	Linke	Tex.	Bee	7 23 65	Iss.
Western Oil Development Co.:					
CI65-1180 Almos Gas Gathering Co.	Undesignated	Tex.	Bee	7 23 65	Iss.
Westmore Drilling Co., Inc., Operator, et al.:					
CI66-13 Cities Service Gas Co.	Aetna Mississippi Gas Pool.	Kans.	Barber	11 22 65	Iss.
Max Wiley:					
CI66-207 Wheeler Gas Co.	East Panhandle	Tex.	Wheeler	11 1 65	Iss.
H. L. Willett:					
CI62-1488 Oklahoma Illinois Gas Pipeline Co.	Red Oak Area	Okla.	Latimer	9 9 65	Den.
Russell Williamson, Agent, et al.:					
CI66-36 United Fuel Gas Co.	Appalachian	Ky.	Martin	9 15 65	Iss.
Dwight J. Wilson:					
CI64-1450 Natural Gas Pipeline Co. of America.	Quinlan Area	Okla.	Woodward	8 10 65	Iss.
Ernest Wilson:					
CI66-162 Pennzoil Co.	Murphy District	W. Va.	Ritchie	10 25 65	Iss.
Robert Weeks, Agent for Wolf Run Oil & Gas Co.:					
CI66-383 Pennzoil Co.	Murphy District	W. Va.	Ritchie	12 30 65	Iss.
James A. Wood Trustee Operator, et al.:					
CI60-383 Tennessee Gas Transmission Co.	South Lareforma	Tex.	Starr	9 30 65	Iss.
Wood Oil Co.:					
CI66-370 El Paso Natural Gas Co.	West Kutz	N. Mex.	San Juan	12 30 65	Iss.

See footnotes at end of table, p. 1663.

NEW SERVICE CERTIFICATES—Continued

PRODUCER,[2] DOCKET NO., AND PURCHASER[3]	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Woods Exploration and Producing Co., et al.:					
CI60-495 Tennessee Gas Transmission Co.	E. Bernard	Tex	Wharton	9 22 65	Iss.
Worth Exploration Co., et al.:					
CI65-1332 Consolidated Gas Supply Corp.	South Bosco	La	Lafayette*	8 9 65	Iss.
Wrico Drilling Co., Operator, et al.:					
CI66-131 Cities Service Gas Co.	Undesignated	Kans	Cowley	10 8 65	Iss.
Yucca Petroleum Co., Operator, et al.:					
CI64-215 Panhandle Eastern Pipe Line Co.	N. W. Midwell	Okla	Cimarron	8 10 65	Iss.
Zimet Brothers, Inc., Agent, Operator, et al.:					
G-18987 Florida Gas Transmission Co.	San Eduardo	Tex	Jim Hogg*	9 30 65	Iss.

See footnotes at end of table, p. 1663.

PRODUCER APPLICATIONS FOR ABANDONMENT OF SERVICE DISPOSED OF DURING THE PERIOD JULY 1, 1965, THROUGH DECEMBER 31, 1965

PRODUCER,[2] DOCKET NO., AND PURCHASER[3]	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [4]
Anschutz Oil Co., Inc., Operator, et al.:					
CI65-1209 Kansas-Nebraska Natural Gas Co., Inc.	Dike	Colo.	Morgan	7 14 56	Iss.
Apell Petroleum Corp., Operator, et al.:					
CI65-905 Valley Gas Transmission, Inc.	Refugio	Tex.	Refugio	8 9 65	Iss.
Armstrong & Horn Drilling Co.:					
CI66-334 United Gas Pipe Line Co.	Blanconia	Tex.	Bee	12 13 65	Iss.
Nettie Armstrong:					
CI65-1063 Cabot Corp.	Undesignated	W. Va.	Calhoun	8 10 65	Iss.
Ashland Oil & Refining Co.:					
CI66-50 Arkansas Louisiana Gas Co.	Waskom	Tex.	Harrison	9 15 65	Iss.
Associated Oil & Gas Co., Operator, et al.:					
CI65-977 Ben Bolt Gathering Co.	Various	Tex.	Nueces[5]	12 23 65	Iss.
Austral Oil Co. Inc.:					
CI65-575 Florida Gas Transmission Co.	Undesignated	La.	Vermilion	11 1 65	Wtd.
Creed Barker:					
CI65-1084 Cabot Corp.	Lee District	W. Va.	Calhoun	8 19 65	Iss.
CI65-1085 Cabot Corp.	Center	W. Va.	Calhoun	8 10 65	Iss.
CI65-1088 Cabot Corp.	Undesignated	W. Va.	Calhoun	8 10 65	Iss.
CI65-1140 Cabot Corp.	Sherman	W. Va.	Calhoun	8 10 65	Iss.
CI65-1141 Cabot Corp.	Sherman	W. Va.	Calhoun	8 10 65	Iss.
Barnes Oil & Gas Co.:					
CI65-1109 Cabot Corp.	Undesignated	W. Va.	Gilmer	8 10 65	Iss.
Bell Oil & Gas Co.:					
CI65-1129 Cabot Corp.	Dekalb	W. Va.	Gilmer	8 10 65	Iss.
Benin Oil Co., Operator, et al.:					
CI66-17 Texas Eastern Transmission Corp.	East Lewisburg	La.	St. Landry	8 27 65	Iss.
E. Max Beren, et al.:					
CI66-347 Cities Service Gas Co.	Whelan	Kans.	Barber	12 23 65	Iss.
T. E. Brickle Estate:					
CI65-1121 Cabot Corp.	Undesignated	W. Va.	Calhoun	8 10 65	Iss.
E. D. Block, et al.:					
G-4166 Transcontinental Gas Pipe Line Corp.	Lacy	Tex.	Hidalgo[5]	9 23 65	Iss.
Bowser Gas & Oil Co.:					
CI65-1120 Cabot Corp.	Sherman	W. Va.	Calhoun	8 10 65	Iss.
CI65-1122 Cabot Corp.	Undesignated	W. Va.	Calhoun	8 10 65	Iss.
CI65-1123 Cabot Corp.	Undesignated	W. Va.	Calhoun	8 10 65	Iss.
W. A. Box & Claude L. Box, d/b/a W. A. Box Equip. Co.:					
CI65-1287 Transwestern Pipeline Co.	Undesignated	Tex.	Lipscomb	8 19 65	Iss.

See footnotes at end of table, p. 1663.

ABANDONMENT APPLICATIONS—Continued

PRODUCER,[2] DOCKET NO., AND PURCHASER[2]	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Bright & Schiff:					
CI66-319 Texas Eastern Transmission Corp.	East Riverside	Tex	San Patricio	12 2 65	Iss.
Busmore Oil & Gas Co., Operator, et al.:					
CI65-981 Ben Bolt Gathering Co.	Alice	Tex	Jim Wells	12 23 65	Iss.
Leonard Cain, et al.:					
CI65-1128 Cabot Corp	Sheridan	W. Va	Calhoun	8 10 65	Iss.
Carri Oil, et al.:					
CI65-990 Ben Bolt Gathering Co.	Papalote	Tex	Bee	12 23 65	Iss.
Carroll Gas Co.:					
CI65-1063 Cabot Corp	Sheridan	W. Va	Calhoun	8 10 65	Iss.
L. B. Carroll, et al.:					
CI65-1068 Cabot Corp	Undesignated	W. Va	Calhoun	8 10 65	Iss.
Gene A. Carter, Operator, et al.:					
CI65-906 Valley Gas Transmission, Inc.	Refugio	Tex	Refugio	8 9 65	Iss.
Joe N. Champlin, Operator, et al.:					
CI66-113 Panhandle Eastern Pipe Line Co.	Undesignated	Kans	Meade	10 1 65	Iss.
Champlin Petroleum Co.:					
CI66-340 West Texas Gathering Co.	Emperor	Tex	Winkler	12 30 65	Iss.
Coastal States Gas Producing Co., Operator, et al.:					
CI65-1371 United Gas Pipe Line Co.	North Laward	Tex	Jackson	8 19 65	Iss.
Colorado Oil & Gas Corp.:					
CI66-274 Panhandle Eastern Pipe Line Co.	West Plains	Kans	Seward	11 22 65	Iss.
Commonwealth Gas Corp.:					
CI66-195 United Fuel Gas Co.	Oriskany Sand	W. Va	Kanawha	11 15 65	Iss.
Connally Oil and Gas Co.:					
CI65-1078 Cabot Corp	Murphy	W. Va	Ritchie	8 10 65	Iss.
Z. N. Connolly, et al.:					
CI65-1095 Cabot Corp	Sycamore	W. Va	Calhoun	8 10 65	Iss.
Conservation Oil & Gas Co.:					
CI65-1074 Cabot Corp	Lemuels Run	W. Va	Calhoun	8 10 65	Iss.
Continental Oil Co.:					
CI65-780 United Fuel Gas Co.	Go Around Bayou	La	Cameron	8 13 65	Rej.
James D. Conway, et al.:					
CI66-88 Cities Service Gas Co.*	Hugoton	Kans	Haskell	10 1 65	Iss.
Coony Oil Co.:					
CI55-1126 Cabot Corp	Murphy	W. Va	Ritchie	8 10 65	Iss.
Claude C. Cottrille, et al.:					
CI65-1238 Equitable Gas Co.	West Union District	W. Va	Doddridge	7 14 65	Iss.
Cox Oil & Gas Co.:					
CI65-1105 Cabot Corp	Undesignated	W. Va	Ritchie	8 10 65	Iss.

See footnotes at end of table, p. 1663.

ABANDONMENT APPLICATIONS—Continued

PRODUCER,[2] DOCKET NO., AND PURCHASER[2]	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
CRA, Inc.:					
G–9650 Kansas-Nebraska Natural Gas Co., Inc.	Hugoton	Kans.	Haskell	10 7 65	Iss.
Crabbe Oil & Gas Co.:					
CI65–1108 Cabot Corp.	Undesignated	W. Va.	Gilmer	8 10 65	Iss.
Crow Drilling & Producing Co.:					
CI66–115 Arkansas Louisiana Gas Co.	Athens	La.	Claiborne	10 1 65	Iss.
Cumberland Gas Corp.:					
CI66–214 Cabot Corp.	Union District	W. Va.	Kanawha	11 15 65	Iss.
CI66–341 Pennzoil Co.	Carroll District	W. Va.	Lincoln	12 13 65	Iss.
L. W. Cunningham Gas Co., et al.:					
CI65–1103 Cabot Corp.	Undesignated	W. Va.	Ritchie	8 10 65	Iss.
T. V. Cunningham Gas Co.:					
CI65–1101 Cabot Corp.	Undesignated	W. Va.	Ritchie	8 10 65	Iss.
W. B. Cunningham Gas Co.:					
CI65–1106 Cabot Corp.	Undesignated	W. Va.	Ritchie	8 10 65	Iss.
Ben S. Curtis:					
CI65–45 Colorado Interstate Gas Co.	Keyes	Okla.	Cimarron	9 14 65	Iss
Thomas J. Davis:					
CI65–1098 Cabot Corp.	Undesignated	W. Va.	Ritchie	8 10 65	Iss.
William K. Davis, Operator, et al.:					
CI66–182 Texas Eastern Transmission Corp.	Cosden West	Tex.	Bee	11 1 65	Iss.
Cecil B. Dean, et al., d/b/a Riley Gas Co.:					
CI66–225 Consolidated Gas Supply Corp.	Triadelphia District	W. Va.	Logan	11 15 65	Iss.
C. S. Despard:					
CI65–1071 Cabot Corp.	Lemuels Run	W. Va.	Calhoun	8 10 65	Iss.
Herbert L. Dillon, Jr.:					
CI66–21 Valley Gas Transmission, Inc.	S. Pheasant	Tex.	Matagorda	8 27 65	Iss.
Dixon Management Corp., Agent for J. M. Frost, Jr.:					
CI66–52 Union Texas Petroleum, a Division Allied Chemical Corp.	Fig Ridge	Tex.	Chambers	9 15 65	Iss.
M. G. Drake Gas Co.:					
CI65–1099 Cabot Corp.	Undesignated	W. Va.	Ritchie	8 10 65	Iss.
Drake Oil & Gas Co.:					
CI65–1100 Cabot Corp.	Murphy	W. Va.	Ritchie	8 10 65	Iss.
East White Point Gathering Co.:					
CI65–979 Ben Bolt Gathering Co.	Midway	Tex.	San Patricio	12 23 65	Iss.
A. B. Edwards:					
CI66–168 Southwest Gas Producing Co., Inc.	Monroe Gas	La.	Union Parish	10 25 65	Iss.
Engeo Gathering Co.:					
CI65–980 Ben Bolt Gathering Co.	Midway	Tex.	San Patricio	12 23 65	Iss.

See footnotes at end of table, p. 1663.

ABANDONMENT APPLICATIONS—Continued

PRODUCER,[2] DOCKET NO., AND PURCHASER[2]	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION[1]
Engeo Oil & Gas Co., Operator, et al.:					
CI65-1194 Engeo Gathering Co.	Midway	Tex	San Patricio	12 23 65	Iss.
Everson Oil & Gas Co.:					
CI65-1127 Cabot Corp	Daniels Run	W. Va	Calhoun	8 10 65	Iss.
Fisher Gas Co.:					
CI66-217 Cabot Corp	Cabin Creek District.	W. Va	Kanawha	11 15 65	Iss.
Four States Drilling Co., Inc.:					
CI65-1341 United Gas Pipe Line Co.	Pistol Ridge	Miss	Pearl River	8 9 65	Iss.
Elias Floyd Fox:					
CI65-1061 Cabot Corp	Seth Fork	W. Va	Calhoun	8 10 65	Iss.
G. B. S. Oil Co.:					
CI65-1125 Cabot Corp	Murphy	W. Va	Ritchie	8 10 65	Iss.
Gerwig & Koethe Oil & Gas Co.:					
CI65-1054 Cabot Corp	Center	W. Va	Calhoun	8 10 65	Iss.
Gill Oil & Gas Co.:					
CI65-1097 Cabot Corp	Murphy	W. Va	Ritchie	8 10 65	Iss.
Burdette Graham, Operator, et al.:					
CI65-1195 East White Point Gathering Co.	Midway	Tex	San Patricio	12 23 65	Iss.
Graham-Michaelis Drilling Co.:					
CI66-191 Phillips Petroleum Co.	Camrick	Okla	Texas	12 17 65	Rej.
Arthur M. Guida:					
CI66-257 Kansas-Nebraska Natural Gas Co., Inc.	Jackpot	Colo	Morgan	12 13 65	Iss.
Gulf Oil Corp.:					
CI66-384 Panhandle Eastern Pipe Line Co.	South Forgan Pool	Okla	Beaver	12 30 65	Iss.
Gulf Oil Corp., Operator, et al.:					
CI65-1364 Northern Natural Gas Co.	Homann Gas	Tex	Gaines	8 27 65	Iss.
Gulf Sands Oil Co. & Alvin Candela:					
CI66-330 Banquete Gas Co., a Div. of Crestmont Oil Co.	Gaines	Tex	San Patricio	12 13 65	Iss.
Gulf States Development Corp., Operator, et al.:					
CI65-1293 Trunkline Gas Co.	Reynolds Ranch	Tex	Jim Wells	7 29 65	Iss.
CI65-1294 The Altex Corp	Tom Graham	Tex	Jim Wells	7 29 65	Iss.
CI65-1295 Trunkline Gas Co.	Pasano°	Tex	Jim Wells	7 29 65	Iss.
P. P. Gunn, et al.:					
CI65-1090 Cabot Corp	Undesignated	W. Va	Calhoun	8 1 65	Iss.
Michel T. Halbouty, Operator, et al.:					
CI65-1339 American Louisiana Pipe Line Co.	South Eunice	La	Acadia	8 9 65	Iss.
Harkins & Co.:					
CI66-77 Coastal States Gas Gas Producing Co.	Johns	Tex	Duval	9 17 65	Iss.

See footnotes at end of table, p. 1653.

ABANDONMENT APPLICATIONS—Continued

PRODUCER,# DOCKET NO., AND PURCHASER#	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
John A. Hendershot, Operator, et al.:					
CI66-127 Arkansas Louisiana Gas Co.	South Hunter	Okla.	Garfield	10 8 65	Iss.
Va Roy Hildreth, et al.:					
CI65-1130 Cabot Corp	Lee	W. Va.	Calhoun	8 10 65	Iss.
J. Robert Hornor:					
CI65-1043 Equitable Gas Co.	Buckhannon	W. Va.	Upshur*	9 15 65	Iss.
Humble Oil & Refining Co.:					
CI66-138 Texas Eastern Transmission Corp.	Theis Wilcox	Tex.	Bee	10 8 65	Iss.
International Helium, Inc., Operator, et al.:					
CI66-305 United Gas Pipe Line Co.	Bethany	Tex.	Harrison	12 2 65	Iss.
J. F. Gainer Gas Co.:					
CI65-1096 Cabot Corp	Undesignated	W. Va.	Gilmer	8 10 65	Iss.
J & M Well Service, Inc.:					
CI66-120 Tennessee Gas Transmission Co.	Los Torritos	Tex.	Hidalgo	10 1 65	Iss.
Johnson Gas Co.:					
CI65-1077 Cabot Corp	Undesignated	W. Va.	Ritchie	8 10 65	Iss.
The Jupiter Corp.:					
CI65-1288 Texas Eastern Transmission Corp.	West Weesatche	Tex.	Goliad	7 23 65	Iss.
CI66-299 Tennessee Gas Transmission Co.	North Magnolia City.	Tex.	Jim Wells	12 1 65	Iss.
Kimbark Exploration Co., Operator, et al.:					
CI66-246 Kansas-Nebraska Natural Gas Co., Inc.	Darby Creek	Colo.	Logan	12 1 65	Iss.
A. P. King, Jr., Operator, et al.:					
CI66-128 United Gas Pipe Line Co.	Scott	La.	Lafayette	10 8 65	Iss.
Kingwood Oil Co., Operator, et al.:					
CI66-288 Cities Service Gas Co.	Undesignated	Okla.	Comanche	12 1 65	Iss.
E. C. Laster, et al.:					
CI65-1367 Arkansas Louisiana Gas Co.	Waskom	Tex.	Harrison	8 19 65	Iss.
Sheridan C. Lewis, Jr., Trustee:					
CI66-311 Coastal States Gas Producing Co.	West Adami	Tex.	Webb	12 2 65	Iss.
Lima Gas Co.:					
CI65-1061 Cabot Corp	Washington	W. Va.	Calhoun	8 10 65	Iss.
W. C. McBride, Inc.:					
CI64-1407 Oklahoma Illinois Gas Pipeline Co.	Red-Oak Norris	Okla.	Latimer	12 8 65	Rej.
M. F. McCain, et al.:					
CI66-150 United Gas Pipe Line Co.	Gibson	La.	Terrebonne	10 8 65	Iss.

See footnotes at end of table, p. 1663.

ABANDONMENT APPLICATIONS—Continued

PRODUCER,[2] DOCKET NO., AND PURCHASER[2]	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
McCall Drilling Co., Inc.:					
CI65-1110 Cabot Corp	Sherman	W. Va	Calhoun	8 10 65	Iss.
CI65-1111 Cabot Corp	Center	W. Va	Gilmer	8 10 65	Iss.
CI65-1112 Cabot Corp	Center	W. Va	Gilmer	8 10 65	Iss.
CI65-1113 Cabot Corp	Sherman	W. Va	Calhoun	8 10 65	Iss.
CI65-1114 Cabot Corp	Sherman	W. Va	Calhoun	8 10 65	Iss.
CI65-1115 Cabot Corp	Center	W. Va	Gilmer	8 10 65	Iss.
CI65-1116 Cabot Corp	Sherman	W. Va	Calhoun	8 10 65	Iss.
CI65-1117 Cabot Corp	Sherman	W. Va	Calhoun	8 10 65	Iss.
CI65-1118 Cabot Corp	Reedy	W. Va	Calhoun	8 10 65	Iss.
McCune Oil & Gas Co.:					
CI65-1066 Cabot Corp	Undesignated	W. Va	Calhoun	12 1 65	Iss.
Ruford F. Madera:					
CI66-208 Kansas-Nebraska Natural Gas Co., Inc.	Undesignated	Okla	Beaver	11 15 65	Iss.
Marathon Oil Co.:					
CI66-171 Kansas-Nebraska Natural Gas Co., Inc.	Padroni Area	Colo	Logan	10 25 65	Iss.
Middle Run Oil & Gas Co.:					
CI65-1131 Cabot Corp	Undesignated	W. Va	Gilmer	8 10 65	Iss.
Midhurst Oil Corp.:					
CI66-372 Trunkline Gas Co.	East Bearhead Creek.	La	Beauregard	12 23 65	Iss.
Geo. W. Miller, et al., d/b/a Geo. W. Miller Gas Co.:					
CI65-967 Consolidated Gas Supply Corp.	Third Run	W. Va	Gilmer	8 19 65	Iss.
W. Rinehart Miller & Hewitt B. Fox, Operator, et al.:					
CI65-978 Ben Bolt Gathering Co.	Alice	Tex	Jim Wells	12 23 65	Iss.
Bob Miner:					
CI66-24 Coastal States Gas Producing Co.	Johns	Tex	Duval	8 27 65	Iss.
Cliff Mock Co.:					
CI66-212 Tennessee Gas Transmission Co.	Magnet-Withers	Tex	Wharton	11 15 65	Iss.
Morley Oil & Gas Co.:					
CI65-1142 Cabot Corp	Geary	W. Va	Calhoun	8 10 65	Iss.
W. H. Mosser:					
CI65-1064 Cabot Corp	Undesignated	W. Va	Calhoun	8 10 65	Iss.
CI65-1065 Cabot Corp	G. W. Dye	W. Va	Calhoun	8 10 65	Iss.
Nafco Oil & Gas Inc.:					
CI65-1282 Kansas-Nebraska Natural Gas Co., Inc.	Minto	Colo	Logan	7 23 65	Iss.
Nobe Oil & Gas Co.:					
CI65-1102 Cabot Corp	Undesignated	W. Va	Gilmer	8 10 65	Iss.
Gail Nutter:					
CI65-1072 Cabot Corp	Undesignated	W. Va	Calhoun	8 10 65	Iss.
CI65-1073 Cabot Corp	Undesignated	W. Va	Calhoun	8 10 65	Iss.
Okmar Oil Co.:					
CI65-1069 Cabot Corp	Sheridan	W. Va	Calhoun	8 10 65	Iss.
CI65-1070 Cabot Corp	Yellow Creek	W. Va	Calhoun	8 10 65	Iss.
Packer Oil Co.:					
CI65-1079 Cabot Corp	Murphy	W. Va	Ritchie	8 10 65	Iss.

See footnotes at end of table, p. 1663.

ABANDONMENT APPLICATIONS—Continued

PRODUCER,# DOCKET NO., AND PURCHASER#	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Ruth I. Penton & D. N. Penton, d/b/a Penton & Penton:					
CI66-280 Trunkline Gas Co.	South Bearhead Creek.	La.	Beauregard	11 22 65	Iss.
Petroleum International, Inc., Operator, et al.:					
CI66-25 Gas Transmission, Inc.	Graham Pool	Kans.	Cowley	8 27 65	Iss.
CI66-33 Wunderlich Development Co.	Graham Pool	Kans.	Cowley	11 15 65	Iss.
Phillips Petroleum Co.:					
CI65-1360 United Gas Pipe Line Co.	Wyrick	Tex.	Refugio	8 9 65	Iss.
CI66-227 Panhandle Eastern Pipe Line Co.	West Plains	Kans.	Seward	11 15 65	Iss.
Phillips Petroleum Co., Operator:					
CI66-6 Cities Service Gas Co.	Bradley*	Okla.	Garvin	10 25 65	Iss.
Phil D. Phillips, et al.:					
CI65-1092 Cabot Corp.	Undesignated	W. Va.	Gilmer	8 10 65	Iss.
CI65-1093 Cabot Corp.	Undesignated	W. Va.	Calhoun	8 10 65	Iss.
Physicians Oil & Gas Co.:					
CI65-1119 Cabot Corp.	Murphy	W. Va.	Ritchie	8 10 65	Iss.
The Preston Oil Co.:					
CI65-1080 Cabot Corp.	Undesignated	W. Va.	Calhoun	8 10 65	Iss.
CI66-234 The Manufacturers Light and Heat Co.	Liberty District	W. Va.	Marshall	11 16 65	Iss.
CI66-235 The Manufacturers Light and Heat Co.	Center District	W. Va.	Wetzel	11 16 65	Iss.
CI66-236 The Manufacturers Light and Heat Co.	Liberty	W. Va.	Marshall	11 16 65	Iss.
Prudential Drilling Co., Operator, et al.:					
CI66-177 Texas Eastern Transmission Co.	Chocolate Bayou	Tex.	Brazoria	10 25 65	Iss.
The Pure Oil Co.:					
CI65-43 Arkansas Louisiana Gas Co.	Haynesville	La.	Claiborne	9 14 65	Iss.
CI65-1325 Lone Star Gas Co.	Aylesworth	Okla.	Marshall	7 29 65	Iss.
CI65-1370 United Gas Pipe Line Co.	Fostoria Wilcox	Tex.	Montgomery	7 6 65	Rej.
Quaker State Oil Refining Corp.:					
CI66-371 United Fuel Gas Co.	Harts Creek District.	W. Va.	Lincoln	12 1 65	Rej.
H. N. Rinehart, Heirs & E. D. Rinehart, Partners:					
CI65-1277 Consolidated Gas Supply Corp.	Grant District	W. Va.	Ritchie	7 23 65	Iss.
W. F. Roberts Gas Co.:					
CI65-1104 Cabot Corp.	Undesignated	W. Va.	Gilmer	8 10 65	Iss.
Neal Rudder, et al.:					
CI66-329 Equitable Gas Co.	Central District	W. Va.	Doddridge	12 13 65	Iss.
H. B. Scott:					
CI65-1089 Cabot Corp.	Sherman	W. Va.	Calhoun	8 10 65	Iss.

See footnotes at end of table, p. 1663.

ABANDONMENT APPLICATIONS—Continued

PRODUCER,[2] DOCKET NO., AND PURCHASER[2]	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
James F. Scott, et al.:					
CI66-296 Consolidated Gas Supply Corp.	Grant District	W. Va.	Doddridge	12 2 65	Iss.
Shell Oil Co.:					
CI66-139 El Paso Natural Gas Co.	Spraberry Davonian.	Tex.	Glasscock	10 8 65	Iss.
Simmons Gas Co.:					
CI65-1086 Cabot Corp.	Lee	W. Va.	Calhoun	8 10 65	Iss.
Sinclair Oil & Gas Co.:					
CI65-1349 United Gas Pipe Line Co.	Henderson	Tex.	Rusk	8 9 65	Iss.
Skinner Corp.:					
CI66-187 Valley Gas Transmission, Inc.	Hinnant	Tex.	Live Oak	11 1 65	Wtd.
CI66-232 United Gas Pipe Line Co.	Cabeza Creek	Tex.	Goliad*	11 16 65	Iss.
The Slug Oil Co.:					
CI65-1124 Cabot Corp.	Murphy	W. Va.	Ritchie	8 10 65	Iss.
Smith & Smith, Operator, et al.:					
CI65-909 Valley Gas Transmission, Inc.	Pheasant	Tex.	Matagorda	8 9 65	Iss.
W. E. Smith, et al., d/b/a J. L. Jarvis, et al.:					
CI65-1139 Cabot Corp.	Center	W. Va.	Calhoun	8 10 65	Iss.
W. E. Smith, et al., d/b/a White Pine Oil & Gas Co.:					
CI65-1132 Cabot Corp.	Sherman	W. Va.	Calhoun	8 10 65	Iss.
CI65-1133 Cabot Corp.	Undesignated	W. Va.	Calhoun	8 10 65	Iss.
CI65-1134 Cabot Corp.	Undesignated	W. Va.	Calhoun	8 10 65	Iss.
CI65-1135 Cabot Corp.	Undesignated	W. Va.	Calhoun	8 10 65	Iss.
CI65-1136 Cabot Corp.	Undesignated	W. Va.	Calhoun	8 10 65	Iss.
W. E. Smith, et al., d/b/a G. M. Yeager Gas Co.:					
CI65-1138 Cabot Corp.	Undesignated	W. Va.	Calhoun	8 10 65	Iss.
W. E. Smith, et al., d/b/a Cleo H. Smith Oil & Gas Co.:					
CI65-1137 Cabot Corp.	Undesignated	W. Va.	Calhoun	8 10 65	Iss.
Sophia M. Smith, et al.:					
CI65-1060 Cabot Corp.	Sheridan	W. Va.	Calhoun	8 10 65	Iss.
William E. Snee, et al.:					
CI63-1058 Oklahoma Illinois Gas Pipeline Co.	Red-Oak	Okla.	Latimer*	12 10 65	Rej.
Socony Mobil Oil Co., Inc.:					
G-14245 El Paso Natural Gas Co.	Aneth	Utah	San Juan	12 30 65	Iss.
CI66-165 Cities Service Gas Co.	Bradley Plant	Okla.	Garvin	10 25 65	Iss.
CI66-166 Tennessee Gas Transmission Co.	Koonts*	Tex.	Victoria*	10 25 65	Iss.
CI66-203 Trunkline Gas Co.	Cowpen Creek	La.	Beauregard	11 1 65	Iss.
Sohio Petroleum Co., Operator, et al.:					
CI66-70 South Texas Natural Gas Gathering Co.	Herlinda Vela	Tex.	Zapata	10 1 65	Iss.
Sooner Pipe & Supply Corp., Operator, et al.:					
CI66-209 Cities Service Gas Co.	Sporn	Okla.	Lincoln	11 1 65	Iss.

See footnotes at end of table, p. 1663.

ABANDONMENT APPLICATIONS—Continued

PRODUCER,[2] DOCKET NO., AND PURCHASER[2]	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Southeastern Gas Co.:					
CI65-1055 Cabot Corp	Undesignated	W. Va	Calhoun	8 10 65	Iss.
CI65-1056 Cabot Corp	Undesignated	W. Va	Calhoun	8 10 65	Iss.
CI65-1057 Cabot Corp	Undesignated	W. Va	Calhoun	8 10 65	Iss.
CI65-1058 Cabot Corp	Undesignated	W. Va	Calhoun	8 10 65	Iss.
CI65-1059 Cabot Corp	Undesignated	W. Va	Calhoun	8 10 65	Iss.
CI66-215 Cabot Corp	Undesignated	W. Va	Kanawha	11 15 65	Iss.
Southwestern Oil & Refining Co., Operator, et al.:					
CI65-1260 Tennessee Gas Transmission Co.	Bailey	Tex	Jim Wells	8 6 65	Iss.
Steer Creek Oil & Gas Co.:					
CI65-1075 Cabot Corp	Center	W. Va	Gilmer	8 10 65	Iss.
Stump Gas Co.:					
CI65-1087 Cabot Corp	Center	W. Va	Gilmer	8 10 65	Iss.
A. H. Stump Gas Co. #1:					
CI65-1091 Cabot Corp	Undesignated	W. Va	Calhoun	8 10 65	Iss.
Texaco Inc.:					
CI65-908 Valley Gas Transmission, Inc.	Pheasant*	Tex	Matagorda	8 9 65	Iss.
CI65-1237 Ben Bolt Gathering Co.	Palito Blanco	Tex	Jim Wells	8 9 65	Iss.
CI66-22 Tennessee Gas Transmission Co.	Southwest Hutchins.	Tex	Wharton	8 27 65	Iss.
CI66-60 South Texas Natural Gas Gathering Co.	Gutierrez	Tex	Jim Hogg	9 15 65	Iss.
Texo Oil Corp.:					
CI66-312 Coastal States Gas Producing Co.	Tiger	Tex	Duval	12 2 65	Iss.
Glen Tompkins:					
CI65-1062 Cabot Corp	Glenville	W. Va	Gilmer	8 10 65	Iss.
Tri-Ess Corp., Operator, Agent for Texo Oil Corp., et al.:					
CI66-313 Coastal States Gas Producing Co.	Peters Ranch	Tex	Duval	12 2 65	Iss.
J. C. Trahan, Drilling Contractor, Inc., Operator, et al.:					
CI65-1291 The Tarpon Oil Corp.	Ansley	Miss	Hancock	7 23 65	Iss.
Tuppers Creek Gas Co.:					
CI66-216 Cabot Corp	Kanawha District	W. Va	Fayette	11 15 65	Iss.
CI66-218 Cabot Corp	Kanawha District	W. Va	Fayette	11 15 65	Iss.
Valentine Oil & Gas Co.:					
CI65-1094 Cabot Corp	Murphy	W. Va	Ritchie	8 10 65	Iss.
Van Camp Oil & Gas Co.:					
CI65-1107 Cabot Corp	Sherman District	W. Va	Calhoun	8 10 65	Iss.
Walter Van Norman:					
CI66-121 Phillips Petroleum Co.	Panhandle	Tex	Gray	10 1 65	Iss.
J. S. Wade, Lease:					
CI65-1076 Cabot Corp	Undesignated	W. Va	Calhoun	8 10 65	Iss.
O. L. Warren:					
CI65-1181 Cabot Corp	Center	W. Va	Gilmer	8 10 65	Iss.
Welsh Oil & Gas, Operator, et al.:					
CI65-907 Valley Gas Transmission, Inc.	Refugio	Tex	Refugio	8 9 65	Iss.

See footnotes at end of table, p. 1663.

ABANDONMENT APPLICATIONS—Continued

PRODUCER,# DOCKET NO., AND PURCHASER#	FIELD	STATE	COUNTY	DISPOSITION DATE	DISPOSITION [1]
Jerome M. Westheimer, et al.:					
CI66-224 Cimarron Transmission Co.	Undesignated	Okla	Love	11 15 65	Iss.
Ola O. White Farm Oil & Gas Co.:					
CI65-1067 Cabot Corp	Undesignated	W. Va	Calhoun	8 10 65	Iss.
Winwell Exploration Co.:					
CI65-1232 Arkansas Louisiana Gas Co.	Jefferson	Tex	Marion	7 14 65	Iss.
Wirt County Oil and Gas Co.:					
CI65-1082 Cabot Corp	Burning Springs	W. Va	Wirt	8 10 65	Iss.
Herbert E. Wollard:					
CI66-331 Tennessee Gas Transmission Co.	North Ross	Tex	Starr	12 13 65	Iss.
Woodman & Iannitti Oil Co., Operator, et al.:					
CI66-155 Cities Service Gas Co.	Rhodes	Kans	Barber	12 13 65	Iss.

*Indicates that other fields, counties, or States are also included.

#Producers' and Purchasers' names may include et al., trustee, agent, or additional names on certain dockets.

[1] Iss., issued; Den., denied; Rej., rejected; Wtd., withdrawn; Dis., dismissed.